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Commission Conference Agenda
October 3, 2017

# Item 1

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of Industry Development and Market Analysis (D. Flores)
Office of the General Counsel ( S. Cuello)

**RE:** Application for Certificate of Authority to Provide Telecommunications Service

**AGENDA:** 10/3/2017 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

**SPECIAL INSTRUCTIONS:** None

Please place the following Application for Certificate of Authority to Provide Telecommunications Service on the consent agenda for approval.

| DOCKET NO. | COMPANY NAME | CERT. NO. |
|---|---|---|
| 20170172-TX | Triton Networks, LLC | 8909 |

The Commission is vested with jurisdiction in this matter pursuant to Section 364.335, Florida Statutes. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return Notice will be mailed each December to the entity listed above for payment by January 30.

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Accounting and Finance (Richards, D. Buys, Cicchetti) CRR MC cross ALM
Office of the General Counsel (Taylor) cwdt JSC

**RE:** Docket No. 20170177-EI – Application for authority to issue and sell securities during calendar years 2018 and 2019 pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company.

**AGENDA:** 10/03/17 – Consent Agenda – Final Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

Please place the following securities application on the consent agenda for approval.

Docket No. 20170177-EI – Application for authority to issue and sell securities during calendar years 2018 and 2019 pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company.

Florida Power & Light Company (FPL or Company) seeks authority to issue and sell and/or exchange any combination of long-term debt and equity securities and/or to assume liabilities or obligations as guarantor, endorser, or surety in an aggregate amount not to exceed $6.1 billion during calendar year 2018. In addition, FPL seeks permission to issue and sell short-term securities during the calendar years 2018 and 2019 in an amount or amounts such that the aggregate principal amount of short-term securities outstanding at the time of and including any such sale shall not exceed $4.0 billion.

In connection with this application, FPL confirms that the capital raised pursuant to this application will be used in connection with the activities of FPL and FPL's regulated subsidiaries and not the unregulated activities of FPL or its unregulated subsidiaries or affiliates.

Staff has reviewed the Company's projected capital expenditures. The amount requested by the Company ($10.1 billion) exceeds its expected capital expenditures ($8.5 billion). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility with regards to unexpected events such as hurricanes, financial market disruptions and other unforeseen circumstances. Staff believes the requested amounts are appropriate. Staff recommends FPL's petition to issue securities be approved.

For monitoring purposes, this docket should remain open until April 30, 2019, to allow the Company time to file the required Commission Report.

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Accounting and Finance (L. Smith, D. Buys, Cicchetti)
Office of the General Counsel (Taylor)

**RE:** Docket No. 20170195-EI – Application for authority to issue and sell securities for 12 months ending December 31, 2018, by Tampa Electric Company.

**AGENDA:** 10/03/17 – Consent Agenda – Final Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

Please place the following securities application on the consent agenda for approval.

Docket No. 20170195-EI – Application for authority to issue and sell securities for 12 months ending December 31, 2018, by Tampa Electric Company.

Tampa Electric Company (Tampa Electric or Company) seeks the authority to issue, sell and/or exchange equity securities and issue, sell, exchange and/or assume long-term or short-term debt securities and/or to assume liabilities or obligations as guarantor, endorser, or surety during calendar year 2018. The Company also seeks authority to enter into interest swaps or other derivatives instruments related to debt securities during calendar year 2018.

The amount of all equity and long-term debt securities issued, sold, exchanged, or assumed and liabilities and obligations assumed or guaranteed as guarantor, endorser, or surety will not exceed in the aggregate $1.6 billion during the year 2018, including any amounts issued to retire existing long-term debt securities. The maximum amount of short-term debt outstanding at any

one time will be $1.3 billion during calendar year 2018. This application is for both Tampa Electric and its local gas distribution division, Peoples Gas System.

In connection with this application, the Company confirms that the capital raised pursuant to this application will be used in connection with the activities of the Company's regulated electric and gas operations and not the unregulated activities of the utilities or their affiliates.

Staff has reviewed the Company's projected capital expenditures. The amount requested by the Company ($2.9 billion) exceeds its expected capital expenditures ($1.223 billion). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility with regards to unexpected events such as hurricanes, financial market disruptions, and other unforeseen circumstances. Staff believes the requested amounts are appropriate. Staff recommends Tampa Electric's petition to issue securities be approved.

For monitoring purposes, this docket should remain open until April 30, 2019, to allow the Company time to file the required Consummation Report.

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Accounting and Finance (Richards, D. Buys, Cicchetti)
Office of the General Counsel (Taylor)

**RE:** Docket No. 20170197-EI – Application for authority to issue and sell securities during 12 months ending December 31, 2018, by Duke Energy Florida, LLC.

**AGENDA:** 10/03/17 – Consent Agenda – Final Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

Please place the following securities application on the consent agenda for approval.

Docket No. 20170197-EI – Application for authority to issue and sell securities during 12 months ending December 31, 2018, by Duke Energy Florida, LLC.

Duke Energy Florida, LLC (DEF or Company) seeks authority to issue, sell or otherwise incur during 2018 up to $1.5 billion of any combination of equity securities, long-term debt securities, and other long-term obligations. Additionally, the Company requests authority to issue, sell, or otherwise incur during 2018 and 2019, up to $1.5 billion outstanding at any time of short-term debt securities and other obligations.

In connection with this application, DEF confirms that the capital raised pursuant to this application will be used in connection with the regulated activities of the Company and not the unregulated activities of its unregulated affiliates.

Staff has reviewed the Company's projected capital expenditures. The amount requested by the Company ($3.0 billion) exceeds its expected capital expenditures ($1.2 billion). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility with regard to unexpected events such as hurricanes, financial market disruptions, and other unforeseen circumstances. Staff believes the requested amounts are appropriate. Staff recommends DEF's petition to issue securities be approved.

For monitoring purposes, this docket should remain open until April 30, 2019, to allow the Company time to file the required Commission Report.

# Item 2

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Cowdery) RC SMC
Division of Economics (Ollila) A.O. CS EJD PD

**RE:** Docket No. 20170163-OT – Proposed repeal of Rules 25-22.017, F.A.C., Rulemaking Proceeding – Adoption, and 25-22.039, F.A.C., Intervention, and proposed amendment of Rules 25-22.060, F.A.C., Motion for Reconsideration of Final Orders, and 25-40.001, F.A.C., Exceptions to the Uniform Rules of Procedure.

**AGENDA:** 10/03/17 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

## Case Background

This rulemaking addresses certain rules in Chapter 25-22, Florida Administrative Code (F.A.C), governing practice and procedure. In 1998, the Administration Commission[1] pursuant to Section 120.54(5), Florida Statutes (F.S.), enacted Uniform Rules of Procedure (Uniform Rules). The Uniform Rules are the rules of procedure for each agency subject to Chapter 120, F.S., including the Commission, unless the Administration Commission grants an exception to the agency. Because of the adoption of the Uniform Rules, many of the Commission's procedural rules contained in Chapter 25-22, F.A.C., were rendered unnecessary and were repealed in 1998.

[1] Pursuant to Section 14.202, F.S., the Administration Commission was created as part of the Executive Office of the Governor and is composed of the Governor and Cabinet.

Pursuant to Section 120.54, F.S., the Commission in 1998 filed a Petition for Exceptions to the Uniform Rules of Procedure for some of its rules (1998 Petition for Exceptions).[2] In its 1998 Petition for Exceptions, the Commission raised concerns that customer participation in hearings might be limited by requiring intervention petitions to be filed at least 20 days prior to a final hearing, as required by Uniform Rule on Intervention, because customers might not have sufficient notice of the final hearing date. The Commission recognized that the Uniform Rule on Intervention allows for intervention after expiration of the 20-day time period "for good cause shown," but was concerned that many lay persons might not intervene because they would not understand the meaning of that language. The Commission's 1998 Petition for Exceptions noted that the "take the case as they find it" language of the Commission's intervention rule eliminates any confusion over the impact an intervenor can have on an ongoing proceeding. The Administration Commission granted the Commission an exception to the Uniform Rule on Intervention. The Commission appears to be the only agency using an exception to the Uniform Rule on Intervention.

The Administration Commission granted an exception to Uniform Rule Chapter 28-103, F.A.C., Rulemaking, for Commission Rule 25-22.017, F.A.C., Rulemaking Proceeding – Adoption, on the basis that the Commission's rule was required for the most efficient operation of the Commission. However, because Uniform Rule Chapter 28-103, F.A.C., was repealed on December 4, 2012, Rule 25-22.017, F.A.C., is no longer an exception to the Uniform Rules. The Administration Commission also granted an exception to Uniform Rule Chapter 28-106, Decisions Determining Substantial Interests, for the Commission's Motion for Reconsideration rule, Rule 25-22.060, F.A.C.

Section 120.54(5)(a)3., F.S., requires each agency to maintain a chapter listing its rules that are exceptions to the Uniform Rules of Procedure. Rule 25-40.001, F.A.C., identifies in table format the Commission rules that are exceptions to the Uniform Rules.

This recommendation addresses whether the Commission should propose the repeal of Rules 25-22.017 and 25-22.039, F.A.C., and the amendment of Rules 25-22.060 and 25-40.001, F.A.C. Notices of rule development appeared in the June 28, 2017, edition of the Florida Administrative Register. No rule development workshop was requested, and thus a workshop was not held. Comments on the proposed repeal of Rule 25-22.039, F.A.C., were provided by Florida Power & Light (FPL), Duke Energy Florida, LLC (DEF), Tampa Electric Company (TECO), and Gulf Power Company (Gulf). The Commission has jurisdiction pursuant to Sections 120.54, 120.569, 120.57, and 350.127(2), F.S.

[2] Florida Public Service Commission's Petition for Exceptions to the Uniform Rules of Procedure, filed April 15, 1998, and Florida Public Service Commission's Supplement to its Petition for Exceptions to Uniform Rules of Procedure, filed May 29, 1998 in Administration Commission Case No. APA-98-007, *In Re: Petition for Exceptions from the Uniform Rules of Procedure, Florida Public Service Commission*, filed in Docket No. 980500-PU, *In Re: Repeal of certain rules in Chapter 25-21, and Chapter 25-22, F.A.C., amendment of certain rules in Chapter 25-22, F.A.C., and adoption of new Rule 25-40.001, F.A.C.*

## Discussion of Issues

***Issue 1:*** Should the Commission propose the repeal of Rules 25-22.017, Rulemaking Proceeding – Adoptions, and 25-22.039, F.A.C., Intervention, and the amendment of Rules 25-22.060, Motion for Reconsideration of Final Orders, and 25-40.001, F.A.C., Exceptions to the Uniform Rules of Procedure?

***Recommendation:*** Yes, the Commission should propose the repeal of Rules 25-22.017 and 25-22.039, F.A.C., and the amendment of Rules 25-22.060 and 25-40.001, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify proposed amended Rules 25-22.060 and 25-40.001, F.A.C., as minor violation rules. Staff also recommends that the Notice of Rulemaking issued by the Commission should state that in repealing Rule 25-22.039, F.A.C., Intervention, and thus becoming subject to Uniform Rule 28-106.205, F.A.C., Intervention, it is the Commission's intent to continue to require intervenors to take the case as they find it. (Cowdery, Ollila)

### *Staff Analysis:*

Staff is recommending the repeal of Rules 25-22.017 and 25-22.039, F.A.C., and the amendment of Rules 25-22.060 and 25-40.001, F.A.C., as set forth in Attachment A. Below is staff's analysis for the recommended rule repeals and amendments.

### Repeal of Rule 25-22.017, F.A.C., Rulemaking Proceeding – Adoption

Section (1) of Rule 25-22.017, F.A.C., states that the Commission, at a public meeting, shall consider the record, the proposed rule, timely exceptions to the presiding officer's final recommended version, if permitted, and the recommendation of the presiding officer, and may question staff and other persons as part of its deliberations prior to adopting, rejecting or modifying the proposed rule. The Commission follows the detailed adoption procedures set forth in Section 120.54(3), F.S. Section 120.54(3)(c), F.S., addresses the procedures to be followed in the event a hearing is requested on a proposed rule. Rulemaking proceedings are governed solely by the provisions of Section 120.54(3)(c), F.S., unless a separate proceeding is convened under Sections 120.569 and 120.57, F.S. Staff believes that Rule 25-22.017, F.A.C., is unnecessary to implementation of Section 120.54(3), F.S.

Section (2) of Rule 25-22.017, F.A.C., explains that oral argument and petitions for reconsideration are not appropriate to the rulemaking process, but that any interested person may file a petition for initiation of rulemaking proceedings pursuant to Rule 28-103.006, F.A.C., Rulemaking, to amend or otherwise modify an adopted rule or amendment. A statement that oral argument is not appropriate in rulemaking is unnecessary because paragraph (7)(a) of the Commission's Oral Argument Rule states that oral argument at an Agenda Conference is limited to recommended orders and dispositive motions, which would not include rulemaking orders.[3] In addition, as discussed in detail below, the language in Section (2) concerning reconsideration in rulemaking should be moved to the Commission's motion for reconsideration rule, Rule 25-

[3] However, informal participation in rulemaking proceedings is allowed at Agenda Conferences pursuant to Rule 25-22.0021, F.A.C., unless there has been a hearing pursuant to Section 120.54(3)(c), F.S., and the record has been closed.

22.060, F.A.C., so that it is consolidated with other rule provisions relating to motions for reconsideration.

Finally, the statement in Section (2) that a petition to initiate rulemaking is filed pursuant to Uniform Rule 28-103.006, F.A.C., is obsolete because Uniform Rule Chapter 28-103, F.A.C., was repealed December 4, 2012. For the reasons explained above, staff recommends that the Commission propose the repeal of Rule 25-22.017, F.A.C., as set forth in Attachment A.

## Repeal of Rule 25-22.039, F.A.C., Intervention

As discussed below, staff is recommending the repeal of its exception to the Uniform Rule on Intervention, Rule 25-22.039, F.A.C. If the Commission's intervention rule is repealed, the Commission would follow the Uniform Rule on Intervention, Rule 28-106.205, F.A.C.

### *The Commission's Intervention Rule*

The Commission's intervention rule, Rule 25-22.039, F.A.C., states as follows:

> Persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 28-106.201(2), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitle to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.

Section (2) of Uniform Rule 28-106.201, F.A.C., Initiation of Proceedings, referenced in the Commission's intervention rule, states as follows:

> (2) All petitions filed under these rules shall contain:
> (a) The name and address of each agency affected and each agency's file or identification number, if known;
> (b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
> (c) A statement of when and how the petitioner received notice of the agency decision;
> (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
> (e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal of modification of the agency's proposed action;

(f) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

### *The Uniform Rule on Intervention*

The Uniform Rule on Intervention, Rule 28-106.205, F.A.C., (Attachment B) states:

(1) Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene. Except for good cause shown, motions for leave to intervene must be filed at least 20 days before the final hearing unless otherwise provided by law. The parties may, within 7 days of service of the motion, file a response in opposition. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.
(2) The motion to intervene shall contain the following information:
(a) The name, address, e-mail address, telephone number, and any facsimile number of the intervener, if the intervener is not represented by an attorney or qualified representative; and
(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative; and
(c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding; and
(d) A statement as to whether the intervenor supports or opposes the preliminary agency action; and
(e) The statement required by subsection 28-106.204(3); and
(f) The signature of the intervenor or intervenor's attorney or qualified representative; and
(g) The date.
(3) Specifically-named persons, whose substantial interests are being determined in the proceeding, may become a party by entering an appearance and need not request leave to intervene.

Section (3) of Uniform Rule 28-106.204, Motions, F.A.C., referenced in the Uniform Rule on Intervention, states:

(3) All motions, other than a motion to dismiss, shall include a statement that the movant has conferred with all other parties of record and shall state as to each party whether the party has any objection to the motion. Any statement that the movant was unable to contact the other party or parties before filing the motion must provide information regarding the date(s) and method(s) by which contact was attempted.

### *Comments from FPL, TECO, DEF, and Gulf*

FPL filed comments on the proposed repeal of the Commission's intervention rule, Rule 25-22.039, F.A.C., stating that, for the most part, it concurs that the procedure for intervening in administrative proceedings is adequately covered by Uniform Rule on Intervention. However, FPL wants to preserve the "take the case as they find it" principle as essential for the expeditious and efficient prosecution of complex matters before the Commission. FPL states that deleting the sentence that intervenors take the case as they find it would make it unclear whether future intervenors would be required to take cases as they find them; that parties would have to argue whether or not prior Commission precedent remains viable; and Commission proceedings could be unnecessarily convoluted and delayed by intervenors seeking to interject last-minute changes to the substantive issues and/or agreed procedures for this resolution.

FPL offered two possible solutions to address its concern. FPL's first choice would be for the Commission to amend the Commission's intervention rule to state: "Intervention in pending proceedings shall be governed by Rule 28-106.205, F.A.C. Intervenors take the case as they find it." Alternatively, FPL suggested that the final order approving the repeal[4] should state clearly that future intervenors will continue to take cases as they find them. DEF, TECO, and Gulf all filed letters in agreement with the comments filed by FPL.

### *Discussion*

As discussed in the Case Background, the primary reason the Commission in 1998 requested an exception to the Uniform Rule on Intervention was that it was concerned that there could be a chilling effect on customer intervention in Commission proceedings if customers were to get notice of the hearing date fewer than 20 days before the hearing. The concern was that lay people might not understand that they could still intervene by showing good cause, which could include an argument of insufficient notice. However, this has not turned out to be a problem during the almost 20 years since the exception was granted to the Uniform Rule.

Lack of notice of hearing dates has not been a problem in Commission proceedings. Commission practice and Rule 25-22.0405, F.A.C., Notices of Hearings, allow the prehearing officer to assure that customers get sufficient notice of the final hearing date. The Notices of Hearings rule provides that the Commission will require a public utility to publish additional notices of hearing in newspapers of general circulation in the area affected and to give notice to its customers by mail, if the Commission finds that it is necessary in order to afford adequate notice to the customers. In addition, hearing dates are generally set well in advance of the hearing and identified in an Order Establishing Procedure, which gives affected persons notice of the date of the hearing well in advance of 20 days before the final hearing.

In addition, experience shows that allowing intervention a mere five days before hearing has resulted in intervenors receiving less than the meaningful participation that they would be afforded if they intervened earlier in the proceeding. This is because at a point five days before

[4] Under Section 120.54(3)(a)1., F.S., after the Commission approves adoption, amendment, or repeal of a rule at an Agenda Conference, a Notice of Proposed Rules is published in the Florida Administrative Register. The Commission also notifies affected utilities and persons by issuing a Notice of Rulemaking. A final order is not part of Section 120.54, F.S., rulemaking procedure.

the hearing, all prefiled testimony has been filed, discovery has been concluded, the prehearing conference has occurred, and all parties' positions on issues in the case have been identified in prefiled testimony and in the prehearing order. Requiring intervention to be at least 20 days before the hearing, as required by the Uniform Rule, would in most cases be prior to the prehearing conference and would allow intervenors to participate in issue identification. This earlier intervention allows intervenors' involvement to be more meaningful and is less disruptive of the hearing process. Further, if an interested person seeks to intervene fewer than 20 days before hearing, the Uniform Rule on Intervention allows the presiding officer to grant the motion to intervene for good cause shown.

The maxim that intervenors take the case as they find it is preserved in the Uniform Rule on Intervention. Administrative and court decisions since enactment of the Uniform Rules show this to be the case. The phrase "take the case as they find it" generally means that the rights of the intervenor are subordinate to and dependent on the principal issues raised by the original parties to an action, and the intervening party is limited to litigating only its interest as affected by the principal issues. The Florida Supreme Court stated that the Commission's intervention rule requirement that intervenors take the case as they find it is similar to Florida Rules of Civil Procedure Rule 1.230, Intervention, stating:

> "Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion." Fla. R. Civ. P. 1230. *See Coast Cities Coaches, Inc. v. Dade County*, 178 So. 2d 703, 706 (Fla. 1965)("it is settled law, however, that an intervening defendant is bound by the record made at the time he intervenes and must take the suit as he finds it unless the court, in its discretion, otherwise orders").

*Panda Energy International v. Jacobs*, 813 So. 2d 46, 50 fn. 4 (Fla. 2002). *See also State Trust Realty, LLC v. Deutcshe Bank National Trust Company Americas*, 207 So. 3d 923, 925-26 (Fla. 4th DCA 2016)(stating that Fla. R. Civ. Pro. 1.230 has consistently been interpreted to mean that interveners are bound by the record made at the time they intervene and must take the suit as they find it).

The principle that intervenors must take the case as they find it applies in administrative proceedings under both the Commission's intervention rule and the Uniform Rule on Intervention. In *Humana of Florida, Inc. v. Department of Health and Rehabilitative Services*, 500 So. 2d 186, 188 (Fla. 1st DCA 1986), *rev. denied*, 506 So. 2d 1041 (Fla. 1987), the Florida Supreme Court found that an intervenor in a formal administrative proceeding before the Division of Administrative Hearings joined the proceeding subject to the action of the original petitioner. *See also Environmental Confederation of Southwest Florida, Inc. v. IMC Phosphates, Inc.*, 857 So. 2d 207, 210-11 (Fla. 1st DCA 2003) (relying on *Humana* in recognizing the applicability in administrative proceedings of the Fla. R. Civ. Pro. 1.230 principle that an intervenor's rights are subordinate to the parties' rights), and *Broward Children's Center, Inc. v. Plantation Nursing and Rehabilitation Center*, 66 So. 3d 1063, 1064 (Fla. 1st DCA 2011).

The Department of Environmental Regulation (DEP), in addressing intervention requested in an administrative hearing under the Uniform Rule on Intervention, stated:

> Case law is clear, that when the ALJ[5] allowed intervention, the MACLA Intervenors' rights were subordinate to the propriety of the main proceeding and they were bound by the issues and matters in the record and by the pleadings as they existed at the time of intervention. *See, e.g., Riviera Club v. Belle Mead Development Corp.*, 141 Fla. 538, 194 So. 783, 784 (Fla. 1940)(reflecting that intervention is a well founded principle of law and that the courts "have always striven to maintain the integrity of the issues raised by the original pleadings, and to keep newly admitted parties within the scope of the original suit.") [also citing *Environmental Confederation* and *Humana*]

*Sherry et al. v. Okaloosa Co. et al.*, Consolidated Final Order, issued August 29, 2011, 2011 WL 4350413 (Fla. Dept. Env. Prot). DEP specified that the issues that intervenors were allowed to argue can be limited by the Administrative Law Judge under the Uniform Rule on Intervention "and in accordance with applicable intervention case law." *Id.* at *12. Thus, even though neither Fla. R. Civ. P. 1.230 nor the Uniform Rule on Intervention specifically state that an intervenor must "take the case as it finds it," that principle is applied in administrative cases by Administrative Law Judges and the courts by requiring that intervention be in subordination to, and in recognition of, the propriety of the main proceeding, subject to the discretion of the judge or presiding officer. Staff believes that the law is clear that intervenors take the case as they find it under the Uniform Rule on Intervention. However, staff believes that for purposes of clarity, the Notice of Rulemaking should state that in repealing Rule 25-22.039, F.A.C., Intervention, and thus becoming subject to Uniform Rule 28-106.205, F.A.C., Intervention, it is the Commission's intent to continue to require intervenors to take the case as they find it.

Unlike the Uniform Rule on Intervention, the Commission's intervention rule does not specify that the presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties. However, this provision of the Uniform Rule would merely codify existing agency practice because Commission prehearing officers routinely exercise their discretion to impose terms and conditions on intervenors. In *Panda*, for example, the Commission prehearing officer denied the intervenor's request to extend the discovery cutoff date by one day, allowed the intervenor to take the depositions it requested, and required the utility to provide immediate access to all confidential information. On appeal, the Florida Supreme Court held that the discovery limitations placed on the intervenor by the Commission were not an abuse of discretion. *Panda*, 813 So. 2d at 50. Commission prehearing officer orders granting intervention routinely state that the intervenor takes the case as it finds it. If a motion to intervene is filed and granted after the Order Establishing Procedure has been issued, an intervenor must, like any other party, file a motion with the prehearing officer to request any changes to the scheduled dates. These principles will not change under the Uniform Rule on Intervention.

Adopting the Uniform Rule as the intervention rule for the Commission is advantageous in that the requirements for what must be alleged in a motion to intervene are specifically intended to

[5] Administrative Law Judge.

apply to motions to intervene. The Commission's intervention rule, on the other hand, requires petitions to intervene to conform with Uniform Rule Section 28-106.201(2), F.A.C., which applies to parties filing a petition to challenge final agency action and is not specifically meant for motions to intervene. The Commission's intervention rule requires petitions to intervene to include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceedings. This requirement will not change because the same language is in the Uniform Rule on Intervention.

Section (3) of the Uniform Rule on Intervention states that specifically-named persons, whose substantial interests are being determined in the proceeding, may become a party by entering an appearance and need not request leave to intervene. The Commission does not have a similar rule provision. The Section (3) Uniform Rule provision is beneficial to parties and the Commission because it saves resources by allowing specifically-named persons whose substantial interests are being determined to become a party by filing a fairly simple notice of appearance instead of a much more involved petition to intervene.

For the reasons explained above, staff recommends that the Commission propose the repeal of the Commission's intervention rule, Rule 25-22.039, F.A.C., as set forth in Attachment A. Staff further recommends that the Notice of Rulemaking should state that in repealing Rule 25-22.039, F.A.C., Intervention, and thus becoming subject to Uniform Rule 28-106.205, F.A.C., Intervention, it is the Commission's intent to continue to require intervenors to take the case as they find it.

**Amendment of Rule 25-22.060, F.A.C., Motion for Reconsideration of Final Orders**

Staff is recommending that the Commission propose the amendment of Rule 25-22.060, F.A.C., to delete paragraph (1)(e), which states:

> A motion for reconsideration of an order adopting, repealing, or amending a rule shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under Section 120.54(7), F.S. and Rule 28-103.106, F.A.C.

Unlike the other provisions of Rule 25-22.060, F.A.C., paragraph (1)(e) specifically addresses rulemaking procedure. The Commission's Petition and the Administration Commission's 1998 final order that granted an exception for Rule 25-22.060, F.A.C., did not specifically address paragraph (1)(e). Reference in paragraph (1)(e) to Uniform Rule 28-103.106, F.A.C., is obsolete because, as previously stated, Uniform Rule Chapter 28-103, F.A.C., is repealed.

The apparent purpose of paragraph (1)(e) is to recognize that a motion for reconsideration is not appropriate in rulemaking under Section 120.54, F.S., and, further, to treat a motion for reconsideration of a rule adoption, repeal, or amendment as a petition to initiate rulemaking under Section 120.54(7), F.S. Section 120.54(7), F.S., gives the specific requirements for a person to petition an agency to adopt, amend, or repeal a rule. There does not appear to be any benefit to treating a motion for reconsideration of a rule adoption, repeal, or amendment as a petition to initiate rulemaking. If a person were to file such a motion for reconsideration, it would

be denied as unauthorized under Section 120.54, F.S.,[6] but that denial would not interfere with the person's ability to file a Section 120.54(7), F.S., petition to initiate rulemaking. For these reasons, staff believes paragraph (1)(e) of the Commission's Motion for Reconsideration of Final Orders rule should be deleted.

In addition, as explained above, staff believes that the provision of Section (2) in Rule 25-22.017, F.A.C., that states that reconsideration is not appropriate in rulemaking, should be updated and, because its subject matter is reconsideration, it should be moved to Rule 25-22.060, F.A.C. For the reasons explained above, staff recommends that the Commission propose the amendment of Rule 25-22.060, F.A.C., Motion for Reconsideration of Final Orders, as set forth in Attachment A.

## Amendment of Rule 25-40.001, F.A.C., Exceptions to the Uniform Rules of Procedure

As discussed in the Case Background, Rule 25-40.001, F.A.C., identifies in table format the Commission rules that are exceptions to the Uniform Rules. As previously explained, Uniform Rule Chapter 28-103, F.A.C., is repealed. Likewise, Uniform Rule Chapter 28-107, Licensing, F.A.C., was repealed on January 15, 2007. These two Uniform Rule chapters should thus be deleted from Rule 25-40.001, F.A.C. Additionally, if the Commission proposes the repeal of the Commission's intervention rule, Rule 25-22.039, F.A.C., it should be deleted from the list of the Commission's exceptions to the Uniform Rules. Finally, the title of Rule 25-22.060, F.A.C., should be amended to state the rule's complete title: Motion for Reconsideration of Final Orders. For these reasons, staff recommends that the Commission should propose the amendment of Rule 25-40.001, F.A.C., as set forth in Attachment A.

## Statement of Estimated Regulatory Costs

Pursuant to Section 120.54(3)(b)1., F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. A SERC was prepared for this rulemaking and is appended as Attachment C. As required by Section 120.541(2)(a), F.S., the SERC analysis includes whether the rule repeals and amendments are likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after implementation. None of the impact cost/criteria established will be exceeded as a result of the recommended revisions.

The SERC concludes that the rule repeals and amendments will likely not directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in Florida within one year after implementation. Further, the SERC concludes that the rule repeals and amendments will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. Thus, the rule repeals and amendments do not require legislative ratification pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule repeals and amendments would not have an adverse impact on small businesses, would have

[6] To staff's knowledge, no one has filed a motion for reconsideration in a rulemaking docket.

no implementation or enforcement cost on the Commission or any other state and local government entity, and would have no impact on small cities or small counties.

## Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption, the Commission is required to certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. A list of the Commission rules designated as minor violation rules is published on the Commission's website, as required by Section 120.695(2), F.S. Currently, Rules 25-22.017, 25-22.039, 25-22.060, and 25-40.001, F.A.C., are on the Commission's list of rules designated as minor violations. If the Commission proposes the repeal of Rules 25-22.017 and 25-22.039, F.A.C., once the repeals become effective, these rules should be deleted from the Commission's published list of minor violation rules.

If the Commission proposes the amendment of Rules 25-22.060 and 25-40.001, F.A.C., the rules would continue to be considered minor violation rules. Therefore, for purposes of filing the amended rules for adoption with the Department of State, staff recommends that the Commission certify proposed amended Rules 25-22.060 and 25-40.001, F.A.C., as minor violation rules.

## Conclusion

For the reasons described above, staff recommends that the Commission should propose the repeal of Rules 25-22.017 and 25-22.039, F.A.C., and the amendment of Rules 25-22.060 and 25-40.001, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify the proposed amended Rules 25-22.060 and 25-40.001, F.A.C., as minor violation rules. Staff also recommends that the Notice of Rulemaking should state that in repealing Rule 25-22.039, F.A.C., Intervention, and thus becoming subject to Uniform Rule 28-106.205, F.A.C., Intervention, it is the Commission's intent to continue to require intervenors to take the case as they find it.

***Issue 2:*** Should this docket be closed?

***Recommendation:*** Yes. If no requests for hearing or comments are filed the rules should be filed with the Department of State, and the docket should be closed. (Cowdery)

***Staff Analysis:*** If no requests for hearing or comments are filed by affected persons, the rules should be filed with the Department of State, and the docket should be closed.

