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March 1, 2018

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Item 1

FILED 2/16/2018
DOCUMENT NO. 01281-2018
FPSC - COMMISSION CLERK

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: February 16, 2018

TO: Office of Commission Clerk (Stauffer)

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

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 2/16/2018 - 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.
20180023-TX	Teliax, Inc.	8918
20180017-TX	Lightower Fiber Networks II, LLC	8917

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.

Item 2

FILED 2/16/2018
DOCUMENT NO. 01280-2018
FPSC - COMMISSION CLERK

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: February 16, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Cowdery)
Division of Economics (Draper, Guffey)
Division of Engineering (King, Graves)
Division of Accounting and Finance (Fletcher)

RE: Docket No. 20180029-WS – Proposed amendment of Rule 25-30.433, F.A.C., Rate Case Proceedings.

AGENDA: 03/01/18 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

Rule 25-30.433, Florida Administrative Code (F.A.C), addresses the procedures that apply in water and wastewater rate case proceedings. Pursuant to Rule 25-30.433(1), F.A.C., the Commission shall make a determination on the quality of service provided by the utility in every rate case proceeding. In making its determination, the Commission evaluates three components of water and wastewater utility operations: (1) the quality of the utility's product (water and wastewater); (2) the operational conditions of the utility's plant and facilities; and (3) the utility's attempt to address customer satisfaction.

Following discussion at the September 7, 2017, Internal Affairs Meeting, the Commission directed staff to explore whether Rule 25-30.433, F.A.C., should be amended to move the second component used to evaluate the utility's quality of service – the infrastructure and operational

conditions of the plant and facilities – to a separate section of the rule. The rationale for this amendment to the rule was that operating conditions of the plant do not always affect the quality of service provided by the utility, so it should not be a required component in the Commission's evaluation of quality of service.

The notice of rule development for Rule 25-30.433, F.A.C., appeared in the November 30, 2017, edition of the Florida Administrative Register, Volume 43, Number 230. A staff rule development workshop was held on December 14, 2017. The Office of Public Counsel, Utilities, Inc. of Florida, U.S. Water Services Corp., and Black Bear Waterworks, Inc., Brendenwood Waterworks, Inc., Brevard Waterworks, Inc., Country Walk Utilities, Inc., Harbor Waterworks, Inc. HC Waterworks, Inc., Jumper Creek Utility Company, Lake Idlewild Utility Company, Lakeside Waterworks, Inc. LP Waterworks, Inc., Merritt Island Utility Company, North Charlotte Waterworks, Inc., Pine Harbour Waterworks, Inc., Raintree Waterworks, Inc., Seminole Waterworks, Inc., Sunny Hills Utility Company, and the Woods Utility Company (hereafter referred to as the "Collective Utilities") participated in the workshop and filed written post-workshop comments.

This recommendation addresses whether the Commission should propose the amendment of Rule 25-30.433, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54, 350.127(2), 367.0812(5), 367.0814, 367.121, and 367.1213, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission propose the amendment of Rule 25-30.433, Rate Case Proceedings, F.A.C?

Recommendation: Yes, the Commission should propose the amendment of Rule 25-30.433, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify proposed amended Rule 25-30.433, F.A.C., as a minor violation rule. (Cowdery, King, Graves, Fletcher, Draper, Guffey)

Staff Analysis: Staff recommends that the Commission propose the amendment of Rule 25-30.433, F.A.C., as set forth in Attachment A. Staff is recommending amendments to the rule for three reasons: (1) to move the Commission's consideration of the infrastructure and operational conditions of the plant and facilities from the Commission's evaluation of quality of service to a separate section of the rule; (2) to codify the information the Commission considers when evaluating the utility's quality of service and the infrastructure and operational conditions of the utility's plant and facilities; and (3) to delete language from the rule that conflicts with statutory requirements.

Introductory Paragraph – Deletion of Rule Waiver Language

The first unnumbered paragraph of Rule 25-30.433, F.A.C., contains a general statement that the rule applies to rate case proceedings unless the applicant or any intervenor demonstrates that the rule requirements create an unreasonable burden. If the applicant demonstrates an unreasonable burden, the rule states that the Commission will consider alternatives to the rule requirements and that any proposed alternatives must be filed with the minimum filing requirements.

Staff recommends that the language allowing an applicant to propose an alternative to the rule requirements if the applicant demonstrates that the requirements are unreasonably burdensome should be deleted from the rule. Section 120.542, F.S., governs the procedure by which a person subject to an agency rule may obtain a variance or waiver from a rule. The procedure currently set forth in Rule 25-30.433, F.A.C., conflicts with Section 120.542, F.S., and should be deleted.