**25-22.017 Rulemaking Proceeding - Adoption.**

~~(1) At a public meeting, the Commission shall consider the record, the proposed rule, timely exceptions to the presiding officer's final recommended version, if permitted, and the recommendation of the presiding officer. The Commission may also question staff and other persons as part of its deliberations prior to adopting, rejecting or modifying the proposed rule.~~

~~(2) Oral argument and petitions for reconsideration are not appropriate to the rulemaking process. However, any interested person may petition the Commission after a rule is adopted or amended, for initiation of rulemaking proceedings pursuant to Rule 28-103.006, F.A.C., to amend or otherwise modify the adopted rule or amendment.~~

*Rulemaking Authority 350.127(2) FS. Law Implemented 120.525, 120.54(3) FS. History–New 12-21-81, Amended 10-25-83, Formerly 25-22.17, Amended 5-3-99. Repealed _____.*

**25-22.039 Intervention.**

~~Persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties may petition the presiding officer for leave to intervene. Petitions for leave to intervene must be filed at least five (5) days before the final hearing, must conform with Uniform subsection 28-106.201(2), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected through the proceeding. Intervenors take the case as they find it.~~

*Rulemaking Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History–Formerly 25-2.34, Amended 12-21-81, Formerly 25-22.39, Repealed _____.*

**25-22.060 Motion for Reconsideration of Final Orders.**

(1) Scope and General Provisions.

(a) Any party to a proceeding who is adversely affected by an order of the Commission may file a motion for reconsideration of that order. The Commission will not entertain any motion for reconsideration of any order that disposes of a motion for reconsideration. Petitions for reconsideration are not authorized in the rulemaking process, and the Commission will not entertain any motion for reconsideration on the adoption, repeal, or amendment of a rule.

(b) A party may file a response to a motion for reconsideration and may file a cross motion for reconsideration. A party may file a response to a cross motion for reconsideration.

(c) A final order shall not be deemed rendered for the purpose of judicial review until the Commission disposes of any motion and cross motion for reconsideration of that order, but this provision does not serve automatically to stay the effectiveness of any such final order. The time period for filing a motion for reconsideration is not tolled by the filing of any other motion for reconsideration.

(d) Failure to file a timely motion for reconsideration, cross motion for reconsideration, or response, shall constitute waiver of the right to do so.

~~(e) A motion for reconsideration of an order adopting, repealing, or amending a rule shall be treated by the Commission as a petition to adopt, repeal, or amend a rule under Section 120.54(7), F.S. and Rule 28-103.006, F.A.C.~~

(2) Contents. Any motion or response filed pursuant to this rule shall contain a concise statement of the grounds for reconsideration, and the signature of counsel, if any.

(3) Time. A motion for reconsideration of a final order shall be filed within 15 days after issuance of the order. A response to a motion for reconsideration or a cross motion for reconsideration shall be served within 7 days of service of the motion for reconsideration to

which the response or cross motion is directed. A response to a cross motion for reconsideration shall be served within 7 days of service of the cross motion.

*Rulemaking Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57 FS. History–New 12-21-81, Amended 10-4-84, Formerly 25-22.60, Amended 7-11-96, 1-1-07,_____.*

**25-40.001 Exceptions to the Uniform Rules of Procedure.**

The following provisions of the Commission's rules are exceptions to the uniform rules of procedure:

| UNIFORM RULE | COMMISSION RULE THAT IS AN EXCEPTION |
|---|---|
| CHAPTER 28-102, F.A.C.<br>AGENDA AND SCHEDULING OF MEETINGS AND WORKSHOPS | Rule 25-22.0021, F.A.C.<br>Agenda Conference Participation. |
| CHAPTER 28-102, F.A.C. – AGENDA AND SCHEDULING OF MEETINGS AND WORKSHOPS AND CHAPTER 28-106, F.A.C. – DECISIONS DETERMINING SUBSTANTIAL INTERESTS | Rule 25-22.0022, F.A.C.<br>Oral Argument Rule. |
| Rule 28-102.001, F.A.C.<br>Notice of Public Meeting, Hearing, or Workshop. | Rule 25-22.001, F.A.C.<br>Notice of Meeting or Workshop. |
| Subsection 28-102.002(2), F.A.C.<br>Agenda of Meetings, Hearings, and Workshops. | Rule 25-22.002, F.A.C.<br>Agenda of Meetings. |
| ~~CHAPTER 28-103, F.A.C.<br>RULEMAKING~~ | ~~Rule 25-22.017, F.A.C.<br>Rulemaking Proceeding – Adoption.~~ |
| CHAPTER 28-106, F.A.C.<br>DECISIONS DETERMINING SUBSTANTIAL INTERESTS | Rule 25-22.006, F.A.C.<br>Confidential Information.<br>Rule 25-22.029, F.A.C.<br>Point of Entry Into Proposed Agency Action Proceedings.<br>Rule 25-22.0376, F.A.C.<br>Reconsideration of Non-Final Orders.<br>Subsections 25-22.0406(7)-(8) , F.A.C.<br>Notice and Public Information on General Rate Increase Requests by Electric, Gas and Telephone Companies.<br>Subsections 25-22.0407(8) and (10) , F.A.C.<br>Notice of and Public Information for General Rate Increase Requests by Water and Wastewater Utilities.<br>Rule 25-22.060, F.A.C.<br>Motion for Reconsideration of Final Orders. |
| ~~Rule 28-106.205, F.A.C.<br>Intervention.~~ | ~~Rule 25-22.039, F.A.C.<br>Intervention.~~ |
| Rule 28-106.208, F.A.C.<br>Notice of Hearing. | Rule 25-22.029, F.A.C.<br>Point of Entry into PAA Proceeding.<br>Rule 25-22.0405, F.A.C.<br>Notices of Hearings. |
| Rule 28-106.212, F.A.C.<br>Subpoenas. | Rule 25-22.045, F.A.C.<br>Subpoenas. |
| ~~CHAPTER 28-107, F.A.C.<br>LICENSING~~ | ~~Rule 25-22.075, F.A.C.<br>Transmission Line Permitting Proceedings.<br>Rule 25-22.080, F.A.C.<br>Electrical Power Plant Permitting Proceedings.~~ |

*Rulemaking Authority 120.54(5)(a)3. FS. Law Implemented 120.54(5)(a)3. FS. History–New 4-28-99, Amended 3-28-07, 9-28-15, _____.*

**28-106.205 Intervention.**

(1) Persons other than the original parties to a pending proceeding whose substantial interest will be affected by the proceeding and who desire to become parties may move the presiding officer for leave to intervene. Except for good cause shown, motions for leave to intervene must be filed at least 20 days before the final hearing unless otherwise provided by law. The parties may, within 7 days of service of the motion, file a response in opposition. The presiding officer may impose terms and conditions on the intervenor to limit prejudice to other parties.

(2) The motion to intervene shall contain the following information:

(a) The name, address, e-mail address, telephone number, and any facsimile number of the intervener, if the intervener is not represented by an attorney or qualified representative; and

(b) The name, address, e-mail address, telephone number, and any facsimile number of the intervenor's attorney or qualified representative; and

(c) Allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to agency rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding; and

(d) A statement as to whether the intervenor supports or opposes the preliminary agency action; and

(e) The statement required by subsection 28-106.204(3); and

(f) The signature of the intervenor or intervenor's attorney or qualified representative; and

(g) The date.

(3) Specifically-named persons, whose substantial interests are being determined in the proceeding, may become a party by entering an appearance and need not request leave to intervene.

*Rulemaking Authority 14.202, 120.54(5) FS. Law Implemented 120.54(5) FS. History–New 4-1-97, Amended 1-15-07, 2-5-13.*

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

**DATE:** July 26, 2017

**TO:** Kathryn G.W. Cowdery, Senior Attorney, Office of the General Counsel

**FROM:** Suzanne M. Ollila, Economic Analyst, Division of Economics S.M.O.

**RE:** Statement of Estimated Regulatory Costs for Proposed Repeal of Rules 25-22.017 and 25-22.039 and for Proposed Amendments to Rule 25-0.600 and 25-40.001, Florida Administrative Code (F.A.C.)

The purpose of the recommended rulemaking is to repeal two rules and to amend two rules. Rule 25-22.017, F.A.C., Rulemaking Proceeding - Adoption, would be repealed as obsolete and unnecessary to the implementation of Section 120.54, Florida Statutes (F.S.). Rule 25-22.039, F.A.C., Intervention, would be repealed and the Commission would follow the Uniform Rule of Procedure Rule 28-106.205, F.A.C. Rule 25-22.060, Motion for Reconsideration for Final Orders, would be amended to delete paragraph (1)(e) as obsolete and unnecessary for the implementation of Section 120.54, F.S. Rule 25-40.001, F.A.C., Exceptions to the Uniform Rules of Procedure, would be amended to remove Chapters 28-103, F.A.C., Rulemaking, and 28-107, F.A.C., Licensing, from the list of Uniform Rules because those chapters are repealed. If Rule 25-22.039, F.A.C., Intervention, is repealed, Rule 25-40.001, F.A.C. would be amended to remove Rule 25-22.039, F.A.C.

The attached SERC addresses the considerations required pursuant to Section 120.541, F.S. No workshop was requested in conjunction with the recommended rule revisions. No regulatory alternatives were submitted pursuant to paragraph 120.541(1)(a), F.S. None of the impact/cost criteria established in paragraph 120.541(2)(a), F.S., will be exceeded as a result of the recommended revisions.

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Chapter 25-22.017, 25-22.039, 25-22.060, and 25-40.001, F.A.C.

1. Will the proposed rule have an adverse impact on small business? [120.541(1)(b), F.S.] (See Section E., below, for definition of small business.)

Yes ☐ No ☒

If the answer to Question 1 is "yes", see comments in Section E.

2. Is the proposed rule likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after implementation of the rule? [120.541(1)(b), F.S.]

Yes ☐ No ☒

If the answer to either question above is "yes", a Statement of Estimated Regulatory Costs (SERC) must be prepared. The SERC shall include an economic analysis showing:

A. Whether the rule directly or indirectly:

(1) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)1, F.S.]

| | |
|---|---|
| Economic growth | Yes ☐ No ☒ |
| Private-sector job creation or employment | Yes ☐ No ☒ |
| Private-sector investment | Yes ☐ No ☒ |

(2) Is likely to have an adverse impact on any of the following in excess of $1 million in the aggregate within 5 years after implementation of the rule? [120.541(2)(a)2, F.S.]

| | |
|---|---|
| Business competitiveness (including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets) | Yes ☐ No ☒ |
| Productivity | Yes ☐ No ☒ |
| Innovation | Yes ☐ No ☒ |

1

(3) Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule? [120.541(2)(a)3, F.S.]

Yes ☐ No ☒

Economic Analysis:

B. A good faith estimate of: [120.541(2)(b), F.S.]

(1) The number of individuals and entities likely to be required to comply with the rule.

Anyone who wants to be involved in a proceeding where intervention is an issue will be required to comply with the rule.

(2) A general description of the types of individuals likely to be affected by the rule.

Regulated electric, gas, telecommunications, and water and wastewater entities as well as any potential party to a proceeding.

C. A good faith estimate of: [120.541(2)(c), F.S.]

(1) The cost to the Commission to implement and enforce the rule.

☒ None. To be done with the current workload and existing staff.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

(2) The cost to any other state and local government entity to implement and enforce the rule.

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

2

(3) Any anticipated effect on state or local revenues.

☒ None.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

D. A good faith estimate of the transactional costs likely to be incurred by individuals and entities (including local government entities) required to comply with the requirements of the rule. "Transactional costs" include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used, procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring or reporting, and any other costs necessary to comply with the rule. [120.541(2)(d), F.S.]

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

E. An analysis of the impact on small businesses, and small counties and small cities: [120.541(2)(e), F.S.]

(1) "Small business" is defined by Section 288.703, F.S., as an independently owned and operated business concern that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than $5 million or any firm based in this state which has a Small Business Administration 8(a) certification. As to sole proprietorships, the $5 million net worth requirement shall include both personal and business investments.

☒ No adverse impact on small business.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

3

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census. A "small county" is defined by Section 120.52, F.S., as any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

☐ Other. Provide an explanation for estimate and methodology used.

F. Any additional information that the Commission determines may be useful. [120.541(2)(f), F.S.]

☒ None.

Additional Information:

G. A description of any regulatory alternatives submitted and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule. [120.541(2)(g), F.S.]

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

☐ Rejected. Describe what alternative was rejected and provide a statement of the reason for rejecting that alternative.

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# Item 3

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Page) PHP SMC RH
Office of Consumer Assistance and Outreach (Hicks, Plescow)
Division of Economics (Ollila) A.O. EW PPB John Ellis

**RE:** Docket No. 20170098-EI – Complaint by Richard Ralph Malcolm against Florida Power & Light Company.

**AGENDA:** 10/03/17 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brisé

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

### Case Background

Section 366.03, Florida Statutes (F.S.), states that each public utility shall furnish to each person applying for service, reasonably sufficient, adequate, and efficient service. The Commission has jurisdiction as set forth in Section 366.04, F.S., to regulate and supervise each public utility with respect to its rates and service.

Rule 25-22.032, Florida Administrative Code (F.A.C.), implements Chapter 366, F.S., and establishes informal customer complaint procedures that are designed to address disputes, subject to the Commission's jurisdiction, that occur between regulated companies and individual customers. Pursuant to this rule, any customer of a Commission regulated company may file a complaint with the Commission's Office of Consumer Assistance and Outreach whenever the

customer has an unresolved dispute with the company regarding electric, gas, telephone, water, or wastewater service.

On September 21, 2016, Richard Malcolm filed an informal complaint with the Commission against Florida Power & Light Company (FPL). In his complaint, Mr. Malcolm stated that FPL had wrongfully accused him of meter tampering and improperly backbilled his account for unrecorded electric usage.

On April 28, 2017, staff advised Mr. Malcolm that his informal complaint and FPL's backbilling calculations had been reviewed and that staff had determined that Mr. Malcolm's account was fairly and reasonably backbilled. Staff also advised Mr. Malcolm that FPL did not violate any statute, rule, its company tariff, or orders in the investigation of meter tampering or in the backbilling of electricity used by Mr. Malcolm for which he did not pay due to unauthorized conditions. Staff advised Mr. Malcolm that he had an opportunity to file a petition for formal proceedings.

On May 1, 2017, Mr. Malcolm filed a petition for initiation of formal proceedings. In the formal complaint, Mr. Malcolm claims that FPL has been "unjustly" awarded for allegedly "stolen" electric services. Mr. Malcolm also states that he is not responsible for the services because he has never opened an account with FPL or conducted business with FPL on his own behalf.

This recommendation addresses the appropriate disposition of Mr. Malcolm's complaint against FPL. The Commission has jurisdiction over this matter pursuant to Section 366.04, F.S.

## Discussion of Issues

***Issue 1:*** What is the appropriate disposition of Mr. Malcolm's formal complaint?

***Recommendation:*** The appropriate disposition of Mr. Malcolm's formal complaint is to deny the complaint. Mr. Malcolm's account was properly billed in accordance with Commission statutes and rules and FPL's tariffs. FPL did not violate any applicable statute, rule, company tariff or order of the Commission in the processing of Mr. Malcolm's account. (Page)

***Staff Analysis:*** Mr. Malcolm alleges that FPL unjustly backbilled him for meter tampering. He also alleges that the amount of the backbilling is unreasonable. These allegations are discussed below.

### Meter Tampering

Meter ACD5293 was located on Mr. Malcolm's premises. On August 18, 2016, FPL determined that meter ACD5293 should be replaced because it had stopped providing meter readings. On August 19, 2016, an FPL meter electrician was dispatched to the location and meter ACD5293 was found in the meter socket with no display and the outer seal missing. An unauthorized metal jumper was found in the right side meter blocks. Meter ACD5293 was removed and a new smart meter, ACD1656, was installed with a locking device on the metal enclosure.

On September 8, 2016, the meter that was removed from Mr. Malcolm's premises, meter ACD5293, was tested by FPL in the field with the unauthorized metal jumper present. The test results reflected that the meter was not registering within the acceptable tolerance prescribed in Rule 25-6.052, F.A.C.[1] The meter was found to have a Weighted Average Registration of 73.98 percent.

On September 19, 2016, FPL reviewed the kWh history for ACD5293 and its smart meter communications and found a sustained drop in kWh from the billing period ending July 11, 2014 to that ending August 11, 2016. There was a substantial increase in kWh usage since the new smart meter, ACD1656, was installed.

On December 8, 2016, a refereed meter test was conducted on the meter removed from Mr. Malcolm's premises, meter ACD5293. The meter test results were below the acceptable tolerance with the jumper and within the acceptable tolerance without the jumper. FPL's test showed a Weighted Average Registration of 83.33 percent with the jumper and 99.62 percent without the metal jumper present. Commission staff also tested the removed meter, with results showing a Weighted Average Registration of 99.54 percent without the metal jumper.

Mr. Malcolm requested that the removed meter, ACD5293, be tested at his premises. On December 19, 2016, meter ACD5293 was tested by FPL and Commission staff at Mr. Malcolm's premises. The test found that when the meter was tested without the metal jumper, the meter recorded consumption accurately.

[1] Rule 25-6.052, F.A.C., states that the performance of watt hour meters shall be acceptable when the average registration error does not exceed plus or minus two percent (98 percent and 102 percent).

Evidence from the FPL field investigation showed the meter removed from Mr. Malcolm's premises, meter ACD5293, had been tampered with. The meter test without the unauthorized conditions reflected that the meter was operating within acceptable tolerances. Staff believes that the unauthorized conditions found on August 19, 2016, at meter ACD5293 and information obtained as a result of the FPL's meter testing show that meter tampering occurred with meter ACD5293.

## Backbilling

Section 366.03, F.S., states that all rates and charges made or received by any public utility for service rendered by it and each rule and regulation of such public utility shall be fair and reasonable. Rule 25-6.104, F.A.C., authorizes electric utilities to backbill the customer for a reasonable estimate of the electricity consumed but not metered due to meter tampering or fraudulent use.

FPL's tariff sets forth its fees, services and policies as approved by the Commission. FPL's Fourth Revised Tariff Sheet No. 6.061, Section 8.3, Tampering with Meters, states:

> Unauthorized connections to, or tampering with the Company's meter or meters, or meter seals, or indications or evidence thereof, subjects the Customer to immediate discontinuance of service, prosecution under the laws of Florida, adjustment of prior bills for services rendered, and reimbursement to the Company for all extra expenses incurred on this account.

A review of the kWh usage and communication history for the meter removed from Mr. Malcolm's premises, meter ACD5293, revealed a sustained drop in usage from the billing period ending July 11, 2014 through the billing period ending August 11, 2016. Based on the Weighted Average Registration of 73.98 percent, FPL backbilled Mr. Malcolm for the billing period ending July 11, 2014, through the billing period ending August 11, 2016. Upon notification by staff that the more appropriate Weighted Average Registration was 83.33 percent, FPL adjusted the amount backbilled.

The adjusted amount backbilled includes $1,319.15 for electric service and an additional $547.28 in investigative charges for an adjusted total amount backbilled of $1,866.43. The total amount Mr. Malcolm owes to FPL as of September 10, 2017, is $2,927.82. This amount includes the $1,866.43 in backbilling and investigative charges, and an additional $642.63 for two unpaid previous billing periods in 2016 (which originally was $710.05 and was partially offset by a payment made by Mr. Malcolm for $67.42) and current charges of $418.76 for the September 10, 2017 billing period.

Staff believes that Mr. Malcolm's consumption history shows that he benefited from unauthorized conditions at his meter by paying less for electricity than he would have with a properly working meter without a jumper. Staff believes that Mr. Malcolm is responsible for

payment of a reasonable estimate of the electricity used but not originally billed and that FPL may also recover the costs of its investigation of the meter tampering.

Staff reviewed FPL's back billing calculations and determined that Mr. Malcolm's account was fairly and reasonably back billed. Staff believes that FPL has violated no statute, rule, company tariff, or orders in the investigation of meter tampering or in the backbilling of electricity used by Mr. Malcolm for which he did not pay due to unauthorized conditions.

## Conclusion

The appropriate disposition of Mr. Malcolm's formal complaint is to deny the complaint. Mr. Malcolm's account was properly billed in accordance with Commission statutes, rules, orders, and FPL's tariffs. FPL did not violate any applicable statute, rule, company tariff or order of the Commission in the handling of Mr. Malcolm's account.

***Issue 2:*** Should this docket be closed?

***Recommendation:*** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Page)

***Staff Analysis:*** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Page)

# Item 4

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Mapp)
Division of Engineering (Wooten, Ellis)

**RE:** Docket No. 20170174-SU – Application for transfer of assets of exempt utility, amendment of Certificate No. 465-S, and petition for partial variance or waiver of Rule 25-30.030(5)(b), F.A.C. by Utilities, Inc. of Florida.

**AGENDA:** 10/03/17 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** 11/21/17 (90-Day Rule Waiver Statutory Deadline)

**SPECIAL INSTRUCTIONS:** None

## Case Background

On August 9, 2017, Utilities, Inc. of Florida (UIF or Utility) filed a Petition for Partial Variance or Waiver of Rule 25-30.030(5)(b), Florida Administrative Code (Petition). The waiver is sought in connection with UIF's Application for Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S in Lake County (Application). The Utility is seeking to add 148 single family connections to UIF's wastewater system in Lake County, and it is seeking a waiver of the provision to notify its current 34,000 customers of the transfer. UIF is a Class A water and wastewater utility currently serving approximately 34,000 water and/or wastewater customers[1] throughout 27 systems in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties. UIF is a wholly owned subsidiary of Utilities, Inc., and its rates

[1] Document No. 06847-2017

and charges were last approved by the Florida Public Service Commission (Commission) in Docket No. 160101-WS. Pursuant to Section 120.542(6), Florida Statutes (F.S.), notice of this Petition was published in the Florida Administrative Register on August 21, 2017. In accordance with Rule 28-104.003(1), Florida Administrative Code (F.A.C.), interested persons were given 14 days after the publication of the notice to submit written comments. No written comments were received, and the time for such has expired. On August 22, 2017, Commission staff sent a data request to the Utility, to which responses were received on August 23, 2017.

This recommendation addresses the Utility's Petition; issues relating to the Utility's Application will be addressed in a subsequent recommendation. The Commission has jurisdiction in this matter pursuant to Sections 367.071 and 120.542, F.S.

## Discussion of Issues

***Issue 1:*** Should the Commission approve Utilities, Inc. of Florida's request for a partial waiver of Rule 25-30.030(5)(b), F.A.C.?

***Recommendation:*** Yes, the Utility has demonstrated that the underlying purpose of the statute will be or has been achieved by other means, and that strict application of the rule would place a substantial hardship on the Utility. Therefore, staff recommends that the Commission approve Utilities, Inc. of Florida's request for a partial waiver or waiver of Rule 25-30.030(5)(b), F.A.C. (Mapp)

***Staff Analysis:*** On August 9, 2017, UIF filed a Petition seeking a partial waiver of Rule 25-30.030(5)(b), F.A.C., which requires that notice be provided by regular mail or personal service to each customer and owner of property located within the existing service area and the service area to be served, extended, deleted or transferred. The waiver is sought in connection with UIF's application for the transfer of wastewater collection, treatment and disposal facilities in Lake County. On August 25, 2017, UIF provided notice by regular U.S. mail to all property owners within the territory to be added, Barrington Estates Property Holdings Homeowners' Association, Inc.,[2] and seeks only to waive Rule 25-30.030(5)(b), F.A.C., that requires notice to be provided to all customers and property owners within its existing service area. On August 25, 2017, UIF also published the notice of its Application within the Daily Commercial, a newspaper of general circulation within Leesburg, Lake County, Florida.[3]

Section 120.542(2), F.S., authorizes the Commission to grant variances or waivers from agency rules where the petitioner subject to the rule has demonstrated that the purpose of the underlying statute will be or has been achieved by other means, and that a strict application of the rule would cause the applicant substantial hardship or would violate the principles of fairness. "Substantial hardship" as defined in this section, means demonstrated economic, technological, legal, or other hardship. A violation of the "principles of fairness" occurs when the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule.

The underlying statutory provision pertaining to the above-mentioned rule is Section 367.045, F.S. Section 367.045, F.S., requires, in part, that notice of the Utility's application be provided to its consumers who would be substantially affected by the requested amendment. This provision has the effect of alerting current customers of the Utility that additional customers may be added to the system, and of potential impacts that could affect their current rates or quality of service. It also prescribes how and in what manner utility customers may submit objections or request a formal evidentiary hearing on the merits of the application.

In its response to Commission Staff's First Data Request (data request) the Utility states that it currently serves over 34,000 equivalent residential connections (ERCs) and the application would only add 148 single family connections to UIF's wastewater system, resulting in an increase in ERC's of less than one-half of one percent. UIF asserts that the impact on rates would

[2] Document No. 07315-2017
[3] Document No. 07337-2017

be de minimis, and that the customers within the proposed service area are served by wastewater collection, treatment and disposal facilities not connected to any of UIF's existing wastewater systems. As a result, the Utility argues, the addition of 148 customers will not affect its current customers' quality of service. Additionally, UIF has already provided all other notices required by Rule 25-30.030, F.A.C., including providing notice by regular mail to the governing body of affected counties and municipalities, and the Office of Public Counsel.

UIF also asserts that strict application of Rule 25-30.030(5)(b), F.A.C., would place a substantial economic hardship on the Utility. UIF contends that the personnel, paper, printing, envelopes, and postage required to mail individual notices to its approximately 34,000 customers would cost over $16,000. The customers to be added to UIF's customer base if its Application is approved would only account for less than half a percent of the Utility's customer base. UIF argues that that the economic cost far outweighs any benefit that the Utility's 34,000 existing customers would receive.

Based on the foregoing analysis and the information provided within UIF's petition and its response to Staff's First Data Request, staff believes that UIF has met the requirements of Section 120.542, F.S., and has demonstrated that the purpose of the underlying statute will be or has been achieved by other means, and that the strict application of Rule 25-30.030(5)(b), F.A.C., would place a substantial hardship on the Utility. Therefore, staff recommends that the Commission approve the Utility's requested partial waiver or variance of Rule 25-30.030(5)(b), F.A.C.

***Issue 2:*** Should this docket be closed?

***Recommendation:*** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. This docket should remain open pending the Commission's final decision regarding the Utility's Application for Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S in Lake County. (Mapp)

***Staff Analysis:*** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. This docket should remain open pending the Commission's final decision regarding the Utility's Application for Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S in Lake County.

# Item 5

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Engineering (Lewis, Graves)
Division of Accounting and Finance (Golden, Wilson)
Division of Economics (Bruce, Hudson)
Office of the General Counsel (Murphy)

**RE:** Docket No. 20160195-WS – Application for staff-assisted rate case in Lake County by Lakeside Waterworks, Inc.

**AGENDA:** 10/03/17 – Proposed Agency Action – Except for Issue Nos. 11, 12, and 13 - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brisé

**CRITICAL DATES:** 01/04/2018 (15-Month Statutory Deadline (SARC))

**SPECIAL INSTRUCTIONS:** None

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## Case Background

Lakeside Waterworks Inc., (Lakeside or Utility) is a Class C utility providing service to approximately 185 (182 residential and 3 general service) water customers and 171 (170 residential and 1 general service) wastewater customers in Lake County. Approximately 74 customers subscribe to the Utility's irrigation service. The Utility was originally owned by Shangri-La by the Lakes, Inc. (Shangri-La) which started providing service to 140 customers in 1983. The Florida Public Service Commission (Commission) granted Shangri-La certificate numbers 567-W and 494-S in 1996.[1] The Utility was transferred from Shangri-La to Lakeside in 2013.[2]

The Utility requested a Staff Assisted Rate Case (SARC) before the Commission in 2013. On November 21, 2014, the Office of Public Counsel (OPC) and the Utility filed a Joint Motion Requesting Approval of Settlement Agreement between OPC, the Utility, and the Homeowners (Joint Motion) which resolved all issues in the rate case. The Joint Motion was approved at the November 25, 2014 Commission Conference.[3] Lakeside also requested a price index increase which was approved on June 26, 2015.

In April 2015, the water treatment plant (WTP) experienced a collapsed well and repairs to it failed. A new well was constructed and placed into service in April 2016.[4] During this time, Lakeside's wastewater treatment plant (WWTP) was deemed out-of-compliance after an inspection by the Department of Environmental Protection (DEP) on October 13, 2015, due to structural issues. As a result, the DEP issued a permit to replace the WWTP on June 27, 2016.[5] These two events necessitated the filing of this SARC by the Utility.

On August 26, 2016, Lakeside filed an application for a SARC. The official filing date of the SARC is October 4, 2016, when the balance of the required filing fee was paid by the Utility. Staff selected the 12-month period ended June 30, 2016, as the test year for the instant case. According to Lakeside's 2016 Annual Report, its total operating revenues for water and wastewater were $64,036 and $57,680, respectively. The Utility reported a net income of $637 for the water service and net income of $1,703 for the wastewater service.

The Commission has jurisdiction in this case pursuant to Sections 367.011, 367.081(8) and (9), 367.0814, 367.101, and 367.121, Florida Statutes (F.S.).

[1]Order No. PSC-96-0062-FOF-WS, issued January 12, 1996, in Docket No. 19940653-WS, *In re: Application for certificates to provide water and wastewater services in Lake County by Shangri-La by the Lake Utilities, Inc.*
[2]Order No. PSC-13-0425-PAA-WS, issued September 18, 2013, in Docket No. 20120317-WS, *In re: Application for approval to transfer water and wastewater system Certificate Nos. 567-W and 494-S in Lake County from Shangri-La by the Lake Utilities, Inc. to Lakeside Waterworks, Inc.*
[3]Order No. PSC-15-0013-PAA-WS, issued January 2, 2015, in Docket No. 20130194-WS, *In re: Application for staff-assisted rate case in Lake County by Lakeside Waterworks, Inc.*
[4]See Document No. 07026-16, p. 44.
[5]See Document No. 07026-16, p. 66.

## Discussion of Issues

***Issue 1:*** Should the quality of service provided by Lakeside be considered satisfactory?

***Recommendation:*** No. The Utility is in compliance with all primary and secondary water standards and the DEP has deemed the Utility to be in compliance for both water and wastewater operations. It also appears that the Utility has actively responded to concerns raised by its customers. However, water aesthetics and foul smells from the lift station continue to be a customer concern. Staff recommends that the overall quality of service provided by Lakeside be considered marginal. In addition, the Utility should meet with its customers with the help of the Office of Public Counsel (OPC) to discuss the options and cost to resolve these issues. Lakeside should provide a progress report of the results of such meetings to the Division of Engineering within six months of the consummating order being issued in the docket. (Lewis)

***Staff Analysis:*** Pursuant to Section 367-081(2)(a)1. F.S., in water and wastewater rate cases, the Commission shall consider the overall quality of service provided by a utility. Rule 25-30.433(1), Florida Administrative Code (F.A.C.), provides for the evaluation of three separate components of the utility's operations. The components evaluated are: (1) the quality of the Utility's product; (2) the operating conditions of the Utility's plant and facilities; and (3) the Utility's attempt to address customer satisfaction. The Rule further states that sanitary surveys, outstanding citations, violations, and consent orders on file with the Department of Environmental Protection (DEP) and the county health department over the preceding three-year period shall be considered. Additionally, Section 367.0812(1)(c), F.S., requires the Commission to consider the extent to which the Utility provides water service that meets secondary water quality standards as established by the DEP.

### Quality of Utility's Product

#### WTP

The responsibility of inspecting and monitoring of Lakeside's water facilities is under the DEP. Staff's evaluation of Lakeside's water quality consisted of a review of the Utility's compliance with the DEP's primary and secondary drinking water standards, county health department standards, as well as customer complaints. Primary standards protect public health, while secondary standards regulate contaminants that may impact the taste, odor, and color of drinking water. On April 22, 2015, the DEP conducted testing at Lakeside and the Utility was deemed in compliance with all primary and secondary water standards. Chemical analyses of all primary and secondary standards are performed every three years; therefore, the next scheduled analysis should occur in 2018.

During the customer meeting on June 1, 2017, customers pointed out DEP and Lakeside had notified them of a Maximum Contaminant Level (MCL) exceedance of Disinfection By-Products that occurred on August 18, 2015.[6] As a result, the DEP required Lakeside to conduct quarterly testing for Trihalomethanes (TTHMs) and Haloacetic Acids (HAA5). Lakeside was informed of the new testing requirements on November 9, 2016 and on November 10, 2016, performed its

[6]Document No. 05290-17, filed June 12, 2017, p. 5.

first test.[7] The results of that test showed the Utility was in compliance with the DEP standards. The Utility was required to sample four consecutive quarters through 2017. They also tested for TTHMs and HAA5s on February 2, 2017, April 10, 2017, and August 14, 2017. All three tests were deemed in compliance.

### WWTP

The Utility was issued a permit for a new WWTP and the new plant was placed into service towards the end of February 2017. On June 27, 2017, the Utility received an emergency call due to sewage discharging from a manhole. Upon investigation, a technician discovered that lightning had tripped the breakers for the lift station. The Utility reported to the DEP that 10 to 20 gallons of sewage was discharged, to which the affected area was cleaned and treated by the technician prior to departure. A review of the DEP records indicates the Utility has no violations or corrective orders pending concerning the treatment and disposal of wastewater.

## Operating Condition of the Utility's Plant and Facilities

### WTP

Lakeside's service area is located next to Lake Eustis, near Leesburg, Florida, in Lake County and is within the St. Johns Water Management District (SJWMD). The raw water source is ground water, which is obtained from two wells in the service area and is treated. The water treatment processing sequence is to pump raw water from the aquifer, perform an aeration process, inject calcium hypochlorite, store the treated water in a tank, and distribute.

In April 2015, one of the Utility's two water wells collapsed. The facility was able to operate effectively with the remaining well. A new 8-inch well was constructed and completed on September 24, 2015, and approved by the DEP on April 15, 2016. There was no change to the capacity of the water treatment plant. The DEP conducted a Sanitary Survey of Lakeside's WTP on August 3, 2016, and on August 23, 2016, and the WTP was deemed in compliance.

### WWTP

Lakeside's WWTP is an extended aeration activated sludge facility with chlorinated effluent sent to a spray field with a backup percolation pond for wet weather conditions. The DEP inspected the WWTP on October 13, 2015, and deemed the facility out-of-compliance on November 24, 2015; due to several maintenance and structural issues. Due to the condition of the aged facility (estimated to be 33 years); the Utility replaced the WWTP. On June 27, 2016, the DEP approved a new WWTP permit authorizing construction of a new splitter box, three new 5,000 gallon aeration chambers, one new 5,000 gallon digester, and piping modifications to provide 15,000 gallons per day (gpd) based on a three month average daily flow (TMADF) permitted capacity. The new WWTP consists of aeration, secondary clarification, chlorination, and aerobic digestion of bio solids. The new WWTP was placed into service on February 17, 2017. As discussed previously, the Utility has no corrective actions or violations pending with the DEP.

[7]Document No. 05290-17, filed June 12, 2017, p. 14.

## The Utility's Attempt to Address Customer Satisfaction

The final component of the overall quality of service that must be assessed is the Utility's attempt to address customer satisfaction. The Utility's last SARC before the Commission was finalized in January 2015, in which the Commission found the overall quality of service for the Utility's water and wastewater systems to be satisfactory. Therefore, staff's analysis of customer satisfaction in this case focused on customer complaints that have occurred since the last rate case. Staff reviewed customer complaint records provided by the Utility as well as complaints filed with the Commission. Staff also requested complaints against the Utility filed with the DEP. The DEP indicated it had not received any complaints against the Utility.

Lakeside's customer complaint records reflect 75 complaints and 11 inquiries for the period with four duplicate complaints or follow-ups from the same customer. Twenty-eight of the complaints were due to repairs including: (1) three concerning water pressure problems on February 4, 2015; (2) nine complaints for smelly and bad tasting water from December 31, 2015, through January 4, 2016; (3) five complaints between March 4 through March 9, 2016, due to cloudy water; and (4) eleven complaints because of a tank inspection resulting in the water service being interrupted on September 13, 2016. The remaining 47 complaints for the period involved cloudy/dirty looking water and billing disputes including meter reading issues.

The 26 complaints filed directly with the Commission were all due to billing issues. Twenty-two of the complaints were caused by a billing error that occurred in March 2016, upon the implementation of Phase II rates from the previous rate case. An error in Lakeside's billing code applied a Base Facility Charge (BFC) for irrigation services to all customers. The error was corrected and all related complaints were closed by May 27, 2016. The remaining complaints were related to billing issues, all of which have been closed.

As part of staff's evaluation of customer satisfaction, staff also held a customer meeting on June 1, 2017, in Leesburg, Florida, at the Shangri-La by the Lakes clubhouse within the Utility's service territory. Approximately 53 residents were in attendance, 44 of which made comments. The OPC addressed the assembly before customer comments commenced. The main areas of concern were: (1) errant meter readings; (2) ongoing water pressure problems; (3) smelly and undrinkable water; and (4) foul smells from the lift station across the street from to the clubhouse. The Utility provided a letter in response to the concerns raised during the customer meeting.

## Meter Readings

In response to the customers' comments regarding meter reading, Lakeside reported that it terminated one employee, in the December 2016/January 2017 timeframe. The Utility explained that the employee was terminated for "curbing" meter readings. The meter readings were reported inaccurately by the employee probably in an effort to shorten their work day. Lakeside additionally represented that its contractor, U.S. Water Services has various procedures to safeguard accurate monthly meter readings.[8]

[8]Document No. 05922-2017 filed July 7, 2017.

### Water Pressure

On July 17, 2017, the Utility rebuilt two high service pumps at the WTP. This was undertaken in response to the customer comments concerning water pressure issues given at the customer meeting. The high service pumps are also necessary to provide the required fire flow for the County. Additionally, Lakeside has two hydropneumatic tanks. Lakeside is modifying the interconnection of the two hydropneumatic tanks in an effort to further address system water pressure issues. In addition, the pump for well #1 failed on July 18, 2017, and was subsequently replaced on July 26, 2017.[9] Lakeside is also replacing its old control panel within the WTP with a newer more up to date panel. This includes the installation of pressure switches for the pumps. The replacement of the control panel will assist in addressing the pressure issues within the distribution system.

### Water Aesthetics

The smell and taste of the water are concerns that were also discussed in the 2013 SARC. In response to the customer's concerns, Lakeside explained that it has made improvements to the aeration treatment for the naturally occurring hydrogen sulfides which can cause a "rotten egg" smell in the water. The Utility additionally stated that the issue of odor can be exacerbated in systems that serve a seasonal customer base such as Lakeside.

Lakeside submitted that it is ready and able to make improvements necessary to address the customer's water quality concerns. The Utility asserted that the cost of such improvements, estimated to be $993,750, would cause a significant upward pressure on water rates. The Utility continued that it is willing to work with the customers if they would like to do an assessment and contribute towards the cost.[10]

### Lift Station

Foul smells emanating from the lift station next to the clubhouse is a continuing issue of displeasure expressed by the customers during the previous SARC and at the customer meeting held on June 1, 2017. The Utility estimated that the cost to rehabilitate the lift station is $75,000. Lakeside also stated it had planned to upgrade the lift station during the previous SARC but decided not to due to opposition from its customers and OPC. The Utility further stated that the upgrade was originally estimated to cost $41,000 and would have addressed many of the customers' concerns.[11] Staff recommends the Utility meet with its customers with the help of the OPC to discuss the options and cost to resolve this issue.

### Conclusion

The Utility is in compliance with all primary and secondary water standards and the DEP has deemed the Utility to be in compliance for both water and wastewater operations. It also appears that the Utility has actively responded to concerns raised by its customers. However, water aesthetics and foul smells from the lift station continue to be a customer concern. Staff recommends that the overall quality of service provided by Lakeside be considered marginal. In addition, the Utility should meet with its customers with the help of the OPC to discuss the options and cost to resolve these issues. Lakeside should provide a progress report of the results

[9]Document No. 06614-2017 filed August 4, 2017.
[10]Document No. 05920-17 filed June 12, 2017, p. 4.
[11]Document No. 05920-17 filed June 12, 2017, p. 6.

of such meetings to the Division of Engineering within six months of the consummating order being issued in the docket.

***Issue 2:*** What are the used and useful percentages (U&U) of Lakeside's WTP, water storage facilities, WWTP, water distribution, and wastewater collection systems?

***Recommendation:*** Lakeside's WTP should be considered 81 percent U&U, and the water storage facilities should be considered 100 percent U&U. Lakeside's WWTP should be considered 92 percent U&U. The Utility's water distribution and wastewater collection systems should be considered 100 percent U&U. Staff recommends that no adjustment be made to purchased power and chemical expenses since there appears to be no excessive unaccounted for water (EUW) and there is no indication of excessive inflow and infiltration (I&I). (Lewis)

***Staff Analysis:*** Lakeside's water system has two wells rated at 850 gallons per minute (gpm) and 270 gpm.[12] Storage consists of a 20,000-gallon concrete ground storage tank with aeration, and two steel hydropneumatic tanks with capacities of 3,000 gallons and 5,000 gallons. A hypochlorination system is used for disinfection and water from the tanks is pumped into the water distribution system.

The distribution system is a composite network of approximately 2,820 linear feet of 10-inch PVC pipe, 2,828 linear feet of 8-inch PVC pipe, 3,450 linear feet of 6-inch PVC pipe, 1,700 linear feet of 4-inch PVC pipe, and 2,800 linear feet of 1.5-inch PVC pipe. According to the Utility, there are 11 fire hydrants in its service area.

The newly permitted WWTP is a 15,000 gpd extended aeration activated sludge facility. The chlorinated effluent is sent to a 3.2 acre restricted public access spray field with a backup percolation pond for wet weather conditions. The collection system is a composite network of force mains, collecting mains, and four lift stations. The force mains consist of approximately 3,211 linear feet of 4-inch PVC pipe and 2,324 linear feet of 3-inch PVC pipe. The collecting mains consist of approximately 9,768 linear feet of 4-inch PVC pipe and 4,277 linear feet of 3-inch PVC pipe. According to the Utility, there are 15 manholes.

## Excessive Unaccounted for Water

Rule 25-30.4325 (1)(e) , F.A.C., defines EUW as unaccounted for water in excess of 10 percent of the amount produced. Unaccounted for water is all water that is produced that is not sold, metered, or accounted for in the records of the Utility. Rule 25-30.4325(10), F.A.C., provides that to determine whether adjustments to plant and operating expenses, such as purchased electrical power and chemicals cost, are necessary, the Commission will consider all relevant factors as to the reason for EUW, solutions implemented to correct the problem, or whether a proposed solution is economically feasible. The unaccounted for water is calculated by subtracting both the gallons used for other purposes, such as flushing, and the gallons sold to customers from the total gallons pumped for the test year.

The Utility's Monthly Operating Reports (MORs) filed with the DEP indicate 9,367,465 gallons of finished water were produced during the test year of which 7,859,000 gallons of water were sold to customers. The MORs filed during the test year do not reflect any gallons used for other purposes. Lakeside has a flushing program but did not record the gallons used.[13] However, in its

[12]See Document No. 07047-16 filed on August 26, 2016.
[13]Document No. 05814-2017 filed July 7, 2017.

application the Utility identifies 560,962 gallons used for other purposes.[14] The resulting calculation for unaccounted for water ((7,859,000+560,962)/(9,367,465)) equals 10.1 percent, yielding an EUW of 0.1 percent. Therefore, staff is recommending that no adjustment be made to operating expenses for chemicals and purchased power due to the EUW.

## Water Treatment Plant Used & Useful

Pursuant to Rule 25-30.4325, F.A.C., the U&U calculations are defined for a water treatment system and storage facilities. For a water treatment plant with more than one well and storage capacity, the U&U is calculated using the following equation: ([Peak Demand + Fire Flow + Growth – Excessive Unaccounted for Water]/Firm Reliable Capacity). The peak demand is the single maximum day in the test year where there are no unusual occurrences and is measured in gallons per day. Based on Lakeside's MORs the Max Day usage during the test year was 100,000 gallons which occurred on May 20, 2016. Staff noted the significant increase from 42,300 gallon peak day recorded in the 2013 SARC and it appears no new construction has occurred since the last SARC. As stated previously, Lakeside has a flushing program but did not specifically identify dates and gallons flushed. Therefore, staff utilized the average monthly peak day from July 2015 through June 2016 as a reasonable peak based upon the data available. The average monthly peak day usage for the system was 55,525 gallons. Staff believes this value is a better reflection of the peak day demand for the system.

In the 2013 SARC, the Utility served 187 Equivalent Residential Connections (ERCs); however, this declined to 185 ERCs for the current test year. The service area has approximately 24 lots available for development in the new Eagles Point subdivision – Phase I. As it appears that no new construction has occurred since the filing of the last rate case, staff believes it is prudent to not include an allowance for customer growth in the near future. Therefore, the growth ERC allowance should be considered as zero.

Because the Utility has storage capacity, the Firm Reliable Capacity (FRC) is based on 16 hours of pumping, excluding the largest well. The Utility has two wells rated at 850 gpm and 270 gpm. The Utility's FRC is calculated by the smallest well capacity x 16 hours (270 gpm x 60 min/hr x 16 hrs) which equates to 259,200 gallons. However, this is greater than the permitted capacity of 180,000 gpd for the plant. Therefore, 180,000 gpd should be considered the FRC for the system. Fire flow for the Utility's service area is 750 gpm for two hours, or 90,000 gpd. Based on the inputs discussed above, the resulting U&U calculation for the WTP (55,525 + 90,000 + 0 - 0)/180,000) equals 81 percent.

## Storage Used & Useful

Pursuant to Rule 25-30.4325(8), F.A.C., for water systems with storage, if the storage capacity is less than the peak demand, the storage system should be considered 100 percent U&U. Lakeside has a 20,000 gallon ground storage tank and two hydropneumatic tanks rated at 3,000 gallons and 5,000 gallons, respectively. Since the storage capacity (28,000 gallons) is less than the peak demand (55,525 gallons), the storage system should be considered 100 percent U&U. The storage capacity was rated at 100 percent in the Utility's previous rate case before the Commission.

[14]Document No. 07026-16 filed August 26, 2016, p. 36.

### Wastewater Treatment Plant Used & Useful

Pursuant to Rule 25-30.432, F.A.C., the U&U analysis of a utility's WWTP is described by the following equation: ((Customer Demand - I&I + Growth)/Permitted Capacity). In this calculation, customer demand is measured on the same basis as permitted capacity.

The Three Month Average Daily Flow (TMADF) from November 2015 through January 2016 was 13,725 gpd. As discussed in more detail below, the monthly Discharge Monitoring Reports (DMR) indicate no I&I. Also, as previously discussed, the expected growth is zero. The DEP permitted plant capacity, based on a TMADF, is 15,000 gpd. Based on the inputs described above the final calculation of U&U for Lakeside's WWTP is 92 percent ([13,725 - 0 + 0] / 15,000).

### Inflow & Infiltration

Infiltration occurs from groundwater entering a wastewater collection system through broken or defective pipes and joints; whereas, inflow results from water entering a wastewater collection system through manholes or lift stations. The allowance for infiltration is 500 gallons per day, per inch diameter pipe per mile, and an additional 10 percent of water sold is allowed for inflow. The allowance for Inflow is 10 percent of the water sold. The Utility's DMRs which were filed with the DEP indicate that there was no excessive I&I for the test year.

### Water Distribution and Wastewater Collection Systems Used & Useful

In the previous rate case before the Commission, the U&U analysis for the water distribution and wastewater collection systems were determined by dividing the number of lots connected to the systems by the number of lots fronting mains in the service area. Consideration is given for growth, if applicable. Staff believes the lines in the Utility's service territory appear to be built-out. Therefore, the water distribution and wastewater collection systems should be considered 100 percent U&U. The water distribution and wastewater collection systems were rated at 100 percent in the Utility's previous rate case before the Commission.

### Conclusion

Lakeside's WTP should be considered 81 percent U&U, and the water storage facilities should be considered 100 percent U&U. Lakeside's WWTP should be considered 92 percent U&U. The Utility's water distribution and wastewater collection systems should be considered 100 percent U&U. Staff recommends that no adjustment be made to purchased power and chemical expenses since there appears to be no EUW and no indication of excessive I&I.

***Issue 3:*** Should the Commission approve a year-end rate base for Lakeside, and if so, what is the appropriate year-end water and wastewater test year rate base?

***Recommendation:*** Yes. The Commission should approve a year-end rate base for Lakeside. The appropriate year-end water test year rate base is $143,573, and the appropriate year-end wastewater test year rate base is $134,117. (Golden, Wilson, Lewis)

***Staff Analysis:*** The appropriate components of the Utility's rate base include utility plant in service, contributions-in-aid-of-construction (CIAC), accumulated depreciation, amortization of CIAC, and working capital. Rate base was last established in Lakeside's 2013 SARC.[15] The Utility requested the test year ended June 30, 2016, for the instant case. Commission audit staff determined that the Utility's books and records are in compliance with the National Association of Regulatory Utility Commissioners' Uniform System of Accounts (NARUC USOA). The OPC filed a Letter of Concern in this docket on May 26, 2017.[16] The Utility subsequently filed a response letter on June 6, 2017.[17] Staff has incorporated adjustments based on both letters. A summary of each component of rate base and the recommended adjustments are discussed below.

## Year-End Rate Base

In its application, the Utility requested a year-end rate base for its water system in order to have an opportunity to recover its allowed rate of return on the significant capital improvements that were made during the test year to install a new well and make additional plant improvements to address water quality concerns. Based on staff's review, Lakeside's water improvements including applicable retirements represent an increase of $85,179 or 63.31 percent since the Utility's rate base was last established. If an average rate base were used, the Utility would not be afforded the opportunity to recover its allowed rate of return on the new investment and would be put in the position of requesting a subsequent SARC at a later date.

The Commission has the authority to apply a year-end rate base, but should only apply a year-end rate base in extraordinary circumstances.[18] Staff believes extraordinary circumstances exist in the instant case. The Utility has made significant improvements to the primary well that supplies water to its customers. In addition, the Utility replaced the automated aeration at the plant and installed new Whitewater Compressors at both of the existing hydropneumatic tanks to address water quality concerns expressed by its customers. The year-end rate base will provide the Utility with an opportunity to recover the investment made to improve water quality and will insure compensatory rates for this Utility in this rate case. The Commission has previously authorized the use of a year-end rate base in other cases involving significant test year

[15]Order No. PSC-15-0013-PAA-WS, issued January 2, 2015, in Docket No. 20130194-WS, *In re: Application for staff-assisted rate case in Lake County by Lakeside Waterworks, Inc.*
[16]Document No. 05071-17, filed on May 26, 2017, in Docket No. 20160195-WS.
[17]Document No. 05300-17, filed on June 13, 2017, in Docket No. 20160195-WS.
[18]*See, Citizens of Florida v. Hawkins,* (FLA.1978), 356 So. 2d 254.

improvements.[19] Therefore, staff recommends that the Commission approve a year-end water rate base for Lakeside.

The Utility did not request a year-end rate base for its wastewater system because there were no extraordinary circumstances during the test year that would warrant use of a year-end rate base. However, in its May 26, 2017 letter, OPC proposed that it would be appropriate to use a year-end rate base for both the water and wastewater systems in keeping with the matching principle and to have a consistent test year across all components of the test year. In its June 6, 2017, response to OPC's letter, the Utility indicated that it had relied on past Commission decisions on plant additions when requesting the year-end water rate base, but that it does not contest OPC's request for a year-end rate base for both water and wastewater. Although the wastewater system does not qualify for a year-end rate base on its own, staff agrees that OPC's proposal to use a year-end rate base for both systems is reasonable and will produce a more consistent result. Further, because the Utility did not make any test year additions to wastewater plant or CIAC, the impact of changing from an average to a year-end rate base is minimal. Therefore, staff recommends that the Commission approve a year-end wastewater rate base for Lakeside as well.

### Utility Plant in Service (UPIS)

The Utility recorded UPIS of $263,806 for water and $153,449 for wastewater. In its May 26, 2017, letter, OPC noted some possible errors in the June 30, 2013, end of test year balances for plant, accumulated depreciation, and accumulated amortization of CIAC that were approved in the last SARC and used as the starting point for the instant SARC. Staff determined that OPC is correct that the end of test year balances inadvertently included several pro forma projects and averaging adjustments that are only used for ratesetting purposes and should not have been included in the end of test year balances. Lakeside properly adjusted its books and records in accordance with the Commission's Order in the last SARC, which resulted in plant being overstated by $3,512 for water and $830 for wastewater due to the errors in the end of test year balances. The Utility later corrected its books by reversing the end of test year adjustments and recording the pro forma projects when they were completed. Lakeside's subsequent correction prevented a double counting of the pro forma adjustments and removed the averaging adjustments that are only used for ratesetting purposes. However, the correction also eliminated some test year adjustments that should have remained on the Utility's books, as well as the retirements associated with the pro forma projects.

In order to reflect the correct 2013 test year balances, staff decreased water plant by $603 to remove an unsupported generator equipment addition from Account No. 310 and decreased wastewater plant by $245 to remove an unsupported pumping equipment addition from Account No. 371. Also, staff decreased wastewater plant by $563 to reflect the retirement associated with a 2013 test year pump starter replacement to Account No. 371. Further, in order to correctly

[19]Order No. PSC-98-0763-FOF-SU, issued June 3, 1998, in Docket No. 19971182-SU, *In re: Application for staff-assisted rate case in Marion County by BFF Corp.*; Order No. PSC-00-1774-PAA-WU, issued September 27, 2000, in Docket No. 19991627-WU, *In re: Application for rate increase in Polk County by Park Water Company Inc.*; Order No. PSC-01-0323-PAA-WU, issued February 5, 2001, in Docket No. 20000580-WU, *In re: Application for staff-assisted rate case in Polk County by Keen Sales, Rentals and Utilities, Inc. (Alturas Water Works*; and Order No. PSC-02-1449-PAA-WS, issued October 21, 2002, in Docket No. 20011451-WS, *In re: Investigation of water and wastewater rates for possible overearnings by Plantation Bay Utility Co. in Volusia County.*

reflect the Commission-approved retirements associated with the four water and one wastewater pro forma projects approved in the last SARC, staff decreased water plant by $6,563 and decreased wastewater plant by $2,768.

Based on audit staff's review in the instant docket, staff decreased UPIS by $463 for water and $398 for wastewater to remove unsupported organization expenses from Account Nos. 301 and 351. Staff also increased water plant by $1,165 to reclassify a water line repair that was inadvertently recorded as a wastewater expense during the test year. Staff notes that OPC also expressed a concern about the expensing of this repair and proposed that it should be capitalized to plant instead.

As discussed above, the Utility replaced the primary well that provides water to its customers during the test year. The Utility initially attempted to rehabilitate the existing well, but ultimately found it necessary to drill a new well. The expenses incurred to attempt to rehabilitate the original well and install the new well were already recorded on the Utility's books during the test year. Engineering staff has reviewed the prior bids and actual final costs of these improvements and determined that the final costs are reasonable and that no adjustments are necessary. The Utility subsequently determined that the associated retirement of the replaced well is $15,956, and the associated retirement for the well rehabilitation work is $19,153, for a total retirement of $35,109. Regarding the $19,153 retirement value, OPC questioned whether the $2,085 water valve replacement that was performed two days prior to the remaining $17,068 in rehabilitation work on the collapsed well was damaged in the collapsed well or was able to be reused. In response, Lakeside verified that the new water valve was not retired with the collapsed well and was still in service. Therefore, the well rehabilitation work retirement is $17,068 rather than $19,153. The total retirement for the replaced well and rehabilitation work is $33,024.

However, OPC further expressed concern about the accounting treatment of the well rehabilitation work. Because the well rehabilitation work was only able to be in service for approximately nine months before the new well was drilled, the retirement will deplete the accumulated depreciation balance for Account No. 307 Wells and Springs, resulting in a negative accumulated depreciation balance at the end of the test year. OPC stated that it is not challenging whether the work performed was reasonable, but believes the appropriate treatment would have been to defer the costs pending the outcome of this proceeding and to amortize those costs over a reasonable time frame. OPC is proposing that the loss be amortized over 10 years.

In its response to OPC's letter, the Utility stated that the well rehabilitation work was originally capitalized due to the fact that Lakeside attempted to rehabilitate the well instead of replacing it in an effort to avoid the cost of drilling a new well. The Utility believes it would be appropriate to include these costs with the loss on the retired well and amortize both losses over the same time period.

Staff notes that NARUC Accounting Instruction 5.D., specifies in part that when an item of plant is retired, Account 108 – Accumulated Depreciation and Amortization of Utility Plant in Service, shall be charged and the appropriate plant accounts shall be credited with the entire recorded original cost of plant retired regardless of the amount of depreciation which has been accumulated for this particular item of plant, and that Account 108 shall be charged with the costs of removal of retired plant, and credited with the salvage value, sales price, or other

amounts recovered from plant retired. In addition, NARUC Accounting Instruction 5.E., provides that a different accounting treatment may be required in rare instances when the unexpired early retirement of a major unit of property will eliminate or seriously deplete the existing depreciation. NARUC Accounting Instruction 5.E., specifies in part that in such instances the Commission may authorize or order the loss on retirement to be transferred to Account 186 – Miscellaneous Deferred Debits, and amortized in future periods.

Staff believes the Utility's capitalization of the well rehabilitation work was an appropriate accounting treatment at the time the work was performed and was consistent with NARUC guidelines. Further, the Utility's proposed accounting treatment of the retirement is consistent with the NARUC guidelines. Staff also notes that if the rehabilitation efforts had been successful, that work would have served to extend the useful service life of the well and would have been depreciated normally over time, further supporting the traditional accounting treatment at the time the repairs were completed. Therefore, staff decreased water plant by $33,024 to reflect the retirement of the collapsed well and well rehabilitation work. In addition, staff believes it would be appropriate to establish a regulatory asset to remove the negative accumulated depreciation that resulted from the retirement of the well rehabilitation work and allow the Utility to amortize the unrecovered well rehabilitation costs. Staff's recommended adjustments to establish the regulatory asset will be discussed later in this issue under the Accumulated Depreciation and Regulatory Asset sections. The calculation of both the amortization period and amortization expense for the water and wastewater early retirement losses will be discussed further in Issue 6.

Subsequent to the test year, Lakeside made several pro forma water plant additions. Therefore, staff increased water plant by $1,338 to reflect a new customer service line installation, and by $1,967 to reflect a high service pump repair. In an effort to reduce costs, Lakeside attempted to use the well pump from the collapsed well in the new well. The original pump subsequently failed and was replaced with a new pump. Therefore, staff increased water plant by $14,012 to reflect the addition of the new well pump. After taking into consideration other plant additions made to pumping equipment in recent years, the remaining balance in Account No. 311 – Pumping Equipment appears to be insufficient to represent the original cost of the pumps on both wells. The original cost of the pump is no longer in plant to be retired; therefore, staff is not recommending a retirement amount associated with the well pump replacement.

OPC expressed concern about U. S. Water Services Corporation's (USWSC) policy of including an 18 percent markup on materials used in the plant upgrades and repair work performed on Lakeside's plants. OPC stated that it has noted several other instances where this markup is applied to services as well as materials. Staff believes OPC is referring to a prior adjustment made in a SARC for one of Lakeside's sister utilities where the markup was inappropriately applied to some services. However, staff has reviewed all the USWSC invoices being considered in this docket and did not find any instances where the markup was applied to labor costs.

The only discrepancy noted by staff was that the markup on one invoice related to the well repair appeared to be overstated. The Utility's supporting documentation showed all of the materials used for that job along with the calculation of the markup, however, a portion of the materials were inadvertently omitted from the final invoice. USWSC issued a subsequent invoice with the

remaining materials that correspond with the supporting documentation and amount of the markup. Therefore, staff increased water plant by $917 to reflect the additional materials.

In addition, staff noted that some invoices exclude the markup entirely. Staff inquired as to the reason why some invoices are assessed the markup and some are not. A USWSC representative informed staff that the markup is provided for in the USWSC operations contract. However, for all the regulated utilities, USWSC takes into consideration who performed the work. For example, if an outside contractor was called and performed all of the work and supplied all of the material completely with no outside assistance or material provided by USWSC, the markup will not be assessed because no material or labor was supplied by USWSC.

The markup is for USWSC related work and material. This would include jobs or projects where USWSC employees assist with the work or provide additional work, such as specifically identified large projects with job numbers, or supply materials for the job. The markups are designed to cover the overhead for the work related to the materials. For example, when material is supplied, a USWSC employee would have to either order it or go purchase it. Also, for all of the invoices processed through USWSC administrative employees, such as the job costing project, accounts payable and accounting personnel must receive, code, enter, and ultimately pay for the vendors. The markup includes the overhead costs for that process. In addition, the jobs have to be tracked for labor and material, and then ultimately billed out to the regulated utility, which involves additional work.

In its response to OPC's letter, Lakeside stated that the 18 percent markup was derived by using factors of 8 percent overhead and 10 percent profit.[20] Lakeside also stated that according to RS Means: (1) the "Average Fixed Overhead for all services across the United States is 17.9 percent; (2) the overhead varied from a low of 11 percent to a high of 16 percent; (3) while the profit across all services was at 10 percent. Further, the overall overhead and profit across all services across the United States varied from a low of 47.4 percent to a high of 80.4 percent. Lakeside also noted that it had previously explained the USWSC 18 percent markup in several past SARC dockets.