Amendment of Subsection (1) - Quality of Service

Removal of Operational Conditions of the Utility's Plant and Facilities From Quality of Service Evaluation

Subsection (1) of Rule 25-30.433, F.A.C., states that the Commission will make a determination on the quality of service provided by the utility in every rate case. The rule states that this determination will be based on an evaluation of three separate components of water and wastewater utility operations: (1) quality of the utility's product (water and wastewater); (2) operational conditions of the utility's plant and facilities; and (3) the utility's attempt to address customer satisfaction.

Staff recommends that the operational conditions of the utility's plant and facilities component should be removed from this section of the rule as one of the factors the Commission considers in its evaluation of a utility's quality of service. Staff believes that this factor should be moved to a separate section of the rule, new Subsection (2), because operating conditions of the plant do

not always affect the quality of service provided to customers by the utility. In those instances where it does affect the quality of service provided to customers, it will be reflected in the quality of the utility's product (water) or in the utility's attempt to address customer satisfaction (water and wastewater), both of which will remain components in the Commission's quality of service evaluation under the amended rule.

Codification of Information Used To Evaluate Quality of Service

Staff also recommends that new paragraphs (1)(a) through (e) of Rule 25-30.433, F.A.C., be added to the rule to codify the information that the Commission currently considers when evaluating the quality of the utility's product (water) and the utility's attempt to address customer satisfaction (water and wastewater). This information ranges from the most recent chemical analyses for each water system to any testimony, complaints, and comments from the utility's customers and others with knowledge of quality of service.

The rule currently states that the Commission will consider sanitary surveys, outstanding citations, violations and consent orders on file with the Department of Environmental Protection (DEP) and county health departments or lack thereof over the preceding three year period. Staff recommends that the three year time period be removed from the rule. In evaluating quality of service, the Commission considers all information properly presented to it up until the close of the record of the hearing, not just information from the preceding three years. The amended rule language would codify existing agency practice.

In its post-workshop comments, OPC stated the rule should be "implemented with the customers' interests in mind." It expressed a concern that the rule language should capture both the oral and written methods that customers communicate with the Commission. Staff believes that the recommended rule language in paragraph (1)(d) – that the Commission will consider any testimony, complaints and comments of the utility's customers and others with knowledge of quality service – is broad enough to sufficiently cover the many ways that customer complaints and comments are provided to the Commission (e.g., both oral and written statements directly from customers, OPC testimony in its representation of customers, Commission staff testimony regarding customer complaints).

Definition of Rate Case Proceeding Under the Rule

In its post-workshop comments, OPC suggested that the terms "rate case" and "rate case proceeding" are not defined in the rule and should apply to all docketed proceedings in which the Commission sets a utility's rates, including grandfather certificate proceedings and original certificate proceedings with existing rates. In response to OPC's comments, the Collective Utilities state that the rule should not apply to grandfather certificate proceedings or original certificate proceedings with existing rates for three reasons: (1) the Commission typically approves the existing rates for such utilities unless there is a concern or finding of potential overearnings; (2) the Commission typically does not establish rate base and/or audit the operating expenses of the utilities during certificate dockets; and (3) certificate cases are under different statutory authority than rate cases.

Staff believes that expanding the rule to certificate dockets could create confusion and result in unintended consequences. For instance, it may mean that customer service hearings would need

to be held in certificate dockets and MFRs would need to be filed with certificate applications. Thus, staff does not recommend that the rule be expanded to grandfather certificate proceedings and original certificate proceedings with existing rates, as suggested by OPC.

Staff, however, agrees with OPC to the extent that the rule is currently unclear as to whether it applies to staff assisted rate cases and limited proceeding rate cases and recommends that the Commission amend the Law Implemented section of the rule to include Section 367.0814, F.S., (staff assisted rate cases) and Section 367.0822, F.S., (limited proceeding rate cases) to reflect that the rule applies to these rate case proceedings in addition to general rate cases filed under Section 367.0812, F.S.

New Subsection (2) – The Commission's Evaluation of the Infrastructure and Operational Conditions of the Utility's Plant and Facilities

As discussed above, staff recommends that the Commission's evaluation of the operational conditions of the utility's plant and facilities should be deleted from Subsection (1) of Rule 25-30.433, F.A.C., and a new Subsection (2) should be created to address this aspect of utility service. Staff recommends this amendment to the rule because, as discussed above, operating conditions of the plant do not always affect the quality of service provided by the utility.

At the workshop, OPC initially expressed concern with moving the operational conditions of the utility's plant and facilities to a separate section of the rule, stating that it is a component of the utility's quality of service. OPC did not address this concern in its post-workshop comments.