As discussed previously, the Utility replaced the WWTP in order to be in compliance with DEP requirements. The WWTP replacement was completed on February 17, 2017. Therefore, staff increased UPIS by $91,755 to reflect the pro forma replacement of the WWTP and decreased UPIS by $33,921 to reflect the retirement of the replaced WWTP. Engineering staff reviewed the bids and final costs of the WWTP replacement and determined that the costs are reasonable. Staff also notes that the selected bid was estimated at $97,103, but the project came in under budget by $5,348. OPC objected to the inclusion of the 18 percent markup on this project from the related party servicing company. The Commission has previously approved project costs for Lakeside's sister utilities that include the USWSC markup, except those instances where it was not properly applied as noted above. In keeping with prior Commission decisions regarding the related party work and markup, staff does not believe any further adjustments to the markup are necessary.

[20]Document No. 05300-17, filed on June 13, 2017, in Docket No. 20160195-WS, p. 2.

In addition, staff increased wastewater plant by $955 to reflect a pro forma WWTP sprayfield pump repair completed after the test year. As discussed above, staff is recommending the use of a year-end rate base for both water and wastewater; therefore, no averaging adjustment is necessary. Further, no averaging adjustments are applied to pro forma additions, consistent with Commission practice. Staff's net adjustments to UPIS are a decrease of $21,253 for water and an increase of $54,815 for wastewater. Therefore, staff recommends a UPIS balance of $242,553 for water and $208,264 for wastewater.

### Non-Used and Useful Plant

As discussed in Issue 2, Lakeside's distribution and collection systems are considered 100 percent U&U. Also, the water treatment plant should be considered 81 percent U&U, and the wastewater treatment plant should be considered 92 percent U&U. As discussed above, staff recommends that the Commission approve a year-end rate base for Lakeside. Therefore, staff applied the non-U&U percentages to the year-end balances for water and wastewater. Application of the non-U&U percentages to plant and the associated accumulated depreciation results in net adjustments of $18,497 for water and $7,872 for wastewater. Therefore, water rate base should be reduced by $18,497 to remove the 19 percent of the water treatment plant that is non-U&U, and wastewater rate base should be reduced by $7,872 to remove the 8 percent of the wastewater treatment plant that is non-U&U.

### Contribution in Aid of Construction (CIAC)

The Utility recorded test year CIAC balances of $14,251 for water and $18,388 for wastewater. Staff notes that CIAC was not affected by the end of test year balance errors discussed above, therefore, no correcting adjustments are necessary. Audit staff determined that no adjustments were necessary to the test year. Staff increased water CIAC by $335 to reflect pro forma additions that occurred after the end of the test year. No averaging adjustments are necessary for ratemaking purposes due to the lack of activity during the test year, and because staff is recommending a year-end rate base for both systems. Staff recommends CIAC balances of $14,586 for water and $18,388 for wastewater.

### Accumulated Depreciation

The Utility recorded test year accumulated depreciation balances of $118,074 for water and $103,869 for wastewater. As discussed above, the June 30, 2013 end of test year balances for accumulated depreciation that were approved in the last SARC inadvertently included several pro forma and averaging adjustments. Lakeside properly adjusted its books and records in accordance with the Commission's Order in the last SARC, which resulted in accumulated depreciation being understated by $7,673 for water and $2,788 for wastewater due to the errors in the end of test year balances. The Utility later corrected its books by reversing the end of test year adjustments and recording the pro forma projects when they were completed. Lakeside's subsequent correction prevented a double counting of the pro forma adjustments and removed the averaging adjustments that are only used for ratesetting purposes. However, the correction also eliminated some test year adjustments that should have remained on the Utility's books, as well as the retirements associated with the pro forma projects.

In order to reflect the correct 2013 test year balances, staff increased this account by $464 for water and decreased this account by $5,534 for wastewater to restore the 2013 test year balances that were calculated based on Rule 25-30.140, F.A.C. As noted above, the Utility's water plant was decreased to remove unsupported generator equipment during the 2013 test year. Accordingly, staff decreased water Account No. 310 by $107 to remove the depreciation that the Utility had accumulated on the generator equipment that has been removed again in accordance with the 2013 Order. Further, in order to correctly reflect the Commission-approved retirements associated with the four water and one wastewater pro forma projects approved in the last SARC, staff decreased accumulated depreciation by $6,563 for water and by $2,768 for wastewater.

Staff also decreased this account by $156 for water and $92 for wastewater to reflect the accumulated depreciation associated with the pro forma retirements.

Based on staff's review in the instant docket, staff increased this account by $31 for water to reflect the accumulated depreciation associated with the water line repair that was reclassified from a wastewater expense account to a water plant account, as discussed above. Staff decreased water accumulated depreciation by $33,024 to reflect the retirement of the collapsed well and well rehabilitation work. Staff also decreased this account by $3,517 to reflect the well abandonment and removal costs associated with abandoning the collapsed well. As discussed above, staff believes it would be appropriate to establish a regulatory asset to remove the negative accumulated depreciation that resulted from the early retirement of the well rehabilitation work. The net unrecovered balance of the well rehabilitation costs is $16,436, which is the total $17,068 rehabilitation cost less $632 in accumulated depreciation that was recovered during the test year while the repairs were in service ($17,068 - $632 = $16,436). Therefore, staff increased accumulated depreciation for water by $16,436 to establish the regulatory asset, thereby, removing the negative accumulated depreciation. Staff's remaining adjustments related to the establishment of the regulatory asset will be discussed below in the Regulatory Asset section. In addition, staff increased this account by $1,012 to reflect the accumulated depreciation associated with the pro forma water line installation, pump repairs, well pump replacement, and well materials correction.

In addition, staff increased wastewater accumulated depreciation by $5,835 to reflect the pro forma WWTP replacement. Further, staff decreased this account by $33,921 for wastewater to reflect the retirement of the replaced WWTP. Staff also decreased this account by $5,760 to reflect the portion of the WWTP removal costs related to dewatering services. The Utility is currently reviewing options for removing the physical structure of the replaced WWTP. As such, it is anticipated that Lakeside will incur additional removal costs in the future. Staff recommends that the Commission authorize Lakeside to record any additional WWTP removal costs it incurs in the future to Account 186 Miscellaneous Deferred Debits pending Commission review in a future rate proceeding. Subsequent to the test year, the Utility repaired a WWTP sprayfield pump that staff has included in plant above. Accordingly, staff has increased the wastewater accumulated depreciation by $32 to reflect the depreciation associated with this plant repair.

Finally, staff calculated accumulated depreciation using the prescribed rates set forth in Rule 25-30.140, F.A.C. After taking into consideration the adjustments discussed above, staff determined that an additional increase of $927 for water and a decrease of $322 for wastewater is necessary to reflect the appropriate test year balances. Again, no averaging adjustment is necessary to the water or wastewater accumulated depreciation balances due to the use of the year-end rate base method. Staff's net adjustments are decreases of $24,496 and $42,530 to water and wastewater, respectively. Therefore, staff recommends accumulated depreciation balances of $93,578 for water and $61,339 for wastewater.

### Accumulated Amortization of CIAC

Lakeside recorded amortization of CIAC balances of $7,379 for water and $7,517 for wastewater. As discussed above, the end of test year balances from the 2013 SARC inadvertently included the averaging adjustments that are only used for ratesetting purpose and should not have

been included in the end of test year balances. Lakeside properly adjusted its books and records in accordance with the Commission's Order in the last SARC, which resulted in accumulated amortization of CIAC being understated by $245 for water and $139 for wastewater due to the averaging adjustments. In order to reflect the correct 2013 test year balances, staff increased this account by $245 for water and $139 for wastewater. Staff calculated amortization of CIAC using composite depreciation rates. Accordingly, staff decreased water amortization of CIAC by $359 and decreased wastewater amortization of CIAC by $463. In addition, staff increased the water account by $10 to reflect the pro forma amortization of CIAC associated with the pro forma CIAC additions discussed above. Staff's net adjustments are decreases of $104 for water and $324 for wastewater. Therefore, staff recommends accumulated amortization of CIAC balances of $7,275 for water and $7,193 for wastewater.

## Regulatory Asset

As discussed above, staff believes it would be appropriate to establish a regulatory asset to remove the negative accumulated depreciation that resulted from the early retirement of the well rehabilitation work and allow the Utility to amortize the unrecovered balance. Therefore, staff increased Account 186.3 Miscellaneous Deferred Debits – Regulatory Assets by $16,436 to establish a regulatory asset to allow the Utility to recover the net unrecovered balance of the well rehabilitation costs. As noted above, $16,436 is the net balance resulting from the total cost of $17,068 less the accumulated depreciation of $632 that was accumulated during the test year while the well repairs were in service. Staff believes an appropriate annual amortization expense for the regulatory asset is $2,348. Accordingly, staff decreased this account by $2,348 to reflect the accumulated amortization on the regulatory asset, resulting in a net adjustment of $14,088. Therefore, staff recommends a regulatory asset balance of $14,088 for the test year. Staff's calculation of the amortization period and annual amortization expense will be discussed in Issue 6.

## Working Capital Allowance

Working capital is defined as the short-term investor-supplied funds that are necessary to meet operating expenses of the Utility. Consistent with Rule 25-30.433(2), F.A.C., staff used the one-eighth of the operation and maintenance (O&M) expense formula approach for calculating the working capital allowance. Staff also removed the unamortized balance of rate case expense of $378 for water and $243 for wastewater pursuant to Section 367.081(9), F.S.[21] In addition, staff removed the unamortized balance of rate case expense from the Utility's 2013 SARC of $339 for water and $339 for wastewater because it already includes the return component that was approved in that docket. This will be discussed further in Issue 6 in the Regulatory Commission Expense section. Applying this formula, staff recommends a working capital allowance of $6,318 ($50,541/8) for water, based on the adjusted O&M expense of $50,541 ($51,258 - $378 - $339 = $50,541). Further, staff recommends a working capital allowance of $6,259 ($50,070/8) for wastewater, based on the adjusted O&M expense of $50,070 ($50,653 - $243 - $339 = $50,070).

[21]Section 367.081(9), F.S., which became effective July 1, 2016, states, "A utility may not earn a return on the unamortized balance of the rate case expense. Any unamortized balance of rate case expense shall be excluded in calculating the utility's rate base." Therefore, staff excluded rate case expense from the working capital calculations.

**Rate Base Summary**

Based on the foregoing, staff recommends that the Commission approve a year-end rate base for Lakeside. The appropriate year-end water test year rate base is $143,573, and the appropriate year-end wastewater test year rate base is $134,117. Rate base is shown on Schedule Nos. 1-A and 1-B. The related adjustments are shown on Schedule No. 1-C.

***Issue 4:*** What is the appropriate rate of return on equity and overall rate of return for Lakeside?

***Recommendation:*** The appropriate return on equity (ROE) is 8.85 percent with a range of 7.85 percent to 9.85 percent. The appropriate overall rate of return is 8.45 percent. (Golden, Wilson)

***Staff Analysis:*** Lakeside's capital structure consists of $158,808 in common equity, $19,566 in long-term debt, and $3,430 in customer deposits. Audit staff determined that no test year adjustments are necessary. In May 2017, the Utility issued a $120,000 call for capital to its three shareholders to fund the new wastewater treatment plant and payoff of a note payable.[22] The shareholders provided the requested capital contributions in June 2017. Therefore, staff increased capital stock by $120,000. For informational purposes, staff notes that the operating ratio method was used in Lakeside's last SARC.[23] However, due to the significant capital improvements that have been made by the Utility since that time, Lakeside is able to return to the traditional rate base rate of return method in the instant case.

The Utility's capital structure has been reconciled with staff's recommended rate base. The appropriate ROE is 8.85 percent based upon the Commission-approved leverage formula currently in effect.[24] Staff recommends an ROE of 8.85 percent, with a range of 7.85 percent to 9.85 percent, and an overall rate of return of 8.45 percent. The ROE and overall rate of return are shown on Schedule No. 2.

[22]Document No. 05290-17, pp. 10 and 121, filed on June 8, 2017, in Docket No. 20160195-WS.
[23]Order No. PSC-15-0013-PAA-WS, issued January 2, 2015, in Docket No. 20130194-WS, *In re: Application for staff-assisted rate case in Lake County by Lakeside Waterworks, Inc.*
[24]Order No. PSC-17-0249-PAA-WS, issued June 26, 2017, in Docket No. 20170006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

***Issue 5:*** What are the appropriate test year revenues for Lakeside's water and wastewater systems?

***Recommendation:*** The appropriate test year revenues for Lakeside's water and wastewater systems are $62,886 and $57,123, respectively. (Bruce)

***Staff Analysis***: Lakeside recorded total revenues of $59,676 for water and $54,216 for wastewater. The water revenues included $58,880 of service revenues and $796 of miscellaneous revenues. The wastewater revenues consisted of service revenues only. During the test year, the Utility had a Phase II rate increase. Therefore, staff annualized test year revenues by applying the rates in effect as of January 28, 2016, to the water and wastewater billing determinants. Staff determined that service revenues should be $65,371 for water and $56,736 for wastewater, which results in increases of $6,491 and $2,520 for water and wastewater, respectively.

Staff made adjustments to miscellaneous revenues for water and wastewater. The Utility assessed a $5.00 late payment charge rather than the Utility's approved charge of $5.25. In addition, the Utility also charged four customers an unauthorized charge of $22 for normal reconnection rather the tariff rate of $15. The Utility refunded each customer overcharged for normal reconnection. Based on the number of occurrences and the Utility's approved miscellaneous charges, the miscellaneous revenues should be $774. As a result, staff decreased miscellaneous revenues by $22 ($796 - $774). The Utility allocated all of the miscellaneous revenues to the water system. Staff recommends that the miscellaneous revenues be equally distributed between the water and wastewater systems.

Based on the above, the appropriate test year revenues for Lakeside Waterworks' water and wastewater systems, including miscellaneous revenues are $62,886 ($62,499 + $387) for water and $57,123 ($56,736 + $387) for wastewater.

***Issue 6:*** What is the appropriate amount of operating expenses?

***Recommendation:*** The appropriate amount of operating expense for the Utility is $64,807 for water and $65,578 for wastewater. (Golden, Wilson)

***Staff Analysis:*** Lakeside recorded operating expense of $59,593 for water and $58,116 for wastewater for the test year ended June 30, 2016. The test year O&M expenses have been reviewed, including invoices, canceled checks, and other supporting documentation. Staff has made several adjustments to the Utility's operating expenses as summarized below.

## Operation and Maintenance (O&M) Expenses

### Purchased Power (615/715)

Lakeside recorded purchased power expense of $2,737 for water and $3,479 for wastewater for the test year. Commission audit staff determined that the purchased power expense was understated. Therefore, staff increased this account by $131 for water and $60 for wastewater to reflect the correct test year balances. Staff recommends purchased power expense of $2,868 for water and $3,539 for wastewater.

### Contractual Services - Professional (631/731)

Lakeside recorded negative balances of $559 for water and $334 for wastewater in this account. The Utility's test year contractual services – professional expense included adjustments to reverse prior accounting expense accruals of $1,050 for water and $825 for wastewater, and test year legal expense of $982 that was split equally between water and wastewater at $491 each. The Utility reversed the prior accounting expense accruals because it transferred the accounting services in-house and will no longer be incurring the separate accounting services expense. In order to reflect the correct test year balances for the legal expense portion of this account, staff increased this account by $1,050 for water and $825 for wastewater to remove the accounting expense reversals. Staff determined that a portion of the test year legal fees related to shareholder activities represent non-recurring expenses. Therefore, staff decreased this account by $182 for water and $182 for wastewater to reflect the five-year amortization of the non-recurring legal fees. Finally, staff increased the wastewater account by $280 to reflect the annual amortization of the computer-aided design (CAD) system mapping project that was approved in the Utility's last SARC. The rates that included this expense went into effect in January 2015, therefore, the amortization of this expense will continue until early 2020. Staff's adjustments result in net increases of $868 for water and $923 for wastewater. Based on the above, staff recommends contractual services – professional expense for the test year of $309 for water and $589 for wastewater.

### Contractual Services - Other (636/736)

The Utility recorded contractual services – other expense of $39,390 for water and $38,452 for wastewater. Lakeside receives all of its operational and administrative services under a contract with an affiliated company, U.S. Water Services Corporation (USWSC). The Commission previously reviewed and approved expenses related to the USWSC management services

contracts for Lakeside in its last SARC, and for six of Lakeside's sister utilities.[25] One sister utility, LP Waterworks, Inc., has had two SARCs in which the Commission previously reviewed and approved expenses related to the USWSC management services contract. Subsequent to the test year, USWSC increased Lakeside's annual contract by $276 for water and $258 for wastewater to reflect an increase in the national Consumer Price Index (CPI). Consistent with the Commission's prior decisions in related dockets, staff increased these accounts by $276 for water and $258 for wastewater to annualize the increase in the monthly contract price. Staff notes that Lakeside has received one price index rate adjustment since its last SARC, which became effective in June 2015, prior to the beginning of the test year. While the price index rate adjustments help utilities to keep up with increasing costs in between rate cases, those limited expense increases are essentially erased in a rate case and do not carry over to the actual test year expenses reviewed within the rate case. Specifically, the test year operation and maintenance expenses will be based on the actual expenses that occurred during the test year, along with any known and measureable changes that are necessary to reflect the actual expenses that are expected to occur going forward, regardless of any price index adjustments that may have been applied in the past. For that reason, staff's recommended adjustment to annualize the pro forma CPI adjustment is necessary to reflect the Utility's actual contractual management services fees going forward and does not result in a double counting of any CPI adjustments.

Subsequent to Lakeside's last SARC, the Commission found USWSC's costing and allocation model to be reasonable in six related dockets with the exception of some allocated expenses related to salary overtime, fuel, and vehicle maintenance which were adjusted in some of those dockets.[26] The salary overtime was removed because it was inadvertently included for salaried positions that are not eligible for overtime pay. USWSC determined that Lakeside's contract amounts would be reduced by $491 each for water and wastewater if similar adjustments were made to remove the salary overtime component.[27] The fuel and vehicle maintenance costs were reduced in the related dockets because the actual test year costs were lower than the allocated costs. However, in the instant docket, Lakeside reported that the actual fuel and vehicle maintenance costs were higher than the allocated costs by $338 for fuel and $626 for vehicle maintenance. Lakeside does not believe the salary overtime adjustment is appropriate because the contract was first calculated in 2013 and did not include the actual costs for administrative

[25]Order No. PSC-14-0413-PAA-WS, issued August 14, 2014, in Docket No. 20130153-WS, *In re: Application for staff-assisted rate case in Highlands County, by L.P. Utilities Corporation c/o LP Waterworks, Inc.*; Order No. PSC-15-0013-PAA-WS, issued January 2, 2015, in Docket No. 20130194-WS, *In re: Application for staff-assisted rate case in Lake County by Lakeside Waterworks, Inc.*; Order No. PSC-15-0282-PAA-WS, issued July 8, 2015, in Docket No. 20140158-WS, *In re: Application for increase in water/wastewater rates in Highlands County by HC Waterworks, Inc.*; Order No. PSC-15-0329-PAA-WU, issued August 14, 2015, in Docket No. 20140186-WU, *In re: Application for staff-assisted rate case in Brevard County by Brevard Waterworks, Inc.*; Order No. PSC-15-0335-PAA-WS, issued August 20, 2015, in Docket No. 20140147-WS, *In re: Application for staff-assisted rate case in Sumter County by Jumper Creek Utility Company;* Order No. PSC-16-0256-PAA-WU, issued June 30, 2016, in Docket No. 20150199-WU, *In re: Application for staff-assisted rate case in Lake County by Raintree Waterworks, Inc.*; Order No. PSC-16-0305-PAA-WU, issued July 28, 2016, in Docket No. 20150236-WU, *In re: Application for staff-assisted rate case in Lake County, by Lake Idlewild Utility Company*; Order No. PSC-2017-0334-PAA-WS, issued August 23, 2017, in Docket No. 20160222-WS, *In re: Application for staff-assisted rate case in Highlands County by LP Waterworks, Inc.*

[26]Order No. PSC-15-0282-PAA-WS; Order No. PSC-15-0329-PAA-WU; Order No. PSC-15-0335-PAA-WS; and Order No. PSC-16-0256-PAA-WU; Order No. PSC-16-0305-PAA-WU; and Order No. PSC-2017-0334-PAA-WS.

[27]Document No. 03643-17, filed on March 16, 2017, in Docket No. 20160195-WS.

services and operations. Consequently, Lakeside has been receiving a subsidy for the past four years. Specifically, Lakeside reported that the water and wastewater systems are currently receiving annual subsidies of $5,168 and $393, respectively.

Subsequent to the test year, USWSC reviewed the contracted amounts and considered revising the contract during the second quarter of 2017. In July 2017, a Utility representative advised staff that USWSC had decided not to revise the contract at this time due to concerns about the rate impact on customers. The Utility and USWSC recognize the current impact caused by the significant capital improvements and did not believe it would be appropriate to increase the contracts in addition to the current SARC rate increases.

While staff recognizes that any reductions to the contract fees will further increase the subsidies, staff believes it is still appropriate to remove the salary overtime component because it should not have been included in the allocated costs. Therefore, staff decreased this account by $491 for water and $491 for wastewater to remove the salary overtime component.

The USWSC contract fees include certain repairs that do not exceed $400. During the test year, the Utility experienced a water line repair and a wastewater lift station repair that exceeded the $400 limit. Both repairs were recorded to wastewater expense. As discussed previously in Issue 3, staff reclassified the water line repair from this wastewater expense account to water plant Account No. 331, resulting in a decrease to wastewater of $1,165. Neither repair involved the replacement of plant.

The CPI-adjusted annual contract fees, net of the salary overtime reduction, of $39,175 for water and $36,613 for wastewater represent an average of $202 and $203 per equivalent residential connection (ERC), for water and wastewater, respectively. This is comparable to the amounts approved by the Commission for Lakeside's sister utilities which ranged from $170 to $247 per water ERC.

The Utility confirmed that USWSC's current cost model continues to include 1,000 additional projected ERCs. Inclusion of 1,000 potential future ERCs that are expected to be added through growth or acquisitions serves to spread the costs over a larger base and lowers the cost per ERC. Lakeside is also experiencing additional cost savings related to other expenses such as chemicals, testing, and miscellaneous expenses that are attributable to economies of scale achieved through operations provided by USWSC. USWSC and its managers bring considerable management and operator experience and expertise at a comparably reasonable cost. By spreading costs over multiple systems, and adding ERCs to recognize potential future growth, Lakeside's customers are realizing operational and cost benefits that would not be available if the Utility operated on a stand-alone basis. Staff believes the adjusted cost of the USWSC management services contract is reasonable. Staff's total adjustment to water contractual services – other expense is a decrease of $215, and staff's net adjustment to wastewater contractual services – other expense is a decrease of $1,398. Therefore, staff recommends contractual services – other expense for the test year of $39,175 ($39,390 + $276 - $491 = $39,175) for water and $37,054 ($38,452 + $258 - $491 - $1,165 = $37,054) for wastewater.

### Rent Expense (640/740)

The Utility recorded test year rent expense for the Utility's land leases of $2,463 for water and $2,465 for wastewater. During the test year, the land owner increased the Utility's lease expense slightly for an annual CPI adjustment. Therefore, staff increased this account by $12 for water and $12 for wastewater to reflect the Utility's current annual land lease expense. Staff recommends rent expense for the test year of $2,475 for water and $2,477 for wastewater.

### Insurance Expense (655/755)

The Utility recorded test year insurance expense of $602 for water and $534 for wastewater. During the test year, the Utility's general liability insurance policy was renewed at a slightly lower premium of $1,125, which is split equally between water and wastewater for an expense of $563 each. Staff decreased this expense for water by $39 and increased it for wastewater by $29 to reflect the current annual general liability insurance expense of $563 each. Therefore, staff recommends insurance expense for the test year of $563 for water and $563 for wastewater.

### Regulatory Commission Expense (665/765)

The Utility did not record any regulatory commission expense in this account. Staff increased this account by $339 for water and $339 for wastewater to reflect the annual amortization of the rate case expense approved in the Utility's 2013 SARC. The rates that included the rate case expense went into effect on January 28, 2015, therefore, the four-year amortization of the rate case expense will continue until January 2019. In order to ensure that the annual rate case expense reflected in this adjustment matches the rate reduction that will occur in 2019, staff included the return component that was approved in the 2013 docket in this adjustment and excluded the rate case expense from the working capital calculation so that no additional return would be added.

Regarding the instant docket, the Utility is required by Rule 25-22.0407, F.A.C., to provide notices of the customer meeting and notices of final rates in this case to its customers. Staff is also recommending that the Utility be required to provide notices of the four-year rate reductions to its customers when the rates are reduced to remove the amortized rate case expense. For noticing, staff estimated $272 for postage expense, $185 for printing expense, and $28 for envelopes. This results in $485 for the noticing requirement.

The Utility paid a total of $1,500 in rate case filing fees ($1,000 for water and $500 for wastewater). The Utility also requested additional rate case expense of $500 to cover travel expenses to attend both the customer meeting and Commission Agenda Conference. The Commission previously approved rate case related travel expenses ranging from $450 to $1,570 in the six most recent dockets for Lakeside's sister utilities. Based on staff's review, the requested travel expense appears reasonable. Based on the above, staff recommends total rate case expense of $2,485 ($485 + $1,500 + $500), which amortized over four years is $621. Staff has allocated the annual rate case expense to the water and wastewater systems based on ERCs, resulting in annual rate case expense of $378 for water and $243 for wastewater. Therefore, staff recommends regulatory commission expense of $717 for water and $583 for wastewater.

### Bad Debt Expense (670/770)

Lakeside recorded $414 for water and $375 for wastewater in this account for test year bad debt expense, which represents 0.54 and 0.49 percent of staff's recommended water and wastewater

revenue requirements, respectively. Commission practice is to calculate bad debt expense using a three-year average. However, Lakeside only has two years of data that are representative of a normal year. The remaining two years of data that were reported after the Utility was purchased by the current owners had an unusually high bad debt expense, followed by an unusually high negative bad debt expense that appears to have been a reversing adjustment. Considering the limited data and that the test year bad debt expense is such a low percentage of staff's recommended revenue requirements, staff believes it would be reasonable to use the test year bad debt expense in lieu of the traditional three-year average. However, in its May 2017 letter, OPC expressed concern that the test year bad debt expense is higher than the bad debt expense amounts reported in the Utility's 2015 and 2016 Annual Reports. OPC proposed using a five-year average comprised of the four years of annual report data plus the bad debt expense approved in the 2013 SARC. Staff agrees with OPC that that the test year amounts are higher than the two most recent Annual Reports. However, staff does not agree with OPC's proposed five-year calculation because there is an overlap of data between the 2013 Annual Report and 2013 SARC test year, preventing a true five-year average.

As a compromise, staff believes a four-year average based on the four years of available data will produce a representative average and serves as a reasonable alternative to a traditional three-year average in this case. Based on a four-year average from 2013 through 2016, the average bad debt expense is $285 for water and $157 for wastewater, which represents only 0.37 and 0.20 percent of staff's recommended revenue requirement. In its response to OPC's letter, Lakeside indicated that it would defer to staff on this item, but noted that rate increases resulting from rate cases typically cause higher bad debt to be incurred, and suggested that the rate increase should be considered when determining the appropriate level of bad debt expense on a prospective basis when the rates go into effect. Staff believes the four-year average is on the low end as a percentage of the revenue requirement, and may not adequately reflect future bad debt expense following the rate increase. However, in keeping with the Commission's current practice of calculating bad debt expense based on a multi-year average, staff believes it would be acceptable to use the four-year average in this case. Therefore, staff decreased test year bad debt expense by $129 for water and $219 for wastewater. Staff recommends bad debt expense of $285 for water and $157 for wastewater for the test year.

### Miscellaneous Expense (675/775)

The Utility recorded $2,201 for water miscellaneous expense for the test year and no miscellaneous expense for wastewater. Staff decreased water miscellaneous expense by $1,655 to remove a regulatory assessment fee (RAF) expense that was incorrectly recorded to this account. The remaining water miscellaneous expense in this account includes the DEP drinking water annual operating license fee of $500, and several Sunshine State Florida One Call fees totaling $46. Therefore, staff recommends miscellaneous expense of $546 for water and no miscellaneous expense for wastewater for the test year.

### Operation and Maintenance Expense (O&M Summary)

Based on the above adjustments, O&M expense should be reduced by $309 for water and $9 for wastewater, resulting in total O&M expense of $51,258 for water and $50,653 for wastewater. Staff's recommended adjustments to O&M expense are shown on Schedule Nos. 3-A through 3-E.

### Depreciation Expense (Net of Amortization of CIAC)

The Utility's records reflect test year water depreciation expense of $5,071 and CIAC amortization expense of $415, resulting in a net water depreciation expense of $4,656 ($5,071 - $415 = $4,656). In addition, the Utility's records reflect test year wastewater depreciation expense of $4,919 and CIAC amortization expense of $589, resulting in a net wastewater depreciation expense of $4,330 ($4,919 - $589 = $4,330). Staff calculated depreciation expense using the prescribed rates set forth in Rule 25-30.140, F.A.C., and increased water depreciation expense by $1,686 and decreased wastewater depreciation expense by $2,219 to reflect the appropriate test year depreciation expense. In addition, staff increased this account by $1,012 to reflect the incremental increase in water depreciation expense resulting from the pro forma water line installation, pump repairs, pump replacement, and well materials correction. Further, staff increased this account by $5,835 to reflect the incremental increase in wastewater depreciation expense resulting from the pro forma WWTP replacement. Staff also increased this account by $32 to reflect the increase in wastewater depreciation resulting from the pro forma WWTP sprayfield pump repair. Finally, staff decreased depreciation expense by $951 for water and $492 for wastewater to reflect the non-U&U portion of the test year depreciation expense, including the pro forma WWTP replacement.

In addition, staff calculated CIAC amortization based on composite rates, and determined that test year CIAC amortization expense should be increased by $38 for water and decreased by $257 for wastewater. This results in CIAC amortization expense of $453 for water and $332 for wastewater. Based on the above, staff's net adjustment to water is an increase of $1,709 ($1,686 + $1,012 - $951 - $38 = $1,709), resulting in a net depreciation expense for water of $6,365 ($4,656 + $1,709 = $6,365). Further, staff's net adjustment to wastewater is an increase of $3,413 (-$2,219 + $5,835 + 32 - $492 + 257 = $3,413), resulting in a net depreciation expense for wastewater of $7,743 ($4,330 + $3,413 = $7,743). Therefore, staff recommends net depreciation expense of $6,365 and $7,743 for water and wastewater, respectively.

### Amortization of Loss on Water Well and WWTP Replacements

As discussed previously, the Utility experienced a well collapse of the primary well supplying potable water to its customers. The Utility attempted to rehabilitate the well with a private well driller, but ultimately was required to replace the well. The Utility believed it was prudent to attempt rehabilitation first because it would have been less costly than drilling the new well. Additionally, as discussed previously, Lakeside found it necessary to replace the WWTP in order to be in compliance with the DEP requirements. The Utility is requesting that the Commission approve the retirement and recovery of the losses on the collapsed well, water well rehabilitation costs, and WWTP that were all retired early.

In its application, Lakeside initially estimated an annual amortization expense of $3,791 for water and $224 for wastewater to be recovered over a 10-year amortization period. The Utility proposed the 10-year amortization period because it is consistent with recent prior Commission decisions.[28] Staff's review indicates that the Utility acted prudently in both instances, and that

[28]*See e.g.,* Order No. PSC-15-0569-PAA-WS, issued December 15, 2015, in Docket No. 20140239-WS, *In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation*; Order No. PSC-16-0013-PAA-SU, issued January 6, 2016, in Docket No. 20150102-SU, *In re: Application for increase in wastewater rates in Charlotte County by Utilities, Inc. of Sandalhaven.*

the replacements and early retirements were necessary to ensure that the customers receive safe and reliable service, as well as ensure that the Utility be in compliance with DEP requirements. Therefore, staff believes it is appropriate to allow the Utility to recover the losses resulting from the early retirement of the collapsed well, water well rehabilitation costs, and WWTP. As discussed previously in Issue 3, staff is recommending that a regulatory asset be established to recover the portion of the Utility's loss related to the well rehabilitation work due to the negative accumulated depreciation that resulted because the repair was in service less than a year. In addition, staff believes it would be appropriate to calculate the amortization expense to recover the losses on the early retirement of the collapsed well and WWTP using Rule 25-30.433(9), F.A.C.

Specifically, Rule 25-30.433(9), F.A.C., provides the formula that shall be used to determine the number of years over which a utility may recover a loss that occurs due to a forced abandonment or prudent early retirement of plant assets. Specifically, Rule 25-30.433(9), F.A.C., states:

> The amortization period for forced abandonment or the prudent retirement, in accordance with the National Association of Regulatory Utility Commissioners Uniform System of Accounts, of plant assets prior to the end of their depreciable life shall be calculated by taking the ratio of the net loss (original cost less accumulated depreciation and contributions-in-aid-of-construction (CIAC) plus accumulated amortization of CIAC plus any costs incurred to remove the asset less any salvage value) to the sum of the annual depreciation expense, net of amortization of CIAC, plus an amount equal to the rate of return that would have been allowed on the net invested plant that would have been included in rate base before the abandonment or retirement. This formula shall be used unless the specific circumstances surrounding the abandonment or retirement demonstrate a more appropriate amortization period.

Lakeside subsequently provided additional information regarding the costs it incurred to abandon the collapsed well and remove the WWTP. As discussed previously, staff is recommending several adjustments to the Utility's test year accumulated depreciation and depreciation expense. Staff has determined that there is no CIAC or amortization of CIAC associated with these retirements because Lakeside's CIAC only represents main extension fees, meter installation fees, and the prior imputation of CIAC for the lines. In addition, no salvage values have been identified for the collapsed well or retired WWTP.

Staff's calculation of the net loss, amortization period, and annual amortization expense including the Utility's removal costs and staff's recommended depreciation adjustments for the early retirement losses on the collapsed well and retired WWTP are shown on Tables 6-1 and 6-2 below.

**Table 6-1**
**Net Loss Calculation**

| | Water | Wastewater |
|---|---|---|
| Plant Retired | | |
| Collapsed Well | $15,956 | |
| Wastewater Treatment Plant | | $33,921 |
| Less Associated Accumulated Depreciation | | |
| Collapsed Well | ($14,429) | |
| Wastewater Treatment Plant | | ($27,410) |
| Less Associated CIAC | $0 | $0 |
| Plus Associated Amortization of CIAC | $0 | $0 |
| Plus Removal Cost | $3,517 | $5,760 |
| Less Salvage Value | $0 | $0 |
| Equals Net Loss | $5,044 | $12,271 |

**Table 6-2**
**Amortization Period and Annual Amortization Expense Calculation**

| | Water | Wastewater |
|---|---|---|
| Net Loss | $5,044 | $12,271 |
| Divided by the sum of: | | |
| Annual Depreciation Expense | $590 | $2,263 |
| Less CIAC Amortization Expense | 0 | 0 |
| Plus Return on Net Invested Plant (8.45% ROR)[29] | 129 | 550 |
| Annual Total Before Plant Retirement | $719 | $2,813 |
| Equals Amortization Period (rounded to nearest year) | 7 Years | 4 Years |
| Annual Amortization of Loss (Net Loss divided by Amortization Period): | $721 | $3,068 |

Based on the formula provided by Rule 25-30.433(9), F.A.C., the appropriate amortization period is seven years for the water loss and four years for the wastewater loss. The rule specifies that this formula shall be used unless the specific circumstances surrounding the abandonment or retirement demonstrate a more appropriate amortization period. In the Staff Report, staff initially recommended amortization periods of eight years for water and three years for wastewater based on the information available at that time. In its May 2017 letter, OPC proposed using a 10-year amortization period for both the water and wastewater losses. OPC also expressed concern that the three-year amortization period was too short for such a material expense. In support of its proposal, OPC cited the two dockets previously referenced by the Utility in which the Commission approved loss amortization periods of 10 years. Although Lakeside initially proposed a 10-year amortization period in its application based on recent prior Commission decisions, the Utility later indicated in its response to OPC's letter that it agreed with staff's preliminary recommendation in the Staff Report to use lower amortization periods that were calculated based on the rule.

Staff disagrees with applying the decisions in the two referenced dockets in this case. In both dockets, the plant was already fully depreciated and the only loss was the cost of removal, which

[29]Based on staff's recommended overall rate of return of 8.45 percent, as discussed in Issue 4.

is not the case for Lakeside. Order No. PSC-15-0569-PAA-WS stated, "As Orchid Springs has essentially fully depreciated the plant, the costs associated with sludge removal shall be spread over the shortest period of time as the plant is no longer in-service."[30] In both referenced dockets, the rule formula produced a 15-year amortization period, but the Commission's decision in each of those cases was to allow each utility to recover the loss over a shorter time period. It is clear that the intent of the 10-year amortization period was to reduce the amount of time needed for the Utility to recover the loss, not extend it. Applying a 10-year amortization period in the instant case would have the opposite effect of the Commission's decision in those cases by requiring Lakeside to recover the losses over a longer period than is required by the rule based on Lakeside's specific circumstances.

Further, staff does not believe either of those decisions should be applied in this instance because Lakeside's early retirement losses include the loss of unrecovered depreciation expense in addition to removal costs, which is what the rule is designed to address. Rule 25-30.433(9), F.A.C., specifies that the formula in the rule shall be used unless the specific circumstances surrounding the abandonment or retirement demonstrate a more appropriate amortization period. Staff does not believe there are any unique circumstances surrounding the early retirement of the well and WWTP that warrant a different treatment. Therefore, staff recommends that the appropriate amortization period to recover the losses resulting from the early retirement of the collapsed well and WWTP is seven years for the water loss and four years for the wastewater loss. The resulting annual amortization expenses are $721 to recover the loss on the collapsed well and $3,068 to recover the loss on the retired WWTP.

Regarding the appropriate amortization period and annual amortization expense to recover the loss on the well rehabilitation work through the regulatory asset, Rule 25-30.433(8), F.A.C., specifies that non-recurring expenses shall be amortized over a five-year period unless a shorter or longer period of time can be justified. It is generally preferred that a regulatory asset be written off as soon as possible to remove the non-productive asset from a utility's books. Although staff is recommending a different recovery method for this portion of the loss due to the resulting negative accumulated depreciation, the well rehabilitation work was essentially part of the well that was ultimately abandoned. Therefore, staff believes it would be appropriate to apply the same seven-year amortization period that is being applied to the portion of the loss related to the collapsed well. Staff believes that this offers a reasonable compromise between the preferred shorter five-year amortization period permitted under Rule 25-30.433(8), F.A.C., and OPC's requested 10-year amortization period. A seven-year amortization period will help to mitigate the impact of the loss amortization expense on rates, while still offering the Utility the opportunity to recover its loss in a reasonable time period. The resulting annual amortization expense is $2,348, which is the net unrecovered balance of $16,436 divided by seven years ($16,436/7 = $2,348).

Therefore, staff recommends annual amortization expenses of $721 to recover the loss on the collapsed well, and $2,348 to recover the loss on the well rehabilitation work, for a total water amortization expense of $3,069 ($721 + $2,348 = $3,069). In addition, staff recommends an annual amortization expense for wastewater of $3,068 to recover the loss on the retired WWTP.

[30]Issued December 16, 2015, in Docket No. 20140239-WS, *In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation*, p. 16.

Staff recommends that amortization of the regulatory asset and other losses begin when the rates approved in this docket become effective.

### Taxes Other Than Income (TOTI)

Lakeside recorded TOTI of $3,370 for water and $3,124 for wastewater for the test year. The Utility recorded RAFs of $2,686 for water and $2,440 for wastewater for the test year. Based on staff's recommended test year revenues of $62,886 for water and $57,123 for wastewater, the Utility's RAFs should be $2,830 and $2,571 for water and wastewater, respectively. Therefore, staff increased these accounts by $144 for water and $131 for wastewater to reflect the appropriate test year RAFs. The Utility also recorded property tax accruals of $684 each for water and wastewater for the test year. Audit staff determined that the Utility's property taxes for the test year were $676 each for water and wastewater. Subsequent to the audit, the 2016 property tax records became available, indicating that Lakeside's actual property taxes were $653 each for water and wastewater. Accordingly, staff decreased property taxes by $31 for water and $31 for wastewater to reflect the appropriate property taxes going forward. Staff's net adjustments to test year TOTI are an increase of $113 for water ($144 - $31 = $113) and $100 for wastewater ($131 - $31 = $100).

In addition, as discussed in Issue 7, revenues have been increased by $14,052 for water and $19,788 for wastewater to reflect the change in revenue required to cover expenses and allow the recommended rate of return. As a result, TOTI should be increased by $632 for water and $890 for wastewater to reflect RAFs of 4.5 percent of the change in revenues. Therefore, staff recommends TOTI of $4,115 for water and $4,114 for wastewater.

### Operating Expenses Summary

The application of staff's recommended adjustments to Lakeside's test year operating expenses results in operating expenses of $64,807 for water and $65,578 for wastewater. Operating expenses are shown on Schedule Nos. 3-A and 3-B. The adjustments are shown on Schedule No. 3-C.

***Issue 7:*** What is the appropriate revenue requirement?

***Recommendation:*** The appropriate revenue requirement is $76,938 for water and $76,911 for wastewater, resulting in an annual increase of $14,052 for water (22.35 percent) and $19,788 for wastewater (34.64 percent). (Golden, Wilson)

***Staff Analysis:*** Lakeside should be allowed an annual increase of $14,052 for water (22.35 percent) and $19,788 for wastewater (34.64 percent). This will allow the Utility the opportunity to recover its expenses and earn an 8.45 percent return on its investment. The calculations are shown below, in Tables 7-1 and 7-2 for water and wastewater, respectively:

**Table 7-1**
**Water Revenue Requirement**

| | |
|---|---|
| Adjusted Rate Base | $143,573 |
| Rate of Return | x 8.45% |
| Return on Rate Base | $12,132 |
| Adjusted O&M Expense | 51,258 |
| Depreciation Expense (Net) | 6,365 |
| Amortization | 3,069 |
| Taxes Other Than Income | 4,115 |
| Income Taxes | 0 |
| Revenue Requirement | $76,938 |
| Less Adjusted Test Year Revenues | 62,886 |
| Annual Increase | $14,052 |
| Percent Increase | 22.35% |

**Table 7-2**
**Wastewater Revenue Requirement**

| | |
|---|---|
| Adjusted Rate Base | $134,117 |
| Rate of Return | x 8.45% |
| Return on Rate Base | $11,333 |
| Adjusted O&M Expense | 50,653 |
| Depreciation Expense (Net) | 7,743 |
| Amortization | 3,068 |
| Taxes Other Than Income | 4,114 |
| Income Taxes | 0 |
| Revenue Requirement | $76,911 |
| Less Adjusted Test Year Revenues | 57,123 |
| Annual Increase | $19,788 |
| Percent Increase | 34.64% |

***Issue 8:*** What are the appropriate rate structures and rates for Lakeside's water and wastewater systems?

***Recommendation:*** The recommended rate structures and monthly water and wastewater rates are shown on Schedule Nos. 4-A and 4-B. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Bruce)

***Staff Analysis:***

## Water Rates

Lakeside's water system is located within the SJRWMD. The Utility provides service to approximately 182 residential water customers, of which 74 have separate irrigation meters. In addition, the Utility provides water service to two general service irrigation meters and a clubhouse. Approximately 20 percent of the residential customer bills during the test year had zero gallons indicating a somewhat seasonal customer base. The average residential water demand was 2.386 gallons per month. The average water demand excluding zero gallon bills was 2,775 per month. The Utility's current residential rate structure consists of a base facility charge (BFC) and two-tier inclining block rate structure. The rate blocks are 0-4,000 gallons and all usage in excess of 4,000 gallons per month. The general service rates consist of a BFC and gallonage charge. The residential irrigation rate structure consists of a gallonage charge only.

Staff performed an analysis of the Utility's billing data in order to evaluate the appropriate rate structure for the residential water customers. The goal of the evaluation was to select the rate design parameters that: (1) produce the recommended revenue requirement; (2) equitably distribute cost recovery among the utility's customers; (3) establish the appropriate non-discretionary usage threshold for restricting repression; and (4) implement, where appropriate, water conserving rate structures consistent with Commission practice.

Due to the customers' low average monthly consumption and somewhat seasonal customer base, staff recommends 45 percent of the revenue requirement should be recovered through the BFC in an effort to provide revenue stability. This will allow the Utility to have sufficient cash flow to cover fixed costs. The average number of people per household served by the water system is 2.5; therefore, based on the number of persons per household, 50 gallons per day per person, and the number of days per month, the non-discretionary usage threshold should be 4,000 gallons per month. Based on staff's analysis of the billing data, approximately 27 percent of the demand is above 10,000 gallons per month. Therefore, staff recommends a BFC and a three-tier inclining block rate structure, which includes separate gallonage charges for discretionary and non-discretionary usage for residential water customers. The rate blocks should be: (1) 0-4,000 gallons; (2) 4,001-10,000 gallons; and (3) all usage in excess of 10,000 gallons per month. This rate structure sends the appropriate pricing signals because it targets customers with high consumption levels and minimizes price increases for customers at non-discretionary levels. In

addition, the third tier provides an additional pricing signal to customers using in excess of 10,000 gallons of water per month. General service customers should be billed a BFC and uniform gallonage charge.

Currently, the residential irrigation customers are billed a gallonage charge only rate structure. Staff evaluated whether the residential irrigation service should be assessed a BFC. Typically, the configuration of irrigation meters determines whether or not it is appropriate to assess a BFC. Several years ago, the Utility required customers that had improperly connected irrigation systems to correct the cross-connection hazard and properly meter all water consumption. During this time, customers were given options as to how their irrigation system should be configured. A customer could re-pipe their irrigation system to connect to the potable water line behind the existing water meter, install a second water meter on the separate irrigation line, or disconnect their irrigation system from the Utility's main. In a prior rate case for this Utility, the Commission found that the separate irrigation meter did not place any additional demand on the Utility's water system and irrigation customers should only be assessed the gallonage charge for the water usage registered by the separate irrigation meter.[31] Based on staff's analysis, the residential irrigation customers' average consumption is 808 gallons per month, which does not indicate high usage for irrigation customers with separate meters. Based on the above, staff recommends that the irrigation customers continue a gallonage charge only rate structure.

Based on a recommended revenue increase of 22.5 percent, which excludes miscellaneous revenues, the residential consumption can be expected to decline by 659,000 gallons resulting in anticipated average residential demand of 2,175 gallons per month. Staff recommends an 8.8 percent reduction in test year residential gallons for ratesetting purposes and corresponding reductions of $229 for purchased power, $111 for chemicals, and $16 for RAFs to reflect the anticipated repression, which results in a post repression revenue requirement of $76,195. Table 8-1 on the following page contains staff's recommended rate structure and rates as well as alternative rate structures, which include varying revenue allocations to the BFC and rate blocks. Staff's recommended rate structure minimizes the rate impact for customers at non-discretionary levels of consumption while sending the appropriate pricing signals to target demand in excess of 10,000 gallons per month. Alternative I leaves the current rate structure in place which results in a slightly higher percentage price increase for non-discretionary demand. Alternative II provides a similar percentage increase for non-discretionary demand; however, does not send as significant of a signal to customers using above 10,000 gallons per month.

The Utility does not have customers for private fire protection; however, the Utility would like to maintain a rate structure for that customer class in the event it is needed in the future. The private fire protection rate should be one-twelfth of the approved BFC, pursuant to Rule 25-30.465, F.A.C.

[31]See Order No. PSC-00-0259-PAA-WS, issued February 8, 2000, in Docket No. 19990080-WS, In re: *Complaint and request for hearing by Linda J. McKenna and 54 petitioners regarding unfair rates and charges of Shangri-La by the Lake Utilities, Inc. in Lake County*, p. 28.

**Table 8-1**
**Staff's Recommended and Alternative Water Rate Structures and Rates**

| | RATES AT TIME OF FILING | STAFF RECOMMENDED RATES (45% BFC) | ALTERNATIVE I (45% BFC) | ALTERNATIVE II (50% BFC) |
|---|---|---|---|---|
| **Residential** | | | | |
| 5/8" x 3/4" Meter Size | $13.76 | $14.75 | $14.78 | $16.41 |
| | | | | |
| Charge per 1,000 gallons | | | | |
| 0-4,000 gallons | $3.47 | | $5.36 | |
| Over 4,000 gallons | $4.49 | | $6.02 | |
| | | | | |
| 0-4,000 gallons | | $4.44 | | $4.04 |
| 4,001-10,000 gallons | | $5.72 | | $4.86 |
| Over 10,000 gallons | | $10.01 | | $8.51 |
| | | | | |
| | | | | |
| **Typical Residential 5/8" x 3/4" Meter Bill Comparison** | | | | |
| 4,000 Gallons | $27.64 | $32.51 | $36.22 | $32.57 |
| 6,000 Gallons | $36.62 | $43.95 | $48.26 | $42.29 |
| 10,000 Gallons | $54.58 | $66.83 | $72.34 | $61.73 |
| | | | | |

## Wastewater Rates

Lakeside provides wastewater service to approximately 170 residential customers. The Utility's current rate structure for the wastewater system consists of a uniform BFC for all residential meter sizes and a gallonage charge with a 6,000 gallon cap. General service customers are billed a BFC by meter size and a gallonage charge that is 1.2 times higher than the residential gallonage charge.

Staff performed an analysis of the Utility's billing data to evaluate various BFC cost recovery percentages and gallonage caps for the residential customers. The goal of the evaluation was to select the rate design parameters that: (1) produce the recommended revenue requirement; (2) equitably distribute cost recovery among the utility's customers; and (3) implement a gallonage cap that considers approximately the amount of water that may return to the wastewater system.

As mentioned earlier, the customer base is somewhat seasonal; therefore, 50 percent of the wastewater revenue should be allocated to the BFC to help provide revenue stability. The Commission typically establishes monthly residential wastewater gallonage caps at 10,000, 8,000, or 6,000 gallons. The wastewater gallonage cap recognizes that not all water used by the residential customers is returned to the wastewater system. It is Commission practice to set the

wastewater cap at approximately 80 percent of residential water sold. Based on staff's review of the billing analysis, approximately 80 percent of the residential gallons are captured at the 18,000 gallon consumption level because of low average demand. In this case, an 18,000 gallon cap does not properly reflect the estimated water gallons returned to the wastewater system. For this reason, staff recommends a continuation of the Utility's current gallonage cap of 6,000 gallons per month. General service customers should continue to be billed a BFC by meter size and a gallonage charge that is 1.2 times higher than the residential gallonage charge. The expected wastewater repression is de minimis because of the low average customer demand. Therefore, staff does not recommend a repression adjustment for wastewater.

Table 8-2 below contains staff's recommended rate structure and rates as well an alternative rate structure, which include varying revenue allocations for the BFC. Alternative I provides less revenue stability, which is contrary to rate design for a seasonal customer base.

**Table 8-2**
**Staff's Recommended and Alternative Wastewater Rate Structures and Rates**

| | RATES AT TIME OF FILING | STAFF RECOMMENDED RATES (50% BFC) | ALTERNATIVE I (45% BFC) |
|---|---|---|---|
| **Residential** | | | |
| 5/8" x 3/4" Meter Size | $14.49 | $18.25 | $16.43 |
| | | | |
| Charge per 1,000 gallons | $6.24 | $9.06 | $9.96 |
| 6,000 gallon cap | | | |
| | | | |
| | | | |
| **Typical Residential 5/8" x 3/4" Meter Bill Comparison** | | | |
| 4,000 Gallons | $39.45 | $54.49 | $46.31 |
| 6,000 Gallons | $51.93 | $72.61 | $76.19 |
| 10,000 Gallons | $51.93 | $72.61 | $76.19 |
| | | | |

## Summary

The recommended rate structure and rates are shown on Schedule Nos. 4-A and 4-B. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

***Issue 9:*** What are the appropriate initial customer deposits for Lakeside's water and wastewater systems?

***Recommendation:*** The appropriate initial customer deposits should be $49 and $87 for the residential 5/8 inch x 3/4 inch meter size for water and wastewater, respectively. The initial customer deposits for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill for water and wastewater. The approved initial customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved deposits until authorized to change them by the Commission in a subsequent proceeding. (Bruce)

***Staff Analysis:*** Rule 25-30.311, F.A.C., provides the criteria for collecting, administering, and refunding customer deposits. Customer deposits are designed to minimize the exposure of bad debt expense for the utility and, ultimately, the general body of ratepayers. An initial customer deposit ensures that the cost of providing service is recovered from the cost causer. Historically, the Commission has set initial customer deposits equal to two times the average estimated bill.[32] Currently, the Utility's initial deposit for residential water is $55 for the 5/8 inch x 3/4 inch meter size and two times the average estimated bill for the general service meter sizes. For wastewater, the current initial customer deposit for the 5/8 x 3/4 inch meter size is $76 and two times the average estimated bill for the general service meter sizes. Based on the staff recommended water rates and post repression average residential demand, the appropriate initial customer deposit for water should be $49 to reflect an average residential customer bill for two months. The appropriate initial customer deposit for wastewater should be $87 to reflect an average residential customer bill for two months.

Staff recommends the appropriate initial customer deposits should be $49 and $87 for the residential 5/8 inch x 3/4 inch meter size for water and wastewater, respectively. The initial customer deposits for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill for water and wastewater. The approved initial customer deposits should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved deposits until authorized to change them by the Commission in a subsequent proceeding.

[32] *See e.g.,* Order No. PSC-15-0142-PAA-SU, issued March 26, 2015, in Docket No. 20130178-SU, *In re: Application for staff-assisted rate case in Polk County by Crooked Lake Park Sewerage Company.*

***Issue 10:*** Should Lakeside be authorized to collect Non-Sufficient Funds Charges (NSF)?

***Recommendation:*** Yes. Lakeside should be authorized to collect NSF charges. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved NSF charges. The approved charges should be effective for service rendered on or after the stamped approval date on the tariff sheets provided customers have received notice pursuant to Rule 25-30.475, F.A.C. The Utility should provide proof of noticing within 10 days of rendering its approved notice. (Bruce)

***Staff Analysis*:** Section 367.091 F.S., authorizes the Commission to approve NSF charges. Staff believes that Lakeside should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:

(1) $25, if the face value does not exceed $50,
(2) $30, if the face value exceeds $50 but does not exceed $300,
(3) $40, if the face value exceeds $300,
(4) or five percent of the face amount of the check, whichever is greater.

Approval of NSF charges is consistent with prior Commission decisions.[33] Furthermore, NSF charges place the cost on the cost-causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of the ratepayers. As such, Lakeside should be authorized to collect NSF charges. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved NSF charges. The approved charges should be effective for service rendered on or after the stamped approval date on the tariff sheets provided customers have received notice pursuant to Rule 25-30.475, F.A.C. The Utility should provide proof of noticing within 10 days of rendering its approved notice.

[33]*See e.g.,* Order No. PSC-17-0092-PAA-WU, issued March 13, 2017, in Docket No. 20160144-WU, *In re: Application for transfer of Certificate No. 288-W in Pasco County from Orangeland Water Supply to Orange Land Utilities, LLC.*

***Issue 11:*** What is the appropriate amount by which rates should be reduced four years after the published effective date to reflect the removal of the amortized rate case expense?

***Recommendation:*** The water and wastewater rates should be reduced as shown on Schedule Nos. 4-A and 4-B, to remove rate case expense grossed-up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the four-year rate case expense recovery period. The Utility should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If Lakeside files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. (Bruce, Golden, Wilson) (Final Agency Action)

***Staff Analysis:*** Lakeside's water and wastewater rates should be reduced immediately following the expiration of the four-year rate case expense recovery period by the amount of the rate case expense previously included in the rates, pursuant to Section 367.081(8), F.S. The reduction will reflect the removal of revenues associated with the amortization of rate case expense and the gross-up for RAFs which is $395 and $255 for water and wastewater, respectively. Using the Utility's current revenues, expenses, and customer base, the reduction in revenues will result in the rate decrease shown on Schedule Nos. 4-A and 4-B.

Lakeside should be required to file revised tariff sheets no later than one month prior to the actual date of the required rate reduction. The Utility also should be required to file a proposed customer notice setting forth the lower rates and the reason for the reduction. If Lakeside files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

***Issue 12:*** Should the recommended rates be approved for Lakeside on a temporary basis, subject to refund, in the event of a protest filed by a party other than the Utility?

***Recommendation:*** Yes. Pursuant to Section 367.0814(7), F.S., the recommended rates should be approved for the Utility on a temporary basis, subject to refund, in the event of a protest filed by a party other than the Utility. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. Prior to implementation of any temporary rates, the Utility should provide appropriate security. If the recommended rates are approved on a temporary basis, the rates collected by the Utility should be subject to the refund provisions discussed below in the staff analysis. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Office of Commission Clerk no later than the 20th of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund. (Golden, Wilson) (Final Agency Action)

***Staff Analysis:*** This recommendation proposes an increase in rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue to the Utility. Therefore, pursuant to Section 367.0814(7), F.S., in the event of a protest filed by a party other than the Utility, staff recommends that the recommended rates be approved as temporary rates. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. The recommended rates collected by the Utility should be subject to the refund provisions discussed below.

The Utility should be authorized to collect the temporary rates upon staff's approval of an appropriate security for the potential refund and the proposed customer notice. Security should be in the form of a bond or letter of credit in the amount of $22,727. Alternatively, the Utility could establish an escrow agreement with an independent financial institution.

If the Utility chooses a bond as security, the bond should contain wording to the effect that it will be terminated only under the following conditions:

1. The Commission approves the rate increase; or,
2. If the Commission denies the increase, the Utility shall refund the amount collected that is attributable to the increase.

If the Utility chooses a letter of credit as a security, it should contain the following conditions:

1. The letter of credit is irrevocable for the period it is in effect.
2. The letter of credit will be in effect until a final Commission order is rendered, either approving or denying the rate increase.

If security is provided through an escrow agreement, the following conditions should be part of the agreement:

1. The Commission Clerk, or his or her designee, must be a signatory to the escrow agreement.
2. No monies in the escrow account may be withdrawn by the Utility without the prior written authorization of the Commission Clerk, or his or her designee.
3. The escrow account shall be an interest bearing account.
4. If a refund to the customers is required, all interest earned by the escrow account shall be distributed to the customers.
5. If a refund to the customers is not required, the interest earned by the escrow account shall revert to the Utility.
6. All information on the escrow account shall be available from the holder of the escrow account to a Commission representative at all times.
7. The amount of revenue subject to refund shall be deposited in the escrow account within seven days of receipt.
8. This escrow account is established by the direction of the Florida Public Service Commission for the purpose(s) set forth in its order requiring such account. Pursuant to *Cosentino v. Elson*, 263 So. 2d 253 (Fla. 3d DCA 1972), escrow accounts are not subject to garnishments.
9. The account must specify by whom and on whose behalf such monies were paid.

In no instance should the maintenance and administrative costs associated with the refund be borne by the customers. These costs are the responsibility of, and should be borne by, the Utility. Irrespective of the form of security chosen by the Utility, an account of all monies received as a result of the rate increase should be maintained by the Utility. If a refund is ultimately required, it should be paid with interest calculated pursuant to Rule 25-30.360(4), F.A.C.

The Utility should maintain a record of the amount of the bond, and the amount of revenues that are subject to refund. In addition, after the increased rates are in effect, pursuant to Rule 25-30.360(6), F.A.C., the Utility should file reports with the Office of Commission Clerk no later than the 20th of every month indicating the monthly and total amount of money subject to refund at the end of the preceding month. The report filed should also indicate the status of the security being used to guarantee repayment of any potential refund.

***Issue 13:*** Should Lakeside be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision?

***Recommendation:*** Yes. The Utility should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. Lakeside should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA primary accounts, as shown on Schedules Nos. 5-A and 5-B, have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. (Golden, Wilson) (Final Agency Action)

***Staff Analysis:*** The Utility should be required to notify the Commission, in writing that it has adjusted its books in accordance with the Commission's decision. Schedule Nos. 5-A and 5-B reflects the accumulated plant, depreciation, CIAC, and amortization of CIAC balances as of June 30, 2016. Lakeside should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA primary accounts, as shown on Schedule Nos. 5-A and 5-B, have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days.

***Issue 14:*** Should this docket be closed?

***Recommendation:*** No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and the Utility has provided staff with proof that the adjustments for all the applicable NARUC USOA primary accounts have been made. Once these actions are complete, this docket should be closed administratively. (Murphy)

***Staff Analysis:*** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and the Utility has provided staff with proof that the adjustments for all the applicable NARUC USOA primary accounts have been made. Once these actions are complete, this docket should be closed administratively.