Staff does not believe that moving this component to a separate section of the rule will impact the Commission's ability to review the infrastructure and operational conditions of the plant and facilities to ensure the safe, efficient, and sufficient service to utility customers, as mandated by Section 367.111, F.S. As discussed above, in those instances where the operational condition of the utility's plant and facilities affects quality of service provided to customers, it will be reflected in the quality of the utility's product (water) or in the utility's attempt to address customer satisfaction (water and wastewater), both of which will remain components in the Commission's quality of service evaluation under the amended rule. If the operational conditions of the plant have not resulted in customer complaints or adversely affected the quality of the utility's product, it will not impact the Commission's evaluation of the quality of service provided by the utility.

Nonetheless, the Commission will continue to have the authority under new Subsection (2) of the rule to evaluate the utility's management of the utility's operations and facilities. If the Commission finds that the utility's infrastructure and operational conditions of the plant and facilities do not meet the requirements with Commission Rule 25-30.225, F.A.C., which sets forth the standard for a utility's plant and facilities, the Commission could, pursuant to Section 367.111, F.S., reduce the utility's return on equity until the standards are met or institute other remedial measures, such as reducing the utility president's salary or imposing a fine on the utility, pursuant to Section 367.161, F.S., to bring the utility into compliance with Commission statutes, rules, and orders.

Renumbered Subsection (3) – Working Capital

This subsection addresses working capital. OPC commented that this subsection should be amended to exclude deferred rate case expense in the balance sheet method of working capital and to exclude rate case expense amortization from O&M expenses for purposes of calculating the formula method of working capital for Class B and C utilities. OPC noted that the Commission follows Section 367.081(9), F.S., which stated: "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." OPC believes that the rule should be amended accordingly to be in compliance with this statute and Commission practice and policy.

OPC is correct that the Commission in complying with Section 367.081(9), F.S., excludes deferred rate case expense in the balance sheet method of working capital for Class A utilities and excludes rate case expense amortization from O&M expenses for purposes of calculating the formula method of working capital for Class B and C utilities. However, adding the language suggested by OPC to the rule would not be required for implementation of the statute, because it is already required by the language of Section 367.081(9), F.S. In adopting rules, agencies are not to reiterate or paraphrase statutory material as part of the rule language. See Section 120.545(1)(c), F.S. For this reason, staff does not recommend that renumbered subsection (3) be amended.

Renumbered Subsection (11) – Right of Access and Continued Use of Land

Section 367.1213, F.S., requires a utility to own the land or possess the right to continued use of the land upon which treatment facilities are located. This section provides the Commission with the authority to adopt rules to implement this statute.

In renumbered subsection (11), staff recommends that the rule language be amended to reflect the language used in the statute. Staff further recommends that the Commission add language to the rule, consistent with Commission rules addressing applications for original certificates (Rule 25-30.034(1)(m), F.A.C.), applications for amendment of certificates (Rule 25-30.036(1)(e), F.A.C.), and applications for transfer of certificates (Rule 25-30.037(2)(s), F.A.C.), that documentation demonstrating continued use of the land shall be in the form of a recorded deed, recorded quit claim deed accompanied by title insurance, recorded lease, such as a 99-year lease, or recorded easement.

In its post-workshop comments, OPC questioned why the rule is limited to only treatment facilities, stating that a utility should be required to have the right of access and continued use of land upon which all of its facilities and equipment are located. OPC states that this should include the utility's water source of supply plant, wastewater disposal, wastewater reuse, water transmission and distribution, and wastewater collection lines.

In response to OPC's comments, Utilities, Inc. of Florida states that it is unaware of "any problem that would compel or justify a change in the status quo." It further states that obtaining such documentation would have a "monumental" impact on a utility the size of Utilities, Inc. of Florida and would result in "substantial additional rate case expense."

The Collective Utilities also disagreed with OPC's comments. They stated that OPC's suggestion would expand the rule beyond the statutory authority of Section 367.1213, F.S., and that it appears to be a "solution in search of a problem that does not exist."

Section 367.1213, F.S., only requires that a utility own the land or possess the right to continued use of the land upon which treatment facilities are located. Staff recommends that the Commission not adopt OPC's suggested rule language, as it would expand the rule beyond its statutory authority.

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 B. As required by Section 120.541(2)(a)1., F.S., the SERC analysis includes whether the rule 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 5 years after implementation. Section 120.541(2)(a)1., F.S. None of the impact/cost criteria will be exceeded as a result of the recommended revisions.