**LAKESIDE WATERWORKS, INC.**
**TEST YEAR ENDED 06/30/2016**
**SCHEDULE OF WATER RATE BASE**

**SCHEDULE NO. 1-A**
**DOCKET NO. 20160195-WS**

| | DESCRIPTION | BALANCE PER UTILITY | STAFF ADJUSTMENTS TO UTILITY BALANCE | BALANCE PER STAFF |
|---|---|---|---|---|
| 1. | UTILITY PLANT IN SERVICE | $263,806 | ($21,253) | $242,553 |
| 2. | LAND & LAND RIGHTS | 0 | 0 | 0 |
| 3. | NON-USED AND USEFUL COMPONENTS | 0 | (18,497) | (18,497) |
| 4. | CIAC | (14,251) | (335) | (14,586) |
| 5. | ACCUMULATED DEPRECIATION | (118,074) | 24,496 | (93,578) |
| 6. | AMORTIZATION OF CIAC | 7,379 | (104) | 7,275 |
| 7. | REGULATORY ASSET | 0 | 14,088 | 14,088 |
| 8. | WORKING CAPITAL ALLOWANCE | 0 | 6,318 | 6,318 |
| 9. | WATER RATE BASE | $138,860 | $4,713 | $143,573 |

**LAKESIDE WATERWORKS, INC.** **SCHEDULE NO. 1-B**
**TEST YEAR ENDED 06/30/2016** **DOCKET NO. 20160195-WS**
**SCHEDULE OF WASTEWATER RATE BASE**

| | DESCRIPTION | BALANCE PER UTILITY | STAFF ADJUSTMENTS TO UTILITY BALANCE | BALANCE PER STAFF |
|---|---|---|---|---|
| 1. | UTILITY PLANT IN SERVICE | $153,449 | $54,815 | $208,264 |
| 2. | LAND & LAND RIGHTS | 0 | 0 | 0 |
| 3. | NON-USED AND USEFUL COMPONENTS | 0 | (7,872) | (7,872) |
| 4. | CIAC | (18,388) | 0 | (18,388) |
| 5. | ACCUMULATED DEPRECIATION | (103,869) | 42,530 | (61,339) |
| 6. | AMORTIZATION OF CIAC | 7,517 | (324) | 7,193 |
| 7. | WORKING CAPITAL ALLOWANCE | 0 | 6,259 | 6,259 |
| 8. | WASTEWATER RATE BASE | $38,709 | $95,408 | $134,117 |

**LAKESIDE WATERWORKS, INC.** | **SCHEDULE NO. 1-C**
**TEST YEAR ENDED 06/30/2016** | **DOCKET NO. 20160195-WS**
**ADJUSTMENTS TO RATE BASE** | **Page 1 of 2**

| | | WATER | WASTEWATER |
|---|---|---|---|
| | **UTILITY PLANT IN SERVICE** | | |
| 1. | To remove unsupported generation addition per 2015 Order. | ($603) | $0 |
| 2. | To remove unsupported pumping equipment addition per 2015 Order. | 0 | (245) |
| 3. | To reflect retirement related to pump starter addition per 2015 Order. | 0 | (563) |
| 4. | To reflect retirements for pro forma additions approved by 2015 Order. | (6,563) | (2,768) |
| 5. | To remove unsupported additions from Acct. Nos. 301 and 351. | (463) | (398) |
| 6. | To reclassify water line repair to water Acct. No. 331. | 1,165 | 0 |
| 7. | To reflect retirement of collapsed well & rehab work to Acct. No. 307. | (33,024) | 0 |
| 8. | To reflect pro forma water line installation to Acct. No. 333. | 1,338 | 0 |
| 9. | To reflect pro forma high service pump repair to Acct. No. 311. | 1,967 | 0 |
| 10. | To reflect pro forma well pump replacement to Acct. No. 311. | 14,012 | 0 |
| 11. | To reflect pro forma correction of new well invoice to Acct. No. 307. | 917 | 0 |
| 12. | To reflect pro forma WWTP replacement to Acct. No. 380. | 0 | 91,755 |
| 13. | To reflect retirement of replaced WWTP to Acct. No. 380. | 0 | (33,921) |
| 14. | To reflect pro forma WWTP spray field pump repair to Acct. No. 371. | 0 | 955 |
| | Total | ($21,253) | $54,815 |
| | **NON-USED AND USEFUL PLANT** | | |
| 1. | To reflect non-U&U plant. | ($23,523) | ($7,377) |
| 2. | To reflect non-U&U accumulated depreciation. | 5,026 | (495) |
| | Total | ($18,497) | ($7,872) |
| | **CIAC** | | |
| | To reflect pro forma CIAC. | ($335) | $0 |

Continued on next page

**LAKESIDE WATERWORKS, INC.** | **SCHEDULE NO. 1-C**
**TEST YEAR ENDED 06/30/2016** | **DOCKET NO. 20160195-WS**
**ADJUSTMENTS TO RATE BASE (Continued)** | **Page 2 of 2**

| | | WATER | WASTEWATER |
|---|---|---|---|
| | **ACCUMULATED DEPRECIATION** | | |
| 1. | To reflect 2013 test year balance per 2015 Order. | ($464) | $5,534 |
| 2. | To reflect test year balance for water Acct. No. 310 per 2015 Order. | 107 | 0 |
| 3. | To reflect retirements for pro forma additions approved in 2015 Order. | 6,563 | 2,768 |
| 4. | To reflect acc. dep. related to pro forma retirements from 2015 Order. | 156 | 92 |
| 5. | To reflect reclassification of line repair to water Acct. No. 331. | (31) | 0 |
| 6. | To reflect retirement of collapsed well & rehabilitation work. | 33,024 | 0 |
| 7. | To reflect well abandonment/removal costs. | 3,517 | 0 |
| 8. | To establish a regulatory asset to recover well rehabilitation costs. | (16,436) | 0 |
| 9. | To reflect various pro forma water projects and well materials correction. | (1,012) | 0 |
| 10. | To reflect pro forma WWTP replacement. | 0 | (5,835) |
| 11. | To reflect retirement of replaced WWTP. | 0 | 33,921 |
| 12. | To reflect WWTP removal costs. | 0 | 5,760 |
| 13. | To reflect pro forma WWTP spray field pump repair. | 0 | (32) |
| 14. | To reflect accumulated depreciation per Rule 25-30.140, F.A.C. | (927) | 322 |
| | Total | $24,496 | $42,530 |
| | **AMORTIZATION OF CIAC** | | |
| 1. | To reverse averaging adjustment recorded from 2015 Order. | $245 | $139 |
| 2. | To reflect appropriate test year amortization of CIAC. | (359) | (463) |
| 3. | To reflect pro forma amortization of CIAC. | 10 | 0 |
| | Total | ($104) | ($324) |
| | **REGULATORY ASSET** | | |
| 1. | To establish regulatory asset to recover well rehabilitation costs. | $16,436 | $0 |
| 2. | To reflect accumulated amortization of regulatory asset. | (2,348) | 0 |
| | Total | $14,088 | $0 |
| | **WORKING CAPITAL ALLOWANCE** | | |
| | To reflect 1/8 of test year O&M expenses. | $6,318 | $6,259 |

**LAKESIDE WATERWORKS, INC.** **SCHEDULE NO. 2**
**TEST YEAR ENDED 06/30/2016** **DOCKET NO. 20160195-WS**
**SCHEDULE OF CAPITAL STRUCTURE (YEAR-END)**

| | CAPITAL COMPONENT | PER UTILITY | STAFF ADJUST-MENTS | TEST YEAR BALANCE PER STAFF | ADJUSTMENTS TO RECONCILE TO RATE BASE | RECONCILED CAPITAL STRUCTURE PER STAFF | PERCENT OF TOTAL | COST | WEIGHTED COST |
|---|---|---|---|---|---|---|---|---|---|
| 1. | COMMON STOCK | $0 | $0 | $0 | $0 | $0 | | | |
| 2. | CAPITAL STOCK | 0 | 120,000 | 120,000 | (9,698) | 110,302 | | | |
| 3. | RETAINED EARNINGS | 0 | 0 | 0 | 0 | 0 | | | |
| 4. | PAID IN CAPITAL | 0 | 0 | 0 | 0 | 0 | | | |
| 5. | OTHER COMMON EQUITY | 158,808 | 0 | 158,808 | (12,835) | 145,973 | | | |
| | TOTAL COMMON EQUITY | $158,808 | $120,000 | $278,808 | ($22,533) | $256,275 | 92.29% | 8.85% | 8.17% |
| 6. | LONG-TERM DEBT | $19,566 | $0 | $19,566 | ($1,581) | $17,985 | 6.48% | 4.00% | 0.26% |
| 7. | SHORT-TERM DEBT | 0 | 0 | 0 | 0 | 0 | 0.00% | | |
| 8. | PREFERRED STOCK | 0 | 0 | 0 | 0 | 0 | 0.00% | | |
| | TOTAL DEBT | $19,566 | $0 | $19,566 | ($1,581) | $17,985 | 6.48% | | |
| 9. | CUSTOMER DEPOSITS | $3,430 | $0 | $3,430 | $0 | $3,430 | 1.24% | 2.00% | 0.02% |
| 10. | TOTAL | $181,804 | $120,000 | $301,804 | ($24,114) | $277,690 | 100.00% | | 8.45% |

| RANGE OF REASONABLENESS | LOW | HIGH |
|---|---|---|
| RETURN ON EQUITY | 7.85% | 9.85% |
| OVERALL RATE OF RETURN | 7.53% | 9.38% |

**LAKESIDE WATERWORKS, INC.**
**TEST YEAR ENDED 06/30/2016**
**SCHEDULE OF WATER OPERATING INCOME**

**SCHEDULE NO. 3-A**
**DOCKET NO. 20160195-WS**

| | | TEST YEAR PER UTILITY | STAFF ADJUSTMENTS | STAFF ADJUSTED TEST YEAR | ADJUST. FOR INCREASE | REVENUE REQUIREMENT |
|---|---|---|---|---|---|---|
| 1. | **OPERATING REVENUES** | $59,676 | $3,210 | $62,886 | $14,052<br>22.35% | $76,938 |
| | **OPERATING EXPENSES:** | | | | | |
| 2. | OPERATION & MAINTENANCE | $51,567 | ($309) | $51,258 | $0 | $51,258 |
| 3. | DEPRECIATION (NET) | 4,656 | 1,709 | 6,365 | 0 | 6,365 |
| 4. | AMORTIZATION | 0 | 3,069 | 3,069 | 0 | 3,069 |
| 5. | TAXES OTHER THAN INCOME | 3,370 | 113 | 3,483 | 632 | 4,115 |
| 6. | INCOME TAXES | 0 | 0 | 0 | 0 | 0 |
| 7. | **TOTAL OPERATING EXPENSES** | $59,593 | $4,581 | $64,174 | $632 | $64,807 |
| 8. | **OPERATING INCOME/(LOSS)** | $83 | | ($1,288) | | $12,132 |
| 9. | **WATER RATE BASE** | $138,860 | | $143,573 | | $143,573 |
| 10. | **RATE OF RETURN** | 0.06% | | (0.90%) | | 8.45% |

**LAKESIDE WATERWORKS, INC.**
**TEST YEAR ENDED 06/30/2016**
**SCHEDULE OF WASTEWATER OPERATING INCOME**

**SCHEDULE NO. 3-B**
**DOCKET NO. 20160195-WS**

| | | TEST YEAR PER UTILITY | STAFF ADJUSTMENTS | STAFF ADJUSTED TEST YEAR | ADJUST. FOR INCREASE | REVENUE REQUIREMENT |
|---|---|---|---|---|---|---|
| 1. | **OPERATING REVENUES** | $54,216 | $2,907 | $57,123 | $19,788<br>34.64% | $76,911 |
| | **OPERATING EXPENSES:** | | | | | |
| 2. | OPERATION & MAINTENANCE | $50,662 | ($9) | $50,653 | $0 | $50,653 |
| 3. | DEPRECIATION (NET) | 4,330 | 3,413 | 7,743 | 0 | 7,743 |
| 4. | AMORTIZATION | 0 | 3,068 | 3,068 | 0 | 3,068 |
| 5. | TAXES OTHER THAN INCOME | 3,124 | 100 | 3,224 | 890 | 4,114 |
| 6. | INCOME TAXES | 0 | 0 | 0 | 0 | 0 |
| 7. | **TOTAL OPERATING EXPENSES** | $58,116 | $6,572 | $64,688 | $890 | $65,578 |
| 8. | **OPERATING INCOME/(LOSS)** | ($3,900) | | ($7,565) | | $11,333 |
| 9. | **WASTEWATER RATE BASE** | $38,709 | | $134,117 | | $134,117 |
| 10. | **RATE OF RETURN** | (10.08%) | | (5.64%) | | 8.45% |

**LAKESIDE WATERWORKS, INC.**
**TEST YEAR ENDED 06/30/2016**
**ADJUSTMENTS TO OPERATING INCOME**

**SCHEDULE NO. 3-C**
**DOCKET NO. 20160195-WS**
**Page 1 of 2**

| | | WATER | WASTEWATER |
|---|---|---|---|
| | **OPERATING REVENUES** | | |
| 1. | To reflect appropriate test year service revenues. | $3,619 | $2,520 |
| 2. | To reflect appropriate test year miscellaneous service revenues. | (409) | 387 |
| | Subtotal | $3,210 | $2,907 |
| | **OPERATION AND MAINTENANCE EXPENSES** | | |
| 1. | Purchased Power (615/715) | | |
| | a. To reflect appropriate test year purchased power expense. | $131 | $60 |
| 2. | Contractual Services – Professional (631/731) | | |
| | a. To reflect annualized accounting fees. | $1,050 | $825 |
| | b. To reflect 5-year amortization of non-recurring legal fees. | (182) | (182) |
| | c. To reflect the annual amortization of CAD system mapping project. | 0 | 280 |
| | Subtotal | $868 | $923 |
| 3. | Contractual Services - Other (636/736) | | |
| | a. To reflect pro forma change in contractual services – other expense. | 276 | 258 |
| | b. To remove overtime component from contractual service – other expense. | ($491) | ($491) |
| | c. To reclassify water line repair from wastewater expense Acct. No. 736 to water plant Acct. No. 636. | 0 | (1,165) |
| | Subtotal | ($215) | ($1,398) |
| 4. | Rents (640/740) | | |
| | a. To reflect annualized land lease expense. | $12 | $12 |
| 5. | Insurance Expense (655/755) | | |
| | a. To reflect annualized general liability insurance expense. | ($39) | $29 |
| 6. | Regulatory Commission Expense (665/765) | | |
| | a. To reflect unamortized rate case expense from last SARC | $339 | $339 |
| | b. To reflect 4-year amortization of rate case expense ($2,485 total, split $1,511/4 for water and $974/4 for wastewater). | 378 | 243 |
| | Subtotal | $717 | $583 |
| 7. | Bad Debt Expense (670/770) | | |
| | a. To reflect appropriate test year bad debt expense. | ($129) | ($219) |
| 8. | Miscellaneous Expense (675/775) | | |
| | a. To remove an incorrectly recorded RAF adjustment. | ($1,655) | $0 |
| | **TOTAL OPERATION & MAINTENANCE ADJUSTMENTS** | ($309) | ($9) |

**LAKESIDE WATERWORKS, INC.**
**TEST YEAR ENDED 06/30/2016**
**ADJUSTMENTS TO OPERATING INCOME (CONTINUED)**

**SCHEDULE NO. 3-C**
**DOCKET NO. 20160195-WS**
**Page 2 of 2**

| | | WATER | WASTEWATER |
|---|---|---|---|
| | **DEPRECIATION EXPENSE** | | |
| 1. | To reflect test year depreciation calculated per Rule 25-30.140, F.A.C. | $1,686 | ($2,219) |
| 2. | To reflect pro forma water line installation, pump repairs, pump replacement, and well materials correction. | 1,012 | 0 |
| 3. | To reflect pro forma WWTP replacement. | 0 | 5,835 |
| 4. | To reflect pro forma WWTP sprayfield pump repair. | 0 | 32 |
| 5. | To reflect non-used and useful test year depreciation. | (951) | (492) |
| 6. | To reflect appropriate test year CIAC amortization expense. | (38) | 257 |
| | Total | $1,709 | $3,413 |
| | **AMORTIZATION** | | |
| 1. | To reflect loss on well retirement. | $721 | $0 |
| 2. | To reflect regulatory asset for recovery of well rehabilitation costs. | 2,348 | 0 |
| 3. | To reflect loss on WWTP retirement. | 0 | 3,068 |
| | Total | $3,069 | $3,068 |
| | **TAXES OTHER THAN INCOME** | | |
| 1. | To reflect the appropriate test year RAFs. | $144 | $131 |
| 2. | To reflect appropriate test year utility property taxes. | (31) | (31) |
| | Total | $113 | $100 |

**LAKESIDE WATERWORKS, INC.** **SCHEDULE NO. 3-D**

**TEST YEAR ENDED 06/30/2016** **DOCKET NO. 20160195-WS**

**ANALYSIS OF WATER OPERATION AND MAINTENANCE EXPENSE**

| | TOTAL PER UTILITY | STAFF ADJUST-MENTS | TOTAL PER STAFF |
|---|---|---|---|
| (601) SALARIES AND WAGES - EMPLOYEES | $0 | $0 | $0 |
| (603) SALARIES AND WAGES - OFFICERS | 3,000 | 0 | 3,000 |
| (604) EMPLOYEE PENSIONS AND BENEFITS | 0 | 0 | 0 |
| (610) PURCHASED WATER | 0 | 0 | 0 |
| (615) PURCHASED POWER | 2,737 | 131 | 2,868 |
| (616) FUEL FOR POWER PRODUCTION | 0 | 0 | 0 |
| (618) CHEMICALS | 1,319 | 0 | 1,319 |
| (620) MATERIALS AND SUPPLIES | 0 | 0 | 0 |
| (630) CONTRACTUAL SERVICES - BILLING | 0 | 0 | 0 |
| (631) CONTRACTUAL SERVICES - PROFESSIONAL | (559) | 868 | 309 |
| (635) CONTRACTUAL SERVICES - TESTING | 0 | 0 | 0 |
| (636) CONTRACTUAL SERVICES - OTHER | 39,390 | (215) | 39,175 |
| (640) RENTS | 2,463 | 12 | 2,475 |
| (650) TRANSPORTATION EXPENSE | 0 | 0 | 0 |
| (655) INSURANCE EXPENSE | 602 | (39) | 563 |
| (665) REGULATORY COMMISSION EXPENSE | 0 | 717 | 717 |
| (670) BAD DEBT EXPENSE | 414 | (129) | 285 |
| (675) MISCELLANEOUS EXPENSE | 2,201 | (1,655) | 546 |
| | $51,567 | ($309) | $51,258 |

**LAKESIDE WATERWORKS, INC.** **SCHEDULE NO. 3-E**

**TEST YEAR ENDED 06/30/2016** **DOCKET NO. 20160195-WS**

**ANALYSIS OF WASTEWATER OPERATION AND MAINTENANCE EXPENSE**

| | TOTAL PER UTILITY | STAFF ADJUST-MENTS | TOTAL PER STAFF |
|---|---|---|---|
| (701) SALARIES AND WAGES - EMPLOYEES | $0 | $0 | $0 |
| (703) SALARIES AND WAGES - OFFICERS | 3,000 | 0 | 3,000 |
| (704) EMPLOYEE PENSIONS AND BENEFITS | 0 | 0 | 0 |
| (710) PURCHASED SEWAGE TREATMENT | 0 | 0 | 0 |
| (711) SLUDGE REMOVAL EXPENSE | 2,275 | 0 | 2,275 |
| (715) PURCHASED POWER | 3,479 | 60 | 3,539 |
| (716) FUEL FOR POWER PRODUCTION | 0 | 0 | 0 |
| (718) CHEMICALS | 416 | 0 | 416 |
| (720) MATERIALS AND SUPPLIES | 0 | 0 | 0 |
| (730) CONTRACTUAL SERVICES - BILLING | 0 | 0 | 0 |
| (731) CONTRACTUAL SERVICES - PROFESSIONAL | (334) | 923 | 589 |
| (735) CONTRACTUAL SERVICES - TESTING | 0 | 0 | 0 |
| (736) CONTRACTUAL SERVICES - OTHER | 38,452 | (1,398) | 37,054 |
| (740) RENTS | 2,465 | 12 | 2,477 |
| (750) TRANSPORTATION EXPENSE | 0 | 0 | 0 |
| (755) INSURANCE EXPENSE | 534 | 29 | 563 |
| (765) REGULATORY COMMISSION EXPENSE | 0 | 583 | 583 |
| (770) BAD DEBT EXPENSE | 375 | (219) | 157 |
| (775) MISCELLANEOUS EXPENSE | 0 | 0 | 0 |
| | $50,662 | ($9) | $50,653 |

**LAKESIDE WATERWORKS, INC.** **SCHEDULE NO. 4-A**
**TEST YEAR ENDED 06/30/2016** **DOCKET NO. 20160195-WS**
**MONTHLY WATER RATES**

| | RATES AT TIME OF FILING * | STAFF RECOMMENDED RATES * | 4 YEAR RATE REDUCTION |
|---|---|---|---|
| **Residential, General Service, and Irrigation** | | | |
| Base Facility Charge by Meter Size | | | |
| 5/8" x 3/4" | $13.76 | $14.75 | $0.08 |
| 3/4" | $20.64 | $22.13 | $0.12 |
| 1" | $34.40 | $36.88 | $0.20 |
| 1-1/2" | $68.79 | $73.75 | $0.40 |
| 2" | $110.07 | $118.00 | $0.64 |
| 3" | $220.13 | $236.00 | $1.28 |
| 4" | $343.96 | $368.75 | $2.00 |
| 6" | $687.91 | $737.50 | $4.00 |
| * Residential irrigation customers do not pay a base facility charge. | | | |
| Charge per 1,000 Gallons - Residential and Residential Irrigation | | | |
| 0-4,000 gallons | $3.47 | | |
| Over 4,000 gallons | $4.49 | | |
| 0-4,000 gallons | | $4.44 | $0.02 |
| 4,000-10,000 gallons | | $5.72 | $0.03 |
| Over 10,000 gallons | | $10.01 | $0.05 |
| Charge per 1,000 gallons - General Service and General Service Irrigation | $3.80 | $5.82 | $0.03 |
| **Typical Residential 5/8" x 3/4" Meter Bill Comparison** | | | |
| 4,000 Gallons | $27.64 | $32.51 | |
| 6,000 Gallons | $36.62 | $43.95 | |
| 10,000 Gallons | $54.58 | $66.83 | |

**LAKESIDE WATERWORKS, INC.** **SCHEDULE NO. 4-B**
**TEST YEAR ENDED 06/30/2016** **DOCKET NO. 20160195-WS**
**MONTHLY WASTEWATER RATES**

| | RATES AT TIME OF FILING | STAFF RECOMMENDED RATES | 4 YEAR RATE REDUCTION |
|---|---|---|---|
| **Residential** | | | |
| Base Facility Charge - All Meter Sizes | $14.49 | $18.25 | $0.06 |
| Charge Per 1,000 gallons | | | |
| 6,000 gallon cap | $6.24 | $9.06 | $0.03 |
| **General Service** | | | |
| Base Facility Charge by Meter Size | | | |
| 5/8" x 3/4" | $14.49 | $18.25 | $0.06 |
| 3/4" | $21.74 | $27.38 | $0.10 |
| 1" | $36.23 | $45.63 | $0.16 |
| 1-1/2" | $72.47 | $91.25 | $0.32 |
| 2" | $115.95 | $146.00 | $0.52 |
| 3" | $231.89 | $292.00 | $1.04 |
| 4" | $362.33 | $456.25 | $1.62 |
| 6" | $724.67 | $912.50 | $3.25 |
| Charge per 1,000 gallons | $7.50 | $10.87 | $0.04 |
| **Typical Residential 5/8" x 3/4" Meter Bill Comparison** | | | |
| 4,000 Gallons | $33.21 | $54.49 | |
| 6,000 Gallons | $51.93 | $72.61 | |
| 10,000 Gallons | $51.93 | $72.61 | |

**LAKESIDE WATERWORKS, INC.** **SCHEDULE NO. 5-A**

**TEST YEAR ENDED 06/30/2016** **DOCKET NO. 20160195-WS**

**SCHEDULE OF WATER PLANT, DEPRECIATION, CIAC, & CIAC AMORTIZATION BALANCES (YEAR-END RATE BASE)**

| ACCT NO. | DEPR. RATE PER RULE 25-30.140 | DESCRIPTION | UPIS 6/30/2016 (DEBIT)* | ACCUM. DEPR. 6/30/2016 (CREDIT)* |
|---|---|---|---|---|
| 301 | 2.50% | ORGANIZATION | $1,010 | $441 |
| 304 | 3.70% | STRUCTURES AND IMPROVEMENTS | 5,000 | 3,239 |
| 307 | 3.70% | WELLS AND SPRINGS | 99,148 | 9,682 |
| 309 | 3.13% | SUPPLY MAINS | 300 | 216 |
| 310 | 5.88% | POWER GENERATION EQUIPMENT | 0 | 0 |
| 311 | 5.88% | PUMPING EQUIPMENT | 9,017 | 3,484 |
| 320 | 5.88% | WATER TREATMENT EQUIPMENT | 10,340 | 9,833 |
| 330 | 3.03% | DISTRIBUTION RESERVOIRS AND STANDPIPES | 5,829 | 1,631 |
| 331 | 2.63% | TRANSMISSION AND DISTRIBUTION MAINS | 53,510 | 25,702 |
| 333 | 2.86% | SERVICES | 7,675 | 7,675 |
| 334 | 5.88% | METERS AND METER INSTALLATIONS | 28,989 | 28,600 |
| 339 | 5.00% | OTHER PLANT AND MISCELLANEOUS EQUIPMENT | 3,501 | 2,063 |
| | | TOTAL | $224,319 | $92,566 |

| | | CIAC AMORT. 6/30/2016 (DEBIT)* | CIAC 6/30/2016 (CREDIT)* |
|---|---|---|---|
| | | $7,265 | $14,251 |

* The plant, accumulated depreciation, CIAC, and CIAC amortization balances exclude the pro forma adjustments.

**LAKESIDE WATERWORKS, INC.** **SCHEDULE NO. 5-B**

**TEST YEAR ENDED 06/30/2016** **DOCKET NO. 20160195-WS**

**SCHEDULE OF WASTEWATER PLANT, DEPRECIATION, CIAC, & CIAC AMORT. BALANCES (YEAR-END RATE BASE)**

| ACCT NO. | DEPR. RATE PER RULE 25-30.140 | DESCRIPTION | UPIS 6/30/2016 (DEBIT)* | ACCUM. DEPR. 6/30/2016 (CREDIT)* |
|---|---|---|---|---|
| 351 | 2.50% | ORGANIZATION | $1,010 | $441 |
| 354 | 3.70% | STRUCTURES AND IMPROVEMENTS | 6,080 | 6,080 |
| 360 | 3.70% | COLLECTION SEWERS – FORCE | 3,138 | 3,138 |
| 361 | 2.50% | COLLECTION SEWERS – GRAVITY | 73,983 | 28,831 |
| 362 | 2.70% | SPECIAL COLLECTING STRUCTURES | 200 | 121 |
| 363 | 2.86% | SERVICES TO CUSTOMERS | 5,145 | 5,061 |
| 364 | 20.00% | FLOW MEASURING DEVICES | 2,474 | 2,474 |
| 365 | 2.86% | FLOW MEASURING INSTALLATIONS | 2,540 | 1,634 |
| 370 | 4.00% | RECEIVING WELLS | 16,000 | 16,000 |
| 371 | 6.67% | PUMPING EQUIPMENT | 1,832 | 1,453 |
| 380 | 6.67% | TREATMENT AND DISPOSAL EQUIPMENT | 33,921 | 27,410 |
| 389 | 6.67% | OTHER PLANT AND MISCELLANEOUS EQUIPMENT | 2,949 | 2,307 |
| 393 | 6.67% | TOOLS, SHOP, AND GARAGE EQUIPMENT | 203 | 230 |
| | | TOTAL | $149,475 | $95,153 |

| | | CIAC AMORT. 6/30/2016 (DEBIT)* | CIAC 6/30/2016 (CREDIT) |
|---|---|---|---|
| | | $7,193 | $18,388 |

* The plant and accumulated depreciation balances exclude the pro forma adjustments.

# Item 6

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Economics (Wu, McNulty)
Office of the General Counsel (DuVal)

**RE:** Docket No. 20170143-EI – Petition for approval of depreciation rates for Polk 2 combined cycle generating units, by Tampa Electric Company.

**AGENDA:** 10/03/17 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None



## Case Background

On June 16, 2017, Tampa Electric Company (TECO or the company) petitioned the Florida Public Service Commission (Commission) for approval to establish depreciation rates for its Polk 2 combined cycle generating units (Polk 2 CC) and associated equipment. Pursuant to Rule 25-6.0436(3)(a), Florida Administrative Code (F.A.C.), electric utilities are required to maintain depreciation rates and accumulated depreciation reserves in accounts or subaccounts as prescribed in Rule 25-6.014(1), F.A.C. Rule 25-6.0436(3)(b), F.A.C., provides that "[u]pon establishing a new account or subaccount classification, each utility shall request Commission approval of a depreciation rate for the new plant category." Staff is not aware of any public comments or concerns on this matter. The Commission has jurisdiction in this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

## Discussion of Issues

***Issue 1:*** Should the Commission approve TECO's proposed depreciation rate for the new assets of the company's Polk 2 CC and associated equipment?

***Recommendation:*** Yes. Staff recommends that the Commission approve a 35-year average service life and a whole life depreciation rate of 2.9 percent, for the new assets of TECO's Polk 2 CC and associated equipment, applied to five subaccounts detailed in the body of Staff Analysis. (Wu, McNulty)

***Staff Analysis:*** TECO seeks approval of a proposed 2.9 percent interim depreciation rate for the new assets of its Polk 2 CC and associated equipment. Polk 2 CC went into service in January 2017 with a generating maximum nameplate capacity of 513 megawatts (MW) and a net capacity for summer and winter of 461 MW and 480 MW, respectively.[1]

Typically, a combined cycle (CC) generating station consists of one or more combustion turbines (CT), each with a heat recovery steam generator (HRSG). Steam produced by each HRSG is used to drive a steam turbine (ST). The ST and each CT have an electrical generator that produces electricity. Polk 2 CC is composed of four CTs, which are existing assets of the company, and four HRSGs and one ST, which are all new assets. TECO's requested depreciation rate is limited to the new technology related to the HRSG and ST assets only. This is because Polk 2 CTs are existing assets with approved depreciation rates, and TECO's approved 2013 rate case settlement stipulates that the company is not required to file a depreciation study until shortly before the filing of its next base rate case.[2] In response to a staff data request, TECO indicated that during its next depreciation study the company will analyze all assets of Polk 2 CC (CTs, HRSGs, and ST), and re-evaluate the useful remaining life for all assets combined.[3]

In its petition in this docket, TECO categorized the Polk 2 CC into four subaccounts. In its response to a staff data request, the company further requested to include one more subaccount (Miscellaneous Power Plant Equipment) in its petition for approval of the depreciation rates.[4] Thus, TECO seeks approval of the depreciation rates for the following five subaccounts:

341.xx Structures and Improvements

342.xx Fuel Holders, Producers and Accessories

343.xx Prime Movers

345.xx Accessory Electric Equipment

346.xx Miscellaneous Power Plant Equipment

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[1] TECO's response to Staff's First Data Request, No. 1.
[2] Order No. PSC-13-0443-FOF-EI, issued September 30, 2013, in Docket No. 130040-EI, *In re: Petition for rate increase by Tampa Electric Company*, Exhibit A, Stipulation and Settlement Agreement, paragraph 8.
[3] TECO's response to Staff's First Data Request, No. 3.
[4] TECO's response to Staff's First Data Request, No. 4.(f).

TECO is requesting an interim 35-year average service life, or a whole life depreciation rate of 2.9 percent, for all of the above five subaccounts.

In determining its proposed interim service life for Polk 2 CC, TECO evaluated similar assets – the company's Bayside 1 and 2 CC generating units. Bayside CCs were placed into service in 2003-2004, based on a composition of existing and new assets like Polk CC as shown in Table 1-1. For both Bayside CC generating units, an interim starter rate of 4.3 percent was used across all accounts during their early service period of 2003-2006.[5] In its 2007 Depreciation Study, TECO evaluated and established final unitization and retirement unit classification for Bayside 1 and 2 CC generating units. The company performed a detailed analysis and proposed subaccount-specific depreciation rates based on adequate data available at that time.

Regarding the Polk 2 CC, TECO believes that a 35-year service life is appropriate for establishing the starter depreciation rate. The company explained that the requested interim rate for Polk 2 CC differs from Bayside 1 and 2 CC generating units' starter rate due to the differences in the asset mix as well as the new technology deployed in Polk 2 CC. TECO confirmed that during its next depreciation study, when the assets are evaluated completely, the new technology-based assets and the existing technology-based assets are expected to produce a composite rate more similar to the rate applied to the Bayside CT assets.[6]

**Table 1-1**
**Illustration of the configurations of TECO's CC generating units**

| **Bayside 1 CC Conversion** (3 CTs into 1 ST) | | | **Bayside 2 CC Conversion** (4 CTs into 1 ST) | | | | **Polk 2 CC Conversion** (4 CTs into 1 ST) | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| CT A New | CT B New | CT C New | CT A New | CT B New | CT C New | CT D New | CT #2 Existing | CT #3 Existing | CT #4 Existing | CT #5 Existing |
| HRSG New | HRSG New | HRSG New | HRSG New | HRSG New | HRSG New | HRSG New | HRSG New | HRSG New | HRSG New | HRSG New |
| ST Existing | | | ST Existing | | | | ST New | | | |

Source: TECO's response to Staff's First Data Request, No. 2.

**Conclusion**

Staff believes that TECO's depreciation rate request is based on information available at this stage of generating unit operation and is consistent with the previous Commission practice. Therefore, staff recommends that a 35-year average service life and a whole life depreciation rate of 2.9 percent is appropriate at this time for the new assets of TECO's Polk 2 CC and associated equipment, applied to each of the related subaccounts discussed in the staff analysis.

[5] The interim depreciation rate was proposed and requested by the company, and approved by the Commission by Order No. PSC-04-0815-PAA-EI, issued August 20, 2004, in Docket No. 030409-EI, *In re: Petition for approval of 2003 depreciation study by Tampa Electric Company.* Also see, TECO's response to Staff's First Data Request, Nos. 3. and 4.(c).
[6] TECO's response to Staff's First Data Request, Nos. 3. and 4.(e).

***Issue 2:*** What should be the effective date for the implementation of the new depreciation rate for TECO's Polk 2 CC and associated equipment?

***Recommendation:*** Staff recommends the Commission approve an effective date of February 1, 2017, for the implementation of the new depreciation rate for TECO's Polk 2 CC and associated equipment. (Wu)

***Staff Analysis:*** Depreciation is the recovery of invested capital representing equipment that is providing service to the public. This recovery is designed to take place over the related period of service to the public, which begins with the equipment's in-service date. Polk 2 CC went into service in mid-January 2017. In its petition, TECO requests the Commission to approve the new depreciation rate effective February 1, 2017, which is the first full month that depreciation expense of the assets will be calculated. Staff believes an effective date of February 1, 2017, for the implementation of the depreciation rate for the Polk 2 CC and associated equipment is appropriate.

***Issue 3:*** Should this docket be closed?

***Recommendation:*** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (DuVal)

***Staff Analysis:*** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.

# Item 7

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Economics (Ollila) A.O. EJ1 PA GS
Office of the General Counsel (Janjic) JSC

**RE:** Docket No. 20170175-EU – Joint petition for approval of amended territorial agreement in Orange and Osceola Counties, by Duke Energy Florida, LLC and Reedy Creek Improvement District.

**AGENDA:** 10/03/17 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None



## Case Background

On August 14, 2017, Duke Energy Florida, LLC (Duke) and the Reedy Creek Improvement District (Reedy Creek) filed a joint petition for approval of an amended territorial agreement (proposed agreement) in Orange and Osceola Counties. The proposed agreement is contained in Attachment A. The maps and written descriptions delineating the area to be served by the proposed agreement are provided in the petition as Exhibits A and B, respectively. Additional maps are contained in the joint petitioners' response to staff's data request filed in this docket on August 31, 2017. Due to the voluminous nature of Exhibits A and B and the maps provided in the data request response, they have not been attached to this recommendation.

The joint petitioners' territorial agreement was approved by the Commission in 1994 and amended in 2010 (existing agreement).[1] The expiration date of the existing agreement is September 30, 2017. The joint petitioners stated that they will abide by the existing agreement until the Commission approves the proposed agreement. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

[1] Order No. PSC-94-0580-FOF-EU, issued May 17, 1994, in Docket No. 940071-EU, *In re: Joint Petition for approval of territorial agreement between Florida Power Corporation and Reedy Creek Improvement District*; Order No. PSC-10-0206-PAA-EU, issued April 5, 2010, in Docket No. 090530-EU, *In re: Joint Petition for approval to amend territorial agreement by Progress Energy Florida, Inc. and Reedy Creek Improvement District.*

## Discussion of Issues

***Issue 1:*** Should the Commission approve the proposed agreement between Duke and Reedy Creek?

***Recommendation:*** Yes, the Commission should approve the proposed agreement between Duke and Reedy Creek. (Ollila)

***Staff Analysis:*** Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440(2), Florida Administrative Code (F.A.C.), the Commission has jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.[2]

Reedy Creek is a special taxing district created by the Florida legislature. Reedy Creek operates like a municipality in that it is authorized to furnish electric service to areas within its defined legal boundary; however, pursuant to its charter, Reedy Creek cannot furnish retail electric power outside of its boundary. Reedy Creek is authorized to furnish electric power to areas in Orange and Osceola Counties.

There are three differences between the existing and proposed agreements, as explained by the joint petitioners in their response to staff's data request. First, the proposed agreement includes modified territorial boundaries. Second, the territorial boundary maps in the proposed agreement have been updated to a geographic information system (GIS) format, thus displaying the boundary lines in greater detail. Third, the term of the existing agreement is 23 years and the term of the proposed agreement is 30 years. After the expiration of the 30-year term of the proposed agreement in 2047, the agreement would remain in effect until and unless either party provides written notice of termination no less than 12 months prior to the termination date.

The proposed territorial boundary changes involve three areas. The boundary changes include two areas, which have been de-annexed by Reedy Creek and will be served by Duke under the proposed agreement: the Black Lake parcel and an area in the vicinity of I-4 and Osceola Parkway. The third boundary modification, an area in the vicinity of County Road (CR) 535 and Apopka Vineland Road, is in the Reedy Creek political boundary and is served by Reedy Creek; however, the area was previously shown as served by Duke. The three boundary changes are detailed in the joint petitioners' response to staff's data request. There are no customer transfers and no facilities will be purchased or transferred; therefore, no noticing was required pursuant to Rule 25-6.0440(1)(d), F.A.C.

The joint petitioners assert that the proposed agreement will avoid duplication of service and wasteful expenditures, it will protect the health and safety of the public from potentially hazardous conditions, and it will not cause a decrease in the reliability of electric service. The joint petitioners believe and represent that the Commission's approval of the proposed agreement is in the public interest.

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[2] Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

## Conclusion

After review of the petition, the proposed agreement, and the joint petitioners' response to staff's data request, staff believes that the proposed agreement is in the public interest and will enable Duke and Reedy Creek to better serve their current and future customers. It appears that the proposed agreement eliminates any potential uneconomic duplication of facilities and will not cause a decrease in the reliability of electric service. As such, staff believes that the proposed agreement between Duke and Reedy Creek will not cause a detriment to the public interest and recommends that the Commission approve it.

***Issue 2:*** Should this docket be closed?

***Recommendation:*** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Janjic)

***Staff Analysis:*** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

AMENDED TERRITORIAL AGREEMENT

Reedy Creek Improvement District, ("RCID"), Duke Energy Florida, LLC. ("DEF") (collectively, the "Parties") enter into this Amended Territorial Agreement (the "Amended Agreement") on this 3rd day of August, 2017.

WITNESSETH:

WHEREAS, RCID, a special district organized and existing by virtue of legislative authority, and DEF, an electric utility organized under the laws of Florida and is subject to the regulatory jurisdiction of the Florida Public Service Commission pursuant to Section 366.04(2), F.S., are each authorized, empowered and obligated by their corporate charters and laws of the State of Florida to furnish retail electric service to persons upon request within their respective service areas in Orange and Osceola Counties; and

WHEREAS, RCID and DEF are Parties to a territorial agreement delineating their respective service territories in Orange and Osceola Counties which was approved by the Florida Public Service Commission ("Commission") in Order No. PSC-94-0580-FOF-EU, issued on May 17, 1994, in Docket No. 940071-EU, and amended by Commission Order No. PSC-94-0580-EU, issued April 5, 2010, in Docket No. 090530-EU ("Existing Agreement"); and

WHEREAS, the Parties desire to further amend the Existing Agreement through this Amended Agreement pertaining to Orange and Osceola Counties in order to

continue operational efficiencies and customer service improvements in the aforesaid Counties, while continuing to eliminate circumstances that could give rise to the uneconomic duplication of service facilities and hazardous situations that territorial agreements are intended to avoid; and

WHEREAS, the Commission is empowered by the Florida legislature, pursuant to section 366.04(2)(d), Florida Statutes, to approve territorial agreements and the Commission, as a matter of long-standing regulatory policy, has encouraged retail territorial agreements between electric utilities subject to its jurisdiction based on its findings that such agreements, when property established and administered by the parties and actively supervised by the Commission, avoid uneconomic duplication of facilities, promote safe and efficient operations by utilities in rendering electric service provided to their customers, and therefore serve the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, which shall be construed as being interdependent, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1: Territorial Boundary Line. As used herein, the term "Territorial Boundary Line" shall mean the boundary line(s) depicted on the maps attached hereto as Exhibit A which delineate and differentiate the Parties' respective Territorial Areas in Orange and Osceola Counties. Additionally, pursuant to Rule 25-6.0440 (10(a), a

written description of the territorial areas served by each Party is attached hereto as Exhibit B.

Section 1.2: RCID Territorial Area. As used herein, the term "RCID Territorial Area" shall mean the geographic areas in Orange and Osceola Counties allocated to RCID as its retail service territory and labeled as "Reedy Creek Improvement District" on the maps contained in Exhibit A.

Section 1.3: Duke Energy Territorial Area. As used herein, the term "Duke Energy Territorial Area" shall mean the geographic areas in Orange and Osceola Counties allocated to Duke Energy as its retail service territory and labeled as "Duke Energy" on the maps contained in Exhibit A.

Section 1.4: Point of Use. As used herein, the term "Point of Use" shall mean the location within the Territorial Area of a Party where a customer's end-use facilities consume electricity, wherein such Party shall be entitled to provide electric service under this Amended Agreement, irrespective of where the customer's point of delivery or metering is located.

Section 1.5: Existing Customers. As used herein, the term "Existing Customer" shall mean any person receiving retail electric service from either RCID or DEF on the Effective Date of this Amended Agreement.

Section 1.6: New Customers. As used herein, the term "New Customers" shall mean those customers applying for electric service during the term of this Amended Agreement at a Point of Use in the territorial area of either Party which has not previously been served by either utility.

Section 1.7: Temporary Service Customers. As used herein, the term "Temporary Service Customers" shall mean customers who are being temporarily served under the temporary service provisions of the Agreement.

Section 1.8: Commission. As used herein, the term "Commission" shall mean the Florida Public Service Commission.

Section 1.9: Effective Date. As used herein, the term "Effective Date" shall mean the date on which the final Order of the Commission granting approval of this Amended Agreement in its entirety becomes no longer subject to judicial review.

## ARTICLE II

## RETAIL ELECTRIC SERVICE

Section 2.1: In General. Except as otherwise specifically provided herein, RCID shall have the exclusive authority to furnish retail electric service within the RCID Territorial Area and DEF shall have the exclusive authority to furnish retail electric service within the DEF Territorial Area. The Territorial Boundary Line shall not be altered or affected by any change that may occur in the corporate limits of any municipality or county lying within the RCID Territorial Area or the DEF Territorial Area, through annexation or otherwise, unless such change is agreed to in writing by the Parties and approved by the Commission.

Section 2.2: Service to New Customers. The Parties agree that neither will knowingly serve nor attempt to serve any New Customer whose Point of Use is located within the Territorial Area of the other Party, except as specifically provided in Sections

2.3, 4.2, and 4.3 below. However, in those instances where the Territorial Boundary Line traverses the property of an individual New Customer or prospective New Customer, the Party in whose service area the preponderance of the Customer's electric energy usage is expected to occur shall be entitled to serve all of the Customer's usage. The Parties will promptly notify the Commission if one Party is going to serve a New Customer whose property spans both Parties' Territorial Areas pursuant to this Section.

Section 2.3: Temporary Service. The Parties recognize that in exceptional circumstances, economic constraints or good engineering practices may indicate that a New Customer's Point of Use either cannot or should not be immediately served by the Party in whose Territorial Area such Point of Use is located. In such instances, upon written request by the Party in whose Territorial Area the New Customer's Point of Use is located, the other Party may, in its sole discretion, agree in writing to temporarily provide service to such New Customer until such time as the requesting Party provides written notice of its intent to serve the Point of Use. Prior to the commencement of Temporary Service, the Party providing such service shall inform the New Customer of the temporary nature of its service and that the other Party will ultimately serve the New Customer. Any such agreement for Temporary Service which lasts, or is anticipated to last, for more than one year shall be submitted to the Commission for approval in accordance with Section 5.1 hereof. Such Temporary Service shall be discontinued upon written notice from the requesting Party of its intent to provide service, which the Parties shall coordinate to minimize any inconvenience to the customer. The Party providing Temporary Service hereunder shall not be required to

pay the other Party for any loss of revenue associated with the provision of such Temporary Service, nor shall the Party providing temporary service be required to pay the other party any going concern value.

Section 2.4: Referral of Service Request. In the event that a prospective New Customer requests or applies for service from either party to be provided to a Point of Use located in the Territorial Area of the other Party, the Party receiving the request or application shall advise the prospective New Customer that such service is not permitted under this Amended Agreement as approved by the Commission, and shall refer the prospective New Customer to the other Party.

Section 2.5: Correction of Inadvertent Service Errors. If any situation is discovered during the term of this Amended Agreement in which either Party has begun to inadvertently provide retail electric service to a customer's Point of Use located within the Territorial Area of the other Party after the Effective Date of this Amended Agreement, service to such customer will be transferred to such other Party at the earliest practical time, but in any event within twelve months of the date the inadvertent service error was discovered. Until service by the other Party can be reasonably established, the inadvertent service will be deemed to be Temporary Service provided and governed in accordance with Section 2.3 above.

ARTICLE III

TRANSFER OF CUSTOMERS AND FACILITIES

Section 3.1: In General. There are no known customers or facilities to be transferred pursuant to this Amended Agreement.

In the event circumstances arise during the term of this Amended Agreement in which the Parties agree that, based on sound economic considerations or good engineering practices, an area located in the Territorial Area of one Party would be better served if reallocated to the service territory of the other Party, the Parties shall jointly petition the Commission for approval of a modification of the Territorial Boundary line that places the area in question (the "Reallocated Area") within the Territorial Area of the other Party and transfer of the customers located in the Reallocated Area to the other Party.

ARTICLE IV

OPERATION AND MAINTENANCE

Section 4.1: Facilities to Remain. Other than as expressly provided for herein, no generating plant, transmission line, substation, distribution line or related equipment shall be subject to transfer or removal hereunder; provided, however, that each Party shall operate and maintain its lines and facilities in a manner that minimizes any interference with the operations of the other Party.

Section 4.2: RCID Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of RCID to serve any facility of

RCID located in the DEF Territorial Area which is used exclusively in connection with RCID business as an electric utility; provided, however, that RCID shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of DEF in the Duke Energy Territorial Area.

Section 4.3: Duke Energy Facilities to be Served. Nothing herein shall be construed to prevent or in any way inhibit the right and authority of DEF to serve any DEF facility located in the RCID Territorial Area which is used exclusively in connection with DEF business as an electric utility; provided, however, that DEF shall construct, operate, and maintain said lines and facilities in such manner as to minimize any interference with the operation of RCID in the RCID Territorial Area.

## ARTICLE V

## PREREQUISITE APPROVAL

Section 5.1: Commission Approval. The provisions and the Parties' performance of this Amended Agreement are subject to the regulatory authority of the Commission, and appropriate approval by the Commission of this Amended Agreement in its entirety shall be an absolute condition precedent to the validity, enforceability, and applicability hereof. This Amended Agreement shall have no effect whatsoever until Commission approval has been obtained. Any proposed modification to this Amended Agreement shall be submitted to the Commission for approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance hereunder.

Upon approval of the Commission, this Amended Agreement shall be deemed to replace the Existing Agreement between Parties regarding their respective retail service areas in Orange and Osceola Counties.

Section 5.2: Liability in the Event of Disapproval. In the event approval pursuant to Section 5.1 is not obtained, neither Party shall have claim against the other Party arising under this Amended Agreement and the terms of the Existing Agreement shall remain in full force and effect.

## ARTICLE VI

## DURATION

Section 6.1: Term. This Agreement shall continue and remain in effect for a period of thirty years from the Effective Date. After expiration of the thirty year term provided herein, this Amended Agreement shall remain in effect until and unless either Party provides written notice of termination. Such written notice shall be provided as contemplated by Section 8.3 and shall be provided no less than twelve months prior to the date of termination.

## ARTICLE VII

## CONSTRUCTION OF AGREEMENT

Section 7.1: Other Electric Utilities. Nothing in this Amended Agreement is intended to define, establish, or affect in any manner, the rights of either Party hereto relative to any other electric utility not a party to this Amended Agreement with respect to the furnishing of retail electric service, but not limited to, the service territory of

either Party. The Parties understand that RCID or DEF may, from time to time and subject to Commission approval, enter into territorial agreements with other electric utilities that have adjacent or overlapping service areas and that, in such event, nothing herein shall be construed to prevent RCID or DEF from designating any portion of its Territorial Area under this Amended Agreement as the retail service area of such other electric utility.

Section 7.2: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Amended Agreement shall be interpreted and construed, among other things, to further Florida's policy of actively regulating and supervising the service territories of electric utilities; supervising the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoiding uneconomic duplication of generation, transmission, and distribution facilities; and encouraging the installation and maintenance of facilities necessary to fulfill the Parties respective obligations to serve.

ARTICLE VIII

MISCELLANEOUS

Section 8.1: Negotiations. Whatever terms or conditions may have been discussed during the negotiations leading up to the execution of this Amended Agreement, the only terms and conditions agreed upon are those set forth herein, and no alteration, modification, enlargement, or supplement to this Amended Agreement shall be binding upon either of the Parties hereto unless agreed to in writing by both Parties, and approved by the Commission.

Section 8.2: Successors and Assigns. Nothing in this Amended Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person or corporation, other than the Parties, any right, remedy, or claim under or by reason of this Amended Agreement or any provision or conditions hereof; and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of and shall be binding only upon the Parties and their respective representatives, successors, and assigns.

Section 8.3: Notices. Notices and other written communications contemplated by this Amended Agreement shall be deemed to have been given if sent by certified mail, postage prepaid, by prepaid private courier, or by confirmed facsimile transmittal, as follows:

| To RCID: | To Duke Energy Florida LLC: |
|---|---|
| John Classe Jr., District Administrator | Harry Sideris, State President |
| Reedy Creek Improvement District | Duke Energy Florida, LLC |
| PO Box 10170 | PO Box 14042 |
| Lake Buena Vista, Florida 32830 | St. Petersburg, Florida 33733 |
| Facsimile: 407-934-6200 | Facsimile: 727-820-5041 |

Either Party may change its designated representative or address to which such notices or communications shall be sent by giving written notice thereof to the other Party in the manner herein provided.

IN WITNESS WHEREOF, the Parties have caused this Amended Agreement to be executed in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

REEDY CREEK IMPROVEMENT DISTRICT

By _____
District Administrator

ATTEST:

_____
Secretary

(SEAL)

DUKE ENERGY FLORIDA, LLC

By _____
State President

ATTEST:

_____
Associate General Counsel

(SEAL)

DUKE ENERGY, INC.
LEGAL DEPARTMENT
APPROVED BY: _____
DATE: _____

# Item 8

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Economics (Doherty, Draper)
Division of Engineering (Ellis, Wooten)
Office of the General Counsel (Mapp)

**RE:** Docket No. 20170181-EI – Petition for expedited approval of temporary territorial variance, by Tampa Electric Company.

**AGENDA:** 10/03/17 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None



## Case Background

On August 25, 2017, Tampa Electric Company (TECO) filed a petition for an expedited approval of a temporary territorial variance (variance). The variance will enable TECO to provide temporary electric service to Mosaic Fertilizer, LLC's (Mosaic) Peacock mining facility outside TECO's approved service territory. TECO is an investor-owned public utility subject to the jurisdiction of the Commission under Chapter 366, Florida Statutes (F.S.). Mosaic is in the business of mining and processing phosphate and manufacturing fertilizer.

Pursuant to a territorial agreement the Commission approved between Duke Energy Florida, LLC[1] (Duke) and Peace River Electric Cooperative (PRECO), the Peacock facility is served by Duke.[2] This 1994 territorial agreement approved Duke's right to serve transmission level customers, such as Mosaic, in PRECO's service territory because PRECO did not have the appropriate facilities to meet Mosaic's transmission level electric needs. The instant petition requests that TECO, instead of Duke, provide temporary service to Mosaic's Peacock mining facility.

TECO and Duke responded to staff's first data request on September 18, 2017. The map and legal description of the Peacock facility are attached to the petition in Exhibits A and B. Florida Power & Light Company (FPL), Duke, and PRECO's consent to the approval of the variance are shown in Exhibit C of the petition. FPL also has the ability to serve Mosaic; however, FPL does not have substations that are close to the Peacock facility and would need to invest in system upgrades. Therefore, FPL provided their consent to the proposed variance.

In 2007, the Commission approved a similar temporary territorial variance allowing TECO to provide electric service to Mosaic's Altman facility in Manatee County.[3] The Altman facility is located in PRECO's service territory; however, PRECO does not have the facilities to serve the Altman facility. The Commission has jurisdiction pursuant to Section 366.04, F.S.

[1] In 1994, Duke was known as Florida Power Corporation. Subsequently, Florida Power Corporation changed its name to Progress Energy Florida, Inc. in 2003, to Duke Energy Florida, Inc. in 2013, and to Duke Energy Florida, LLC in 2015.
[2] Order No. PSC-94-1522-FOF-EI, issued December 12, 1994, in Docket No. 940376-EU, *In re: Joint petition for approval of territorial agreement between Florida Power Corporation and Peace River Electric Cooperative, Inc.*
[3] Order No. PSC-07-0906-PAA-EI, issued November 8, 2007, in Docket No. 070546-EI, *In re: Petition for expedited approval of temporary territorial variance by Tampa Electric Company.*

## Discussion of Issues

***Issue 1:*** Should the Commission approve TECO's petition for a temporary territorial variance?

***Recommendation:*** Yes. TECO's petition for a temporary territorial variance is in the public interest and should be approved. During the period of its retail electric service to the Peacock facility, TECO should report to the Commission on an annual basis regarding the status of the temporary service through its conclusion. TECO should file its first status report in the docket file in October 2018, or sooner if concluded. (Doherty, Wooten)

***Staff Analysis:*** The proposed variance addresses the supply of electric service to Mosaic's Peacock facility located in Manatee County. The Peacock facility is an industrial phosphate mining operation and associated pump operation, and takes service at 69 kilovolt (kV) transmission level. Once the mining has been completed in a particular area, the facility moves to another mining location.

The Peacock facility added within the last year 20 to 25 megawatts (MWs) of load. The increase in load is causing adverse voltage conditions on PRECO's distribution facilities, as both the Peacock mining facility and PRECO distribution system are connected to the same two substations. PRECO contacted Duke in September 2016 and reported the adverse voltage effects on its system. Duke and Mosaic discussed its operations to find ways to reduce the voltage issues to PRECO. Duke stated that no feasible or cost effective solution was identified.

According to TECO's petition, Mosaic has indicated that it needs to continue taking service at the Peacock facility to accommodate its phosphate mining operations. TECO asserts in the petition that it can provide immediate electric service to the Peacock facility from an existing meter just over the Manatee/Hillsborough County border, which is in TECO's service territory. TECO has indicated that it does not need to invest in any additional facilities to serve the Peacock facility and has sufficient capacity to serve the load. TECO also stated that the Peacock facility load will not create voltage issues for TECO. Based on the assertions made in the petition, staff believes the proposed variance will not cause a decrease in the reliability of electrical service to the existing or future ratepayers of TECO and the adjacent utilities (FPL, PRECO, and Duke).

It is TECO's intention to serve the Peacock facility until the mining at that facility is complete, at which point, the temporary variance will no longer be necessary. TECO will file a final status report to indicate that TECO is no longer providing service to the Peacock facility. Mosaic's mining plans are subject to change; however, TECO stated that Mosaic expects the mining activity at the Peacock facility to continue for a period of approximately six months to a year.

While TECO will serve the Peacock facility to meet the facility's immediate need for electric service, Duke stated that it started the preliminary work to construct a new substation and eight miles of 230 kV transmission lines. The Duke project will support Mosaic's projected future mining load and also eliminate the voltage issues in the area. Duke stated that additional customers could also benefit in the future with the new substation and transmission line. The Duke project is expected to be completed by May 2019.

## Conclusion

Based on the petition and responses to staff's data request, staff recommends that TECO's petition for a temporary territorial variance is in the public interest and should be approved. During the period of its retail electric service to the Peacock facility, TECO should report to the Commission on an annual basis regarding the status of such temporary service through its conclusion. TECO should file its first status report in the docket file in October 2018, or sooner if concluded.

***Issue 2:*** Should this docket be closed?

***Recommendation:*** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Mapp)

***Staff Analysis:*** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.

# Item 9

State of Florida

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** September 21, 2017

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Economics (Guffey, Doherty, Draper) SKG AP EJD CB PD
Office of the General Counsel (Taylor) WDT JSC

**RE:** Docket No. 20170176-GU – Petition by Florida Division of Chesapeake Utilities Corporation for approval of special contract with Sebring Gas System, Inc.

**AGENDA:** 10/03/17 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None



### Case Background

On August 14, 2017, the Florida Division of Chesapeake Utilities Corporation (Chesapeake) filed a petition seeking Commission approval of a Special Contract (Contract) with Sebring Gas System, Inc. (Sebring). Pursuant to the Contract, Chesapeake will construct a gas pipeline in DeSoto County near the City of Arcadia. The pipeline is referred to as the Arcadia Pipeline on the map shown in Attachment A to the recommendation and as the Sebring Pipeline in the Contract. Chesapeake and Sebring both own and operate natural gas distribution facilities in Florida and are subject to the regulatory jurisdiction of the Commission pursuant to Section 366.06, Florida Statutes (F.S.).

The Contract between Chesapeake and Sebring was executed on June 30, 2017, has an initial 20-year term, and can be extended for additional one year periods unless given notification by either party to terminate the Contract. The proposed Contract is shown in Attachment B to the

recommendation. During the evaluation of the petition, staff issued two data requests to Chesapeake for which responses were received on August 28, 2017 and on September 5, 2017. The first data request was also forwarded to Sebring, for which responses were received on September 19, 2017. In its response to staff's first data request, Chesapeake filed certain revisions to the Cost of Service Study that was included in the petition. There have been no public comments regarding this petition. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, F.S.

## Discussion of Issues

***Issue 1:*** Should the Commission approve the Contract between Chesapeake and Sebring?

***Recommendation:*** Yes. The Commission should approve the Contract shown in Attachment B between Chesapeake and Sebring. The Contract should be effective as of the date of the Commission's vote. (Guffey, Doherty, Draper)

***Staff Analysis:*** At present, Chesapeake and Sebring both have customers in DeSoto County; however, neither utility has facilities capable of providing gas service to the City of Arcadia. In May 2017, by Order No. PSC-2017-0205-PAA-GU, the Commission approved a territorial agreement between Chesapeake and Sebring.[1] Pursuant to the territorial agreement, Sebring's service area includes customers within Arcadia's municipal boundaries and two specifically identified customers just outside Arcadia's municipal limits. Chesapeake's service territory is defined as DeSoto County, except for customers within Arcadia's municipal boundary and the two specifically identified customers who are located outside of the Arcadia municipal limits.

The proposed Contract is designed to allow Sebring to provide gas service to the City of Arcadia. Sebring will construct and own the distribution system to serve customers within the City of Arcadia and Chesapeake will construct, own, and maintain a pipeline connecting the Florida Gas Transmission (FGT) interstate transmission pipeline with Sebring's distribution system. Chesapeake will provide transportation service only; the gas delivered to the City of Arcadia via FGT and the Sebring Pipeline is purchased by Sebring. The Contract contains the terms and conditions under which Chesapeake will provide transportation service and the negotiated rate allowing Chesapeake to recover its investment in the Sebring Pipeline. Rule 25-9.034, Florida Administrative Code, and Chesapeake's tariff require that special contracts be approved by the Commission.

In accordance with the Contract, Chesapeake is constructing approximately one mile of four-inch coated steel pipeline extending from the FGT facilities in Hardee County to the interconnection point with Sebring's distribution system. Chesapeake will connect the pipeline with FGT at the Arcadia gate station, an existing delivery point. Chesapeake will install a new custody transfer station at its interconnection point with Sebring's distribution system that will serve the City of Arcadia. Chesapeake anticipates construction of the pipeline to be complete in October 2017. The Contract contains language stating that Sebring is relying upon Chesapeake's expertise in operating and providing transportation service over the Sebring Pipeline.

Chesapeake stated that it has obtained approvals from the Department of Transportation and the Department of Environmental Protection for the pipeline. Additionally, Chesapeake stated it is currently working to receive approval from the Seminole Gulf Railroad for the railroad crossing.

[1] Order No. PSC-2017-0205-PAA-GU, issued May 23, 2017, in Docket No. 20170036-GU, *In re: Joint petition for approval of territorial agreement in DeSoto County by Florida Division of Chesapeake Utilities Corporation and Sebring Gas System, Inc.*

## Cost of Service Considerations

The cost of service study provided by Chesapeake in its response to staff's first data request shows total annual operating cost of $128,183 for the Sebring Pipeline. The cost of service includes a return on the investment, operation and maintenance cost, depreciation, and taxes. Chesapeake's investment for the Sebring Pipeline totals $821,384 and includes the main installation, custody transfer meter, and skid mount (a prefabricated frame that holds the meter and pressure regulation equipment). The return included in the cost of service is 5.67 percent, based on the midpoint rate of return shown in Chesapeake's December 2016 year-end surveillance report.