The SERC concludes that the rule amendments will likely not directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in Florida within 1 year after implementation. Further, the SERC concludes that the rule 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 5 years of implementation. Thus, the rule amendments do not require legislative ratification, pursuant to Section 120.541(3), F.S. In addition, the SERC states that the rule amendments would have no impact on small businesses, would have 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. The SERC states that transactional costs likely to be incurred by individuals and entities required to comply with the requirements of the rule are expected to be minimal.

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, Rule 25-30.433, F.A.C., is on the Commission's list of rules designated as minor violations. If the Commission proposes the amendment of Rule 25-30.433, F.A.C., the rule would continue to be considered a minor violation rule. Therefore, for purposes of filing the amended rule for adoption with the Department of State, staff recommends that the Commission certify proposed amended Rule 25-30.433, as minor violation rules.

Conclusion

The Commission should propose the amendment of Rule 25-30.433, F.A.C., as set forth in Attachment A. Staff recommends that the Commission certify proposed amended Rule 25-30.433, F.A.C., as a minor violation rule.

Issue 2: Should this docket be closed?

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

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

25-30.433 Rate Case Proceedings.

In a rate case proceeding, the following provisions shall apply.~~, unless the applicant or any intervenor demonstrates that these rules result in an unreasonable burden. In these instances, fully supported alternatives will be considered by the Commission. Any alternatives proposed by the utility must be filed with the minimum filing requirements.~~

~~(1)The Commission in every rate case shall make a determination of the quality of service provided by the utility. This shall be derived from an evaluation of three separate components of water and wastewater utility operations: quality of utility's product (water and wastewater); operational conditions of utility's plant and facilities; and the utility's attempt to address customer satisfaction. Sanitary surveys, outstanding citations, violations and consent orders on file with the Department of Environmental Protection (DEP) and county health departments or lack thereof over the preceding 3-year period shall also be considered. DEP and county health department officials' testimony concerning quality of service as well as the testimony of utility's customers shall be considered.~~

(1) The Commission in every rate case shall make a determination of the quality of service provided by the utility by evaluating the quality of the utility's product (water) and the utility's attempt to address customer satisfaction (water and wastewater). In making this determination, the Commission shall consider:

(a) The most recent chemical analyses for each water system as described in Rule 25-30.440(3), F.A.C.;

(b) Any Department of Environmental Protection (DEP) and county health department citations, violations and consent orders that address quality of service;

(c) Any DEP and county health department officials' testimony concerning quality of service;

(d) Any testimony, complaints and comments of the utility's customers and others with

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knowledge of the utility's quality of service; and

(e) Any utility testimony and responses to the information provided in paragraphs (1)(a) – (d) above.

(2) In order to ensure safe, efficient, and sufficient service to utility customers, the Commission shall consider whether the infrastructure and operational conditions of the plant and facilities are in compliance with Rule 25-30.225, F.A.C. In making this determination, the Commission shall consider:

(a) Any testimony of DEP and county health department officials;

(b) Inspections, including sanitary surveys for water systems and compliance evaluation inspections for wastewater systems; citations, violations and consent orders issued to the utility;

(c) Any testimony, complaints and comments of the utility's customers and others with knowledge of the infrastructure and operational conditions of the utility's plant and facilities; and

(d) Any utility testimony and responses to the information provided in paragraphs (2)(a) – (c) above.

(3)~~(2)~~ Working capital for Class A utilities shall be calculated using the balance sheet approach. Working capital for Class B and C utilities shall be calculated using the formula method (one-eighth of operation and maintenance expenses).

(4)~~(3)~~ Used and useful debit deferred taxes shall be offset against used and useful credit deferred taxes in the capital structure. Any resulting net debit deferred taxes shall be included as a separate line item in the rate base calculation. Any resulting net credit deferred taxes shall be included in the capital structure calculation. No other deferred debits shall be considered in rate base when the formula method of working capital is used.

(5)~~(4)~~ The averaging method used by the Commission to calculate rate base and cost of

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capital shall be a 13-month average for Class A utilities and the simple beginning and end-of-year average for Class B and C utilities.

(6)~~(5)~~ Non-used and useful adjustments shall be applied to the applicable depreciation expense. Property tax expense on non-used and useful plant shall not be allowed.

(7)~~(6)~~ Charitable contributions shall not be recovered through rates.

(8)~~(7)~~ Income tax expense shall not be allowed for subchapter S corporations, partnerships or sole proprietorships.

(9)~~(8)~~ Non-recurring expenses shall be amortized over a 5-year period unless a shorter or longer period of time can be justified.

(10)~~(9)~~ 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.

(11)~~(10)~~ A utility is required to have the right of access and continued use of ~~own~~ the land upon which the utility treatment facilities are located~~, or possess the right to the continued use of the land, such as a 99-year lease~~. Documentation of continued use shall be in the form of a recorded warranty deed, recorded quit claim deed accompanied by title insurance, recorded lease such as a 99-year lease, or recorded easement. ~~The Commission may consider a written~~

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~~easement or other cost-effective alternative.~~

(12)~~(11)~~ In establishing an authorized rate of return on common equity, a utility, in lieu of presenting evidence, may use the current leverage formula adopted by Commission order. The equity return established shall be based on the equity leverage order in effect at the time the Commission decides the case.

(13)~~(12)~~ Nonutility investment should be removed directly from equity when reconciling the capital structure to rate base unless the utility can show, through competent evidence, that to do otherwise would result in a more equitable determination of the cost of capital for regulatory purposes.

(14)~~(13)~~ Interest expense to be included in the calculation of income tax expense shall be the amount derived by multiplying the amount of the debt components of the reconciled capital structure times the average weighted cost of the respective debt components. Interest expense shall include an amount for the parent debt adjustment in those cases covered by Rule 25-14.004, F.A.C. Interest shall also be imputed on deferred investment tax credits in those cases covered by 26 CFR Part 1, s. 1.46-6(b)(2)(i), (3) and (4)(ii) issued May 22, 1986 and effective for property constructed or acquired on or after August 15, 1971.

Rulemaking Authority 350.127(2), 367.0812(5), 367.0814, *367.121, 367.1213 FS. Law Implemented 367.081, 367.0812(1), 367.0814, 367.0822, 367.1213, ~~376.1213~~ FS. History–New 11-30-93, Amended 12-14-93* ____________.

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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: February 13, 2018

TO: Kathryn Gale Winter Cowdery, Senior Attorney, Office of the General Counsel

FROM: Sevini K. Guffey, Public Utility Analyst I, Division of Economics S.K.G.

RE: Statement of Estimated Regulatory Costs (SERC) for Proposed Amendments to Rule 25-30.433, Florida Administrative Code (F.A.C.)

The purpose of this rulemaking initiative is to: (1) delete language from the rule that conflicts with statutory requirements; (2) move the Commission's consideration of the infrastructure and operational conditions of the plant and facilities from the Commission's evaluation of quality of service to a separate section of the rule; (3) codify the information the Commission considers when evaluating the utility's quality of service; (4) codify the information the Commission considers when evaluating the infrastructure and operational conditions of the utility's plant and facilities; and (5) amend renumbered subsection (11) of the rule to reflect statutory language related to the right of access and continued use of the land upon which utility treatment facilities are located.

The attached SERC addresses the considerations required pursuant to Section 120.541, Florida Statutes (F.S.). A staff rule development workshop was held on December 14, 2017 to solicit input on the proposed rule revisions.

The proposed rule revisions are not imposing any new regulatory requirements. The SERC analysis indicates that the proposed rule 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. The proposed rule amendment would have no impact on small businesses, would have no implementation cost on the Commission or other state and local government entities, and would have no impact on small cities or counties. None of the impact/cost criteria established in Section 120.541(2)(a), F.S., will be exceeded as a result of the proposed revisions.

Cc: Draper, Daniel, Shafer, King, SERC file

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-30.433, 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 ☒

(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: A summary of the recommended rule revisions is included in the attached memorandum to Counsel. Specific elements of the associated economic analysis are discussed below in Sections B through F of this SERC. Staff believes that none of the impacts/cost criterial established in Paragraph 120.541(2)(a), F.S. will be exceeded as a result of the proposed rule revisions. The proposed rule revisions are not imposing any new regulatory requirements, only codifying existing rule requirements. The proposed revisions are intended to make the requirements more specific and reformatting to make the rule consistent with the certification rules.

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.

Potentially affected entities include 132 investor-owned water and wastewater utilities that serve approximately 170,242 Florida customers. Water and wastewater utilities which will come under the jurisdiction of the Commission in the future also would be required to comply.

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

The 132 investor-owned water and wastewater utilities that are located in 38 counties.

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.

(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. The 132 investor-owned water and wastewater utilities already are required to comply with the rules that are being revised to better align the rule with the certification rules and there are no new regulatory requirements being proposed in the revisions. Staff believes that there would be no additional transactional costs associated with the proposed revisions. If a utility were to incur new costs, staff believes that it will be minimal.

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

E. An analysis of the impact on small businesses, and small counties and small cities:

3

[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.

(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.