The negotiated annual fixed rate contained in the Contract of $135,812 is designed to enable Chesapeake to cover its cost of service. The contract amount is paid by Sebring to Chesapeake in monthly reservation charges [2] that are fixed and do not vary based on actual usage. The largest daily quantity of gas Chesapeake is obligated to transport to Sebring is 720 Dekatherms.

Based on the cost of service study provided, staff agrees with Chesapeake's assertion that the monthly reservation charge recovers its cost of service and, therefore, will provide benefits to Chesapeake's general body of ratepayers, as well as Sebring's customers in the City of Arcadia.

## Conclusion

Based on the review of the petition and responses to staff's data requests, staff believes Chesapeake's representations to be reasonable and recommends that the Commission approve the Special Contract between Chesapeake and Sebring as shown in Attachment B. The Contract should be effective as of the date of the Commission's vote.

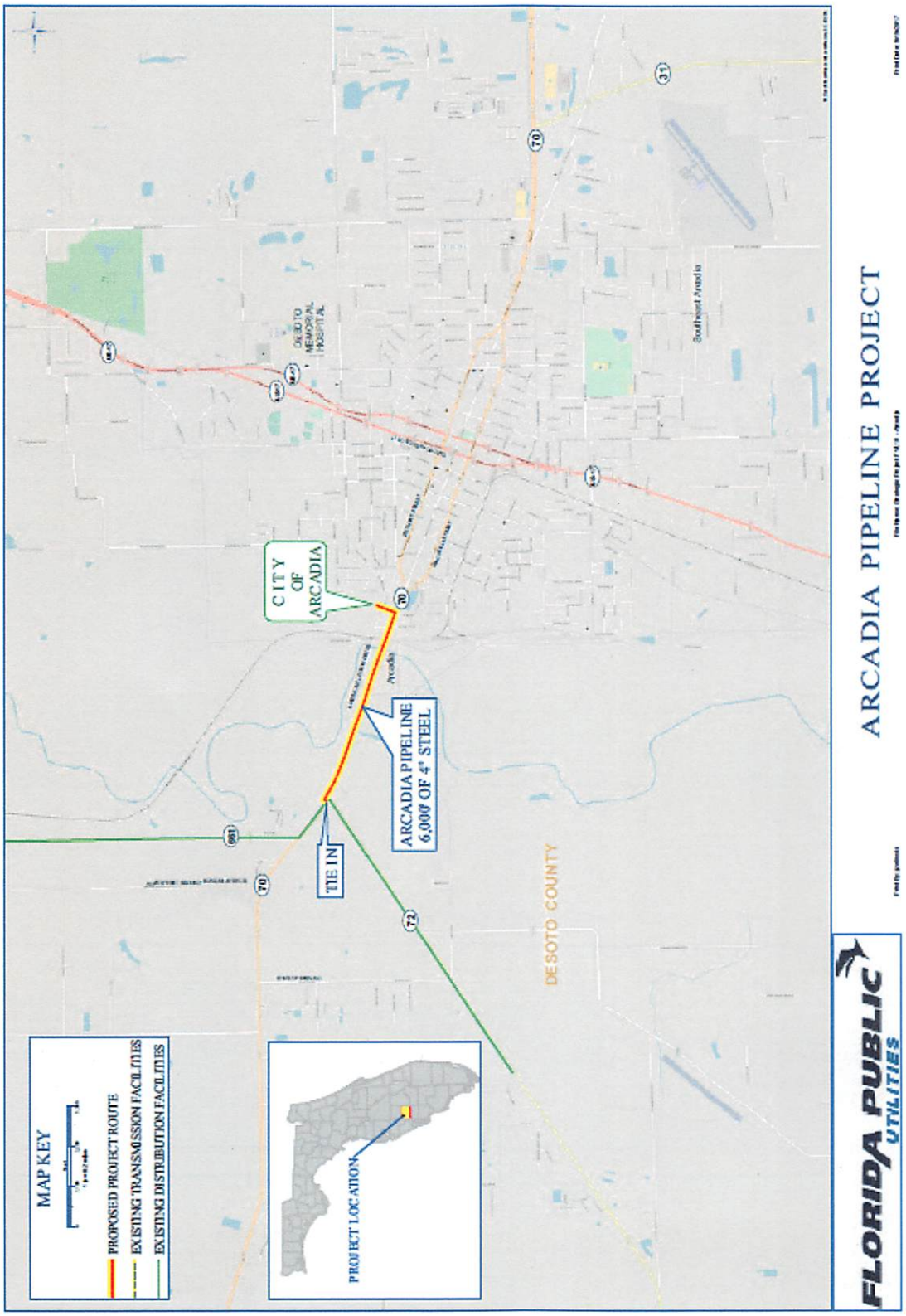
[2] Monthly Reservation Charge: The annual fixed rate of $136,812 is billed in the following increments:

| | |
|---|---|
| December through March | $12,401 |
| April through July | $11,401 |
| August through November | $10,401 |

***Issue 2:*** Should this docket be closed?

***Recommendation:*** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order. (Taylor)

***Staff Analysis:*** If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a Consummating Order.


ARCADIA PIPELINE PROJECT
FLORIDA PUBLIC UTILITIES
MAP KEY
PROPOSED PROJECT ROUTE
EXISTING TRANSMISSION FACILITIES
EXISTING DISTRIBUTION FACILITIES
PROJECT LOCATION
CITY OF ARCADIA
ARCADIA PIPELINE 6,000' OF 4" STEEL
TIE IN
DESOTO COUNTY
DESOTO MEMORIAL HOSPITAL
Southeast Arcadia
Arcadia

# SPECIAL CONTRACT

**THIS AGREEMENT**, entered into this 30th day of June, 2017 by and between Chesapeake Utilities Corporation, a Delaware corporation, doing business in Florida as Central Florida Gas Company, and hereinafter referred to as "Company" and Sebring Gas System, Inc., hereinafter referred to as "Shipper."

**WITNESSETH:**

**WHEREAS,** the Company operates facilities for the distribution of natural gas in the State of Florida; and

**WHEREAS,** Shipper desires to serve customers in and around the City of Arcadia in DeSoto County, Florida, which is near its certificated service area as set forth in Shipper's Natural Gas Tariff, as approved and on file with the Florida Public Service Commission (FPSC); and

**WHEREAS,** Shipper has requested that the Company receive from Transporter certain quantities of Gas for Shipper's account, transport such quantities on Company's distribution system, and redeliver same to Shipper's facilities located near Arcadia in DeSoto County, and Company agrees to provide such service in accordance with the terms and conditions herein.

**NOW, THEREFORE,** in consideration of the premises and mutual covenants and agreements herein contained, the parties agree as follows:

## ARTICLE I
## DEFINITIONS

Unless another definition is expressly stated, the following terms and abbreviations, when used in this Agreement and in all exhibits, recitals, and appendices contained or attached to this Agreement are intended to and shall mean as follows:

1.1 "Btu" means the amount of heat required to raise the temperature of one pound of water from 59 degrees Fahrenheit to 60 degrees Fahrenheit at a constant pressure of 14.73 p.s.i.a.

1.2 "Day" means a period of 24 consecutive hours beginning and ending at 9:00 a.m. Central Clock Time ("CCT"); provided that, in the event of a change in the definition of the corresponding term in the tariff of Florida Gas Transmission Company ("FGT") on file with the Federal Energy Regulatory Commission ("FERC"), this definition shall be

deemed to be amended automatically so that it is identical at all times to the definition of the corresponding term in FGT's tariff.

1.3 "Dekatherm" or "DT" means 1,000,000 Btu's or ten (10) Therms.

1.4 "Delivery Point" means the point at the connection of the facilities of an upstream party and a downstream party's facility at which the Gas leaves the outlet side of the measuring equipment of the upstream party and enters the downstream party's facility.

1.5 "Gas" means natural gas which is in conformance with the quality specifications of the Transporter.

1.6 "Maximum Daily Transportation Quantity" or "MDTQ" means the largest quantity of Gas, expressed in Dekatherms, that the Company is obligated to transport and make available for delivery to Shipper under this Agreement.

1.7 "Month" means a period beginning at 9:00 a.m. CCT on the first day of a calendar month and ending at 9:00 a.m. CCT on the first day of the next succeeding calendar month; provided that, in the event of a change in the definition of the corresponding term in the tariff of FGT on file with the FERC, this definition shall be deemed to be amended automatically so that it is identical at all times to the definition of the corresponding term in FGT's tariff.

1.8 "P.O.I." means Point of Interest, that is, the point at which control and possession of Gas passes from FGT to the Company.

1.9 "p.s.i.a." means pounds per square inch absolute.

1.10 "p.s.i.g." means pounds per square inch gauge.

1.11 "Receipt Point" means the point at which Gas is received by Transporter into Transporter's system from an upstream service or facility.

1.12 "Shipper Designee" means a Company-approved agent of Shipper.

1.13 "Shipper's Facilities" means the Gas distribution system to be built and located in DeSoto County, Florida and owned by Sebring Gas System.

1.14 "Therm" means a unit of heat equal to 100,000 Btu's.

1.15 "Transporter" means any third party pipeline or pipelines utilized to effect delivery of Gas to Shipper's Facilities.

## ARTICLE II
## POINTS OF DELIVERY AND REDELIVERY

2.1 Shipper shall cause the Transporter to deliver to Company at the Delivery Point on Transporter's system (which specified Delivery Point is hereinafter referred to as "Transporter's Delivery Point"), the quantities of Gas to be transported by Company hereunder. Company shall have no responsibility for transportation of Shipper's Gas prior to receipt of such Gas from Transporter at Transporter's Delivery Point. Company

shall deliver such quantities of Gas received from Transporter at Transporter's Delivery Point for Shipper's account to Company's Delivery Point at the Shipper's Facilities (hereinafter referred to as "Company's Delivery Point").

## ARTICLE III
## QUANTITIES

3.1 Company shall construct, own and maintain a pipeline in DeSoto County, Florida, that is more particularly described on Exhibit A (the "Pipeline") with a capacity of at least the Minimum Daily Transportation Quantity as set forth on Exhibit A attached hereto. The Pipeline shall be constructed in accordance with the specifications set forth on Exhibit A attached hereto and incorporated herein. Company shall complete construction of the Pipeline such that Company will be able to deliver Gas to Shipper through the Pipeline no later than September 1, 2017. Shipper is not responsible for any costs associated with the construction, operation, or maintenance of the Pipeline.

3.2 Subject to the terms and conditions of this Agreement, Company agrees to receive from Transporter, at Transporter's Delivery Point, on a daily basis, a quantity of Gas up to Shipper's MDTQ, and Company agrees to transport and deliver equivalent quantities of Gas to Shipper at Company's Delivery Point located at Shipper's Facilities. Shipper's MDTQ under this Agreement shall be the quantity of Gas per day as shown in Exhibit A to this Agreement, which is incorporated herein by reference and made a part hereof.

## ARTICLE IV
## SCHEDULING AND BALANCING

4.1 Shipper shall be responsible for nominating quantities of Gas to be delivered by Transporter to Transporter's Delivery Point and delivered by Company to Shipper's Facilities. Shipper shall promptly provide notice to Company of all such nominations. Such notices shall be provided to Company electronically as both parties may agree. Imbalances between quantities (i) scheduled for delivery by the Transporter to Company and/or delivery by Company to Shipper's Facilities, and (ii) actually delivered by the Transporter and/or Company hereunder, shall be resolved in accordance with the applicable provisions of Company's Florida Public Service Commission ("FPSC") Natural Gas Tariff, as such provisions may be amended from time to time, subject to approval by the FPSC.

4.2 The parties hereto recognize the desirability of maintaining a uniform rate of flow of Gas to Shipper's Facility over each 24-hour period and each Day throughout each Month. Therefore, Company agrees to receive from the Transporter for Shipper's account at Transporter's Delivery Point and deliver to Company's Delivery Point up to the MDTQ as described in Exhibit A attached hereto, subject to any restrictions imposed by the Transporter and to the provisions of Articles V and IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's gas distribution system at a daily rate of flow not to exceed the applicable nomination in place subject to any additional restrictions imposed by the Transporter or by Company pursuant to Articles V and VI of this Agreement

## ARTICLE V
## CURTAILMENT

5.1 This Agreement in all aspects shall be and remain subject to the applicable provisions of Company's Curtailment Plan, as filed with the FPSC, which is attached hereto and made a part hereof by this reference.

## ARTICLE VI
## TITLE, CONTROL AND INDEMNIFICATION

6.1 Shipper or its agent warrants that it will have good and merchantable title to all Gas delivered by the Transporter to Company for Shipper's account at Transporter's Delivery Point, and that to the extent of Shipper's commercial control, such Gas will be free and clear of all liens, encumbrances, and claims whatsoever. In the event any adverse claim in respect to said Gas is asserted, or Shipper breaches its warranty herein, Company shall not be required to perform its obligations to transport and deliver said Gas to Shipper's Facilities, subject to receipt of any necessary regulatory authorization, to continue service hereunder for Shipper until such claim has been finally determined; provided, however, that Shipper may receive service if (i) in the case of an adverse claim, Shipper furnishes a bond to Company, conditioned for the protection of Company with respect to such claim; or (ii) in the case of a breach of warranty, Shipper promptly furnishes evidence, satisfactory to Company, of Shipper's title to said Gas.

6.2 Shipper shall be deemed to be in control and possession of the Gas prior to delivery to Transporter's Delivery Point; and Company shall be deemed to be in control and possession of the Gas to be transported by it upon delivery of such Gas by Transporter to Transporter's Delivery Point and until it shall have been delivered to Company's Delivery Point.

6.3 (a) For value received and to induce Company to enter into this Agreement, Shipper agrees to protect, defend (at Shipper's expense and by counsel satisfactory to Company), indemnify, and save and hold harmless Company, its officers, directors, shareholders, employees, agents, successors and assigns, from and against all direct or indirect costs, expenses, damages, losses, obligations, lawsuits, appeals, claims, or liabilities of any kind or nature (whether or not such claim is ultimately defeated), including in each instance, but not limited to, all costs and expenses of investigating and defending any claim at any time arising and any final judgments, compromises, settlements, and court costs and attorneys' fees, whether foreseen or unforeseen (including all such expenses, court costs, and attorneys' fees in the enforcement of Company's rights hereunder), incurred by Company in connection with or arising out of or resulting from or relating to or incident to:

1. any breach of any of the representations, warranties, or covenants of Shipper contained in this Agreement or in any Exhibit, Schedule, or other document

attached hereto and/or incorporated by reference herein, specifically including but not limited to:

a. any Transporter penalties or other expenses or liabilities for unauthorized overrun or underrun Gas, for monthly imbalances, for failure to comply with its FERC Tariff, or for failure to comply with a curtailment notice or to take deliveries as scheduled, pursuant to Sections 3.1 and 4.1 of this Agreement; and
b. any breach by Shipper of warranty of title to Gas and related obligations, pursuant to Sections 6.1 and 6.2 of this Agreement;

2. any claim by a creditor of Shipper as a result of any transaction pursuant to or contemplated by this Agreement;
3. any claim against Company relating to any obligation or liability of Shipper; and
4. the operations or activities of Shipper in performance of this Agreement.

In the event that any claim or demand for which Shipper would be liable to Company hereunder is asserted against or sought to be collected from Company by a third party, Company shall promptly notify Shipper of such claim or demand, specifying the nature of such claim or demand and the amount or the estimated amount thereof, if determination of an estimate is then feasible (which estimate shall not be conclusive of the final amount of such claim or demand) (the "Claim Notice"). Shipper shall have twenty (20) days, or such shorter period as the circumstances may require if litigation is involved, from the personal delivery or mailing of the Claim Notice (the "Notice Period") to notify Company:

1. whether or not it disputes its liability to Company hereunder with respect to such claim or demand; and
2. whether or not it desires, at its sole cost and expense, to defend Company against such claim or demand.

In the event that Shipper notifies Company within the Notice Period that it desires to defend Company against such claim or demand and except as hereinafter provided, Shipper shall have the right to defend Company by appropriate proceedings, which proceedings shall be promptly settled or prosecuted by Shipper to a final conclusion in any manner as to avoid any risk of Company becoming subject to any liability for such claim or demand or for any other matter. If Company desires to participate in, but not control, any defense or settlement, it may do so at its sole cost and expense. If Shipper elects not to defend Company against such claim or demand, whether by not giving Company timely notice as provided above or otherwise, then the amount of any such claim or demand, or, if the same is contested by Shipper or by Company (Company having no obligation to contest any such claim or demand), then that portion thereof as to which such defense is unsuccessful, shall be conclusively deemed to be a liability of Shipper and subject to indemnification as provided hereinabove.

(b) For value received and to induce Shipper to enter into this Agreement, Company agrees to protect, defend (at Company's expense and by counsel satisfactory to Shipper), indemnify, and save and hold harmless Shipper, its officers, directors, shareholders, employees, agents, successors and assigns, from and against all direct or indirect costs,

expenses, damages, losses, obligations, lawsuits, appeals, claims, or liabilities of any kind or nature (whether or not such claim is ultimately defeated), including in each instance, but not limited to, all costs and expenses of investigating and defending any claim at any time arising and any final judgments, compromises, settlements, and court costs and attorneys' fees, whether foreseen or unforeseen (including all such expenses, court costs, and attorneys' fees in the enforcement of Shipper's rights hereunder), incurred by Shipper in connection with or arising out of or resulting from or relating to or incident to:

1. any breach of any of the representations, warranties, or covenants of Company contained in this Agreement or in any Exhibit, Schedule, or other document attached hereto and/or incorporated by reference herein, specifically including, but not limited to, any breach by Company of warranty of title to Gas and related obligations, pursuant to Sections 6.1 and 6.2 of this Agreement;
2. any claim by a creditor of Company as a result of any transaction pursuant to or contemplated by this Agreement;
3. any claim against Shipper relating to any obligation or liability of Company, or its affiliates; and
4. the operations or activities of Company in performance of this Agreement.

In the event that any claim or demand for which Company would be liable to Shipper hereunder is asserted against or sought to be collected from Shipper by a third party, Shipper shall promptly notify Company of such claim or demand, specifying the nature of such claim or demand and the amount or the estimated amount thereof, if determination of an estimate is then feasible (which estimate shall not be conclusive of the final amount of such claim or demand). Company shall have twenty (20) days, or such shorter period as the circumstances may require if litigation is involved, from the personal delivery or mailing of the Claim Notice to notify Shipper:

1. whether or not it disputes its liability to Shipper hereunder with respect to such claim or demand; and
2. whether or not it desires, at its sole cost and expense, to defend Shipper against such claim or demand.

In the event that Company notifies Shipper within the Notice Period that it desires to defend Shipper against such claim or demand and except as hereinafter provided, Company shall have the right to defend Shipper by appropriate proceedings, which proceedings shall be promptly settled or prosecuted by Company to a final conclusion in any manner as to avoid any risk of Shipper becoming subject to any liability for such claim or demand or for any other matter. If Shipper desires to participate in, but not control, any defense or settlement, it may do so at its sole cost and expense. If Company elects not to defend Shipper against such claim or demand, whether by not giving Shipper timely notice as provided above or otherwise, then the amount of any such claim or demand, or, if the same is contested by Company or by Shipper (Shipper having no obligation to contest any such claim or demand), then that portion thereof as to which such defense is unsuccessful, shall be conclusively deemed to be a liability of Company and subject to indemnification as provided hereinabove.

(c) The foregoing indemnification and hold harmless agreement shall benefit both parties from the date hereof and shall survive the termination of this Agreement.

## ARTICLE VII
## RATE

7.1 The rate to be charged each month for transportation service provided by Company shall be as set forth in Exhibit A to this Agreement, which is incorporated herein by reference and made a part hereof. The rate, as set forth in Exhibit A, has been negotiated between the parties and includes only Company's delivery charge per month for Gas transported and redelivered under this Agreement and does not include any charges for transportation service by FGT or any other Transporter transporting Shipper's Gas prior to delivery to Company at the Transporter's Delivery Point. The rate provided in Exhibit A is subject to the continuing jurisdiction of the FPSC and may be adjusted during the term of this Agreement only by Order of the FPSC. Company shall notify Shipper as soon as it receives any notice form FPSC of a proposed rate change.

7.2 Billing of the Reservation Charge, as set forth in Exhibit A, will commence upon the completion of the Shipper Facilities, or December 1, 2017, whichever is earliest, and will be billed to Shipper Designee.

7.3 If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should increase any present tax or levy any additional tax, relating to the service provided by Company under this Agreement, any such additional tax required by law to be paid by Company shall, in Company's discretion, insofar as such discretion is provided for under applicable law, be separately stated in the bill. If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should decrease or eliminate any tax relating to the service provided by Company under this Agreement, the reduction in such tax required to be paid by Company shall be separately stated as a reduction in the amount of the bill retroactive to the effective date of such tax reduction.

## ARTICLE VIII
## TERM

8.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution by both parties and shall continue in full force and effect for an initial period of twenty (20) years from the in-service date of the Pipeline as set forth in Section 3.1 (the "Initial Term"), and shall thereafter be extended for additional periods of one year each; unless either party gives written notice of termination to the other party, not less than one hundred and twenty (120) days prior to the expiration of the initial or any subsequent term. This Agreement may only be terminated earlier in accordance with the provisions of this Agreement or if mutually agreed to by the parties in writing.

## ARTICLE IX
## DEFAULT

9.1 The following shall constitute an event of default:

(a) Shipper or Company fails to satisfy in full the terms and conditions of this Agreement.

(b) Shipper or Company voluntarily suspends the transaction of business where there is an attachment, execution or other judicial seizure of any portion of their respective assets;

(c) Shipper or Company becomes insolvent or unable to pay its debts as they mature or makes an assignment for the benefit of creditors;

(d) Shipper or Company files, or there is filed against it, a petition to have it adjudged bankrupt or for an arrangement under any law relating to bankruptcy; or

(e) Shipper or Company applies for or consents to the appointment of a receiver, trustee or conservator for any portion of its properties or such appointment is made without its consent.

9.2 If either party fails to perform its obligations under this Agreement, the non-defaulting party shall notify the defaulting party in writing (the "Default Notice") within three (3) days after the non-defaulting party obtained knowledge of such failure to perform. Each such Default Notice shall describe in detail the act or event constituting the non-performance by the defaulting party. The defaulting party shall have five (5) days after its receipt of the Default Notice to cure any such failure to perform, unless such cure cannot be accomplished using reasonable efforts within said five (5) day period, in which case the defaulting party shall have such additional time as may be necessary, using reasonable efforts, to cure such non-performance (the "Default Cure Period").

9.3 In the event of a default that is not cured within the Default Cure Period, the non-defaulting party may, at its option, exercise any, some or all of the following remedies, concurrently or consecutively:

(a) any remedy specifically provided for in this Agreement;

(b) terminate the Agreement by written notice to the defaulting party; and/or

(c) any remedy existing at law or in equity.

## ARTICLE X
## COMPANY'S TARIFF PROVISIONS

8

10.1 Company's applicable Rate Schedule provisions to the extent mutually agreed upon by the parties in writing, may be incorporated into this Agreement, and applicable Subsections of the Rules and Regulations of Company's Natural Gas Tariff approved by the FPSC, including any amendments thereto approved by the FPSC during the term of this Agreement, are hereby incorporated into this Agreement and made a part hereof. In the event of any conflict between said provisions of Company's FPSC Natural Gas Tariff and specific provisions of this Agreement, the latter shall prevail, in the absence of an FPSC Order to the contrary.

## ARTICLE XI
## SAFE DESIGN AND OPERATION

11.1 Company warrants that its distribution system is currently built and maintained in in accordance with the Federal Department of Transportation ("FDOT") Regulations, Sections 191 and 192 and Chapters 25-7 and 25-12 of the Florida Public Service Commission, and covenants that it shall maintain its distribution system in accordance with the Federal Department of Transportation ("FDOT") Regulations, Sections 191 and 192 and Chapters 25-7 and 25-12 of the Florida Public Service Commission, which has statutory powers granted to establish rules and standards for safe design, installation, operation and maintenance of natural gas systems. Company covenants and agrees it shall maintain, repair and replace equipment to assure the safety and good working order of the Company natural gas system at no cost to Shipper for the term of this agreement.

11.2 It shall be the responsibility of Shipper to maintain all Shipper-owned equipment, starting from the outlet side of the measurement equipment at the Company's Delivery Point.

11.3 Shipper shall have the right to periodic third-party independent inspections of equipment. Inspections performed shall be at Shipper's cost. Company covenants and agrees to correct any defects noted by such inspection which are not in conformance with FDOT and FPSC Regulations referenced above in Section 11.1 at Company's cost.

## ARTICLE XII
## MISCELLANEOUS PROVISIONS

12.1 Notices and other communications. Any notice, request, demand, statement or payment provided for in this Agreement, unless otherwise specified, shall be sent to the Parties hereto at the following addresses:

Shipper: Sebring Gas System, Inc.
3515 Highway 27 South
Sebring, FL 33870-5452
Attention: Jerry Melendy
Phone: (863) 385 0194
Email: Jmelendy@floridasbestgas.com

CUC: Central Florida Gas Company
1750 S 14th Street, Suite 200
Fernandina Beach, FL 32034
Attention: Cheryl Martin, AVP, Regulatory Affairs

Phone: (904) 445 9298
Email: cmmartin@fpuc.com

12.2 Headings. All article headings, section headings and subheadings in this Agreement are inserted only for the convenience of the parties in identification of the provisions hereof and shall not affect any construction or interpretation of this Agreement.

12.3 Entire Agreement. This Agreement, including the Exhibits attached hereto, sets forth the full and complete understanding of the parties as of the date of its execution by both parties, and it supersedes any and all prior negotiations, agreements, executed contracts, and understandings with respect to the subject matter hereof. No party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.

12.4 Amendments. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Party against which enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to Section 12.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 12.1 of this Agreement. Further, the parties expressly acknowledge that the limitations on amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments which are necessary to comply with the requirements of, or are otherwise approved by FPSC or its successor agency or authority.

12.5 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

12.6 Waiver. No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

12.7 Attorneys' Fees and Costs. In the event of any dispute arising concerning this Agreement, the parties shall in the first instance attempt informal Mediation to resolve the dispute. Thereafter, in the event of litigation relative to, or arising out of the

relationship of the Parties as evidenced by this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other sums which may be found to be due, all costs incurred and reasonable attorneys' fees, including, but not limited to, all such costs and fees incurred during investigation, in preparation for trial, at trial, at retrial, upon rehearing or appeal of the decision of any tribunal, in bankruptcies, and in any administrative proceedings.

12.8 Independent Parties. Company and Shipper shall perform hereunder as independent parties and neither Company or Shipper is in any way or for any purpose, by virtue of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

12.9 Assignment and Transfer. No assignment of this Agreement by either party may be made without the prior written approval of the other party (which approval shall not be unreasonably withheld) and unless the assigning or transferring party's assignee or transferee shall expressly assume, in writing, the duties and obligations under this Agreement of the assigning or transferring party, and upon such assignment or transfer and assumption of the duties and obligations, the assigning or transferring party shall furnish or cause to be furnished to the other party a true and correct copy of such assignment or transfer and assumption of duties and obligations.

12.10 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of Gas hereunder. Company and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. Company and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement. Each party shall proceed with diligence to file any necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In addition to the foregoing, Company shall file within sixty (60) business days an appropriate petition with the FPSC seeking approval of this Agreement as a Special Contract. In the event FPSC approval occurs after December 1, 2017, the Company shall retroactively adjust any rendered bills to Shipper for the period beginning December 1, 2017 through the FPSC approval date. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any such law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either party from contesting the validity of any such law, order, directive, rule, or regulation, nor shall anything in this Agreement be construed to require either party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the FPSC over this Agreement or any part thereof. In the event of such contestation, or in the event FPSC has not approved this Agreement as a Special Contract by December 1, 2017, and unless otherwise prohibited from doing so under this Section 12.10, Company shall continue to

transport and Shipper shall continue to take Gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule, or regulation shall prevent either party from performing hereunder, then neither party shall have any obligation to the other during the period that performance is precluded.

12.11 Law Governing Agreement; Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue for any action, at law or in equity, commenced by either party against the other and arising out of or in connection with this Agreement shall be before an agency or a court of the State of Florida having jurisdiction.

12.12 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates stated below.

SEBRING GAS SYSTEM, INC.

BY: Jerry H. Melendy, Jr.

NAME: Jerry H. Melendy, Jr.

TITLE: President

DATE: 06/30/2017

CHESAPEAKE UTILITIES CORPORATION d/b/a CENTRAL FLORIDA GAS

BY:

NAME: Kevin Webber

TITLE: Vice President

DATE: 6/30/17

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EXHIBIT A

TO

SPECIAL CONTRACT

BETWEEN

CHESAPEAKE UTILITIES CORPORATION

AND

SEBRING GAS SYSTEM, INC.

DATED: 06/30/2017

| **Description of Delivery Point(s)** | **Description of Points of Delivery** | **MDTQ in Dekatherms. Excluding Fuel Retention** |
|---|---|---|
| Interconnection with Florida Gas Transmission at the existing Arcadia gate station in Hardee County Florida. | Interconnections between the existing pipeline facility at or near Hwy 70 and Hwy 72 in DeSoto County, Florida.<br><br>Interconnection between proposed CUC meter and pressure reducing station on the east side of the Peace River in Arcadia, Florida to the Shipper's pipeline. | 720 |

The pipeline consists of a tap and valve, approximately 1 mile of 4.50" x 0.188" API 5L X52 pipe, a custody transfer meter and pressure reducing equipment. The design operating pressure is 250 psig. Shipper is relying upon Company's skill, judgment and expertise in operating and providing transportation service over the Pipeline and associated facilities.

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EXHIBIT A (page 2)

**Total MDTQ (Dekatherms):** 720

**MHTP:** 6%

**Fuel Retention Percentage:** 0.05%

**Monthly Reservation Charge:** Annual fixed rate of $136,812 billed in the following monthly increments.

| | |
|---|---|
| December through March | $12,401 |
| April through July | $11,401 |
| August through November | $10,401 |

**Natural Gas System:** Company will provide and arrange for the installation of a pipeline tap, pressure reducing equipment, and electronic metering equipment compatible with the Shipper's data gathering system to enable natural gas usage by Shipper. Shipper is relying on Company's skill, judgment and expertise in selecting and installing materials and equipment.

IN WITNESS WHEREOF, the parties hereto have executed this Exhibit A with their duly authorized officers on the dates stated below.

SEBRING GAS SYSTEM, INC.

BY: _____

NAME: Jerry H. Melendy, Jr.

TITLE: President

DATE: 06/30/2017

CHESAPEAKE UTILITIES CORPORATION d/b/a
CENTRAL FLORIDA GAS

BY: _____

NAME: Kevin Webber

TITLE: Vice President

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DATE: 6/30/17

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