Item 3

FILED 2/16/2018
DOCUMENT NO. 01292-2018
FPSC - COMMISSION CLERK

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: February 16, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Harper)
Office of Industry Development and Market Analysis (Crawford)

RE: Docket No. 20170273-EQ – Petition by Sunrun Inc. for declaratory statement concerning leasing of solar equipment.

AGENDA: 03/01/18 – Regular Agenda – Parties May Participate at the Commission's Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: 03/29/18 (Final Order must be issued by this date pursuant to Section 120.565(3), Florida Statutes)

SPECIAL INSTRUCTIONS: None

Case Background

On December 29, 2017, Petitioner, Sunrun Inc. (Sunrun) filed a petition for a declaratory statement (Petition). Sunrun asks the Commission to declare that based on the facts presented by Sunrun:

(1) Sunrun's residential solar equipment lease does not constitute a sale of electricity;

(2) Offering its solar equipment lease to customers in Florida will not cause Sunrun to be deemed a public utility under Florida law; and

(3) The residential solar equipment lease described in its petition will not subject Sunrun or Sunrun's customer-lessees to regulation by the Commission.

Pursuant to Rule 28-105.0024, Florida Administrative Code (F.A.C.), a Notice of Declaratory Statement was published in the January 4, 2018, edition of the Florida Administrative Register, informing interested persons of the Petition. There were no requests to intervene filed. However, on February 5, 2018, Gulf Power Company (Gulf Power) and Florida Public Utilities Company (FPUC) filed a motion to participate as amici curiae along with a memorandum of law setting forth a number of issues for consideration by the Commission. The motion was granted by Order No. PSC-2018-0080-PCO-EQ. Sunrun filed a response to the memorandum of law, providing additional information about its Petition. On February 14, 2018, Florida Electric Cooperatives Association, Inc., (FECA) filed a letter in support of Gulf Power and FPUC's motion and memorandum of law.

This recommendation addresses Sunrun's Petition for Declaratory Statement. Pursuant to Section 120.565(3), Florida Statutes (F.S.), a final order must be issued within 90 days, which is March 29, 2018. The Commission has jurisdiction pursuant to Section 120.565, F.S., and Chapter 366, F.S.

Discussion of Issues

Issue 1: Should the Commission grant Sunrun's Petition for Declaratory Statement?

Recommendation: Yes. Based on the facts presented by Sunrun, the Commission should grant Sunrun's Petition and declare: (1) Sunrun's residential solar equipment lease does not constitute a sale of electricity; (2) offering its solar equipment lease to customers in Florida will not cause Sunrun to be deemed a public utility under Florida law; and (3) the residential solar equipment lease described in its Petition will not subject Sunrun or Sunrun's customer-lessees to regulation by the Commission. The Commission should also state that its declaration is limited to the facts described in Sunrun's Petition and would not apply to different, alternative facts. (Harper, Crawford)

Staff Analysis: Staff recommends the Commission grant Sunrun's Petition for Declaratory Statement based on the facts presented by Sunrun. Below is a more detailed explanation of staff's recommendation.

Law Governing Petitions for Declaratory Statements

Declaratory statements are governed by Section 120.565, F.S., and the Uniform Rules of Procedure in Chapter 28-105, F.A.C. Section 120.565, F.S., states, in pertinent part:

> (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
>
> (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, F.A.C., Purpose and Use of Declaratory Statement, provides:

> A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rule 28-105.002(5), F.A.C., requires a petition for declaratory statement to include a description of how the statutory provisions or orders on which a declaratory statement is sought may substantially affect the petitioner in the petitioner's particular set of circumstances. A party seeking a declaratory statement must not only show that it is in doubt as to the existence or nonexistence of some right or status, but also that there is a bona fide, actual, present, and practical need for the declaration. *State Department of Environmental Protection v. Garcia*, 99 So. 2d 539, 544-45 (Fla. 3d DCA 2011). A declaratory statement procedure is intended to enable

members of the public to definitively resolve ambiguities of law arising in the planning of their future affairs and to enable the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. *Department of Business and Professional Regulation, Div. of Pari-Mutuel Wagering v. Investment Corp. of Palm Beach*, 747 So. 2d 374, 382 (Fla. 1999).

Sunrun's Petition for Declaratory Statement

Sunrun's particular circumstances and facts

The Petition states that Sunrun has offices in Tampa, Florida, and is the nation's largest dedicated residential solar storage and energy services company with over 160,000 customers currently in 22 states and the District of Columbia. In Florida, Sunrun offers only its "cash solar product," which customers must purchase and pay for in full, upfront.[1]

Sunrun plans to offer leasing as an option in Florida for potential customer-lessees who prefer not to or cannot purchase and pay upfront for residential solar systems. Sunrun states that the Florida residential solar equipment lease will consist of a 20-year lease of solar panels with an option to include batteries. According to Sunrun, the residential solar equipment lease will include the following:

- Lease payments will be fixed for a 20-year lease term. The payment amounts will be based on a negotiated rate of return and will be independent of electric generation, production rates, or any other operational variable of the leased equipment.
- Sunrun will hold legal title to the leased equipment and receive the tax credits and depreciation benefits associated with the investment.
- Sunrun will have no control over the use of the equipment other than as the beneficiary of covenants requiring the customer-lessee to maintain the equipment in good repair.
- At the lease expiration, the customer-lessee will be able to purchase the solar equipment at fair market value, renew the lease on an annual basis, or require removal of the equipment.
- Sunrun will provide customary workmanship warrantees to protect the customer-lessees' home from damage during the installation process. The customer-lessees will be responsible for the costs for ongoing system maintenance through their monthly lease payment. Equipment warranties and maintenance services will be triggered by damage to or malfunction of the system, or its components, and will not be dependent upon electrical generation or system production rates.
- The customer-lessee will be responsible for the cost of non-warranty maintenance, repair and replacement.

[1]Based upon staff's review of information on Sunrun's website, it currently offers potential customers in Florida two options to purchase and own a solar energy system. Customers may either pay upfront the cost of the system, including installation, or customers may finance the cost of the system, including installation, and make monthly payments. *See* https://www.sunrun.com/solar-by-state/fl.

- Once the system is installed and interconnected, the operational burden and risk of maintaining the equipment and assuring adequate solar exposure conditions will be borne by the customer-lessee.
- The customer-lessee will be responsible for the costs of applicable property taxes and insurance.
- Lease terms and conditions will be compliant with applicable IRS and accounting standards.

Amici Curiae Gulf Power and FPUC raise issues that they believe the Commission should consider when evaluating Sunrun's Petition. Their issues all relate to the single fact that Sunrun did not file a lease agreement for the Commission's review. For example, they state that the lease would provide information as to energy performance guarantees for the solar systems, whether the lessee is entitled to compensation via separate bill credits or refunds in the event that performance guarantees are not met, and information as to the nature of the obligations retained by the lessor as compared to the lessee. Gulf Power and FPUC assert that without Sunrun's proposed leasing agreement, there is ambiguity as to whether the lease program is compliant with Florida law and suggest that the Commission's Order on Declaratory Statement address such compliance issues. Amici Curiae also provide marketing materials from Sunrun's activities in other jurisdictions.[2]

In its response to Gulf Power and FPUC's memorandum of law, Sunrun states that its Petition clearly outlines how the lease payments will not be linked to electricity production. Sunrun points to the places in the Petition where it addresses the lease components as to guarantees, warranties, and obligations of the lessor and lessees. Sunrun reiterates that its Petition provides that the customer-lessee's payments will be fixed in amount throughout the lease term and without regard to the level of electricity production or output of lease equipment.

Also in response, Sunrun states that the Petition is consistent with Rule 26-6.065(2), F.A.C., and Order 17009, issued December 22, 1986, in Docket No. 860725-EU, *In re: Petition of Monsanto Company for a declaratory statement concerning the lease financing of a cogeneration facility* (*Monsanto)*, as Sunrun's customer-lessees will be solely responsible for all costs and expenses associated with the maintenance, repair, replacement and operation of the leased equipment, and the lease payments will not be dependent on electric generation.

Sunrun concludes that providing a lease agreement is not required because it is seeking the affirmative declaration from the Commission in good faith before investing any further time, effort, and expense with this proposed project. Moreover, it states that the relevant statutes and rules do not require it to provide contractual documentation before the agency may issue a declaratory statement. Sunrun notes its activities in other jurisdictions are irrelevant to its Petition in Florida.

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[2]As mentioned in the case background, FECA filed a letter of support for Gulf Power and FPUC's motion and memorandum of law.

Statutes, Rules, and Commission Orders Applicable to Sunrun's Facts

The statute to be applied to this Petition is Section 366.02(1), F.S., which states, in pertinent part, that the Commission's jurisdiction extends to public utilities defined as:

> Every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas…to or for the public within the state.

The rule that applies to this Petition is Rule 25-6.065, F.A.C., which provides, in pertinent part:

> The term "customer-owned renewable generation" does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third party.

The Commission order applicable to Sunrun's Petition is Order 17009, issued December 22, 1986, in Docket No. 860725-EU, *In re: Petition of Monsanto Company for a declaratory statement concerning the lease financing of a cogeneration facility*. In *Monsanto*, the Commission declared that the Monsanto Company's on-site lease financing of its cogeneration facility did not result in a retail sale of electricity, did not cause the lessor to be deemed a public utility, and did not subject either the company or its lessor to regulation by the Commission.

Declaratory Statement Requested

Sunrun asks the Commission to declare that based on the facts presented by Sunrun:

(1) Sunrun's residential solar equipment lease does not constitute a sale of electricity;

(2) Offering its solar equipment lease to customers in Florida will not cause Sunrun to be deemed a public utility under Florida law; and

(3) The residential solar equipment lease described in its petition will not subject Sunrun or Sunrun's customer-lessees to regulation by the Commission.

In its Petition, Sunrun states that the declaratory statement procedure can assist Sunrun with planning its future conduct and will help avoid costly administrative litigation by selecting the proper course of action in advance. Sunrun will only offer and market the residential solar equipment lease program in Florida if the Commission grants, in the affirmative, its request for a declaratory statement, which contains specific facts as required by Section 120.565(3) F.S. For this reason, Sunrun is a substantially affected person and has standing to bring its Petition.

Staff's Analysis of Sunrun's Petition for Declaratory Statement

Sunrun's Petition asks the Commission whether Sunrun's proposed leasing program triggers the Commission's jurisdiction under Section 366.02(1), F.S. The Commission has issued previous orders on petitions for declaratory statement that have addressed the concept of what constitutes a public utility in terms of leasing cogenerators or the use of energy created by cogenerators.

These orders stand for the general proposition that where a customer pays a flat fee to an energy generation equipment supplier for personal use and that fee is not based on electric production, there is no jurisdictional sale of electricity. The *Monsanto* declaratory statement is on point in this instance.

In *Monsanto,* the company asked the Commission for a declaratory statement to recognize that the company's use of lease-financing for equipment to increase the company's own on-site generation would not render the company subject to the Commission's jurisdiction. In its petition, the company stated that it would replace older, less efficient natural gas boilers with a combustion turbine capable of using either oil or natural gas as a fuel, and would finance this project by leasing the necessary equipment. The company stated that it would pay a fixed amount for the lease, an amount that was not tied to energy production. The lease would run for a minimum of five years, after which the company could elect to renew it, purchase the equipment, or pay for the removal of the equipment. The company stated that it would pay for the fuel and would be responsible for any operation and maintenance costs for the equipment. The Commission answered the declaratory statement in the affirmative and held that Monsanto's plan would not trigger the Commission's jurisdiction because the company's lease financing of its cogeneration facility did not result in a retail sale of electricity, did not cause the company's lessor to be deemed a public utility, and did not subject either the company or its lessor to regulation by the Commission.

Like *Monsanto,* Sunrun's fixed lease payments are independent of electric generation and production. Sunrun's residential solar equipment lease program will allow individual customers to generate their electricity for personal use. According to Sunrun's facts, the customer will be the end-user and will not engage in the retail sale of electricity.

Additionally, Sunrun's lease does not run afoul of Order No. 18302, issued in October 16, 1987, in Docket No. 8700446-EU, *In re: Petition by PW Ventures Inc., for a Declaratory Statement in Palm Beach County* (*PW Ventures*). The Commission's holding in *PW Ventures* established that private companies cannot use cogenerators to engage in unregulated retail sales to avoid Commission jurisdiction.

In the *PW Ventures* order, the Commission denied PW Ventures Inc.'s Petition for Declaratory Statement for Commission approval to construct, own, and operate a cogeneration project, because the facts presented in the petition constituted a retail sale of electricity to another independent private company. In its order, the Commission explicitly held that this decision was consistent with its prior order in *Monsanto*. In *PW Ventures, Inc. v. Nichols*, 533 So. 2d. 281, 284 (1988), the Florida Supreme Court affirmed the Commission's order and opined that while limiting the sale of electric service was in the public interest, there was no prohibition on self-generation.

The facts in Sunrun's Petition are consistent with Order No. 23729, issued in November 7, 1990, in Docket No. 900699-EQ, *In re: Petition of Seminole Fertilizer Corporation for a declaratory statement concerning the financing of a cogeneration facility* (*Seminole*). In *Seminole*, the Commission reiterated its holding in *Monsanto* and held that there was no retail sale of

electricity triggering the Commission's jurisdiction when a private company expanded its cogeneration equipment to lease the energy equipment to its subsidiary.

Moreover, the facts set forth in Sunrun's Petition are also consistent with Rule 25-6.065, F.A.C., which addresses interconnection and net metering of customer-owned renewable generation. Rule 25-6.065(2)(a), F.A.C., specifically states that "[t]he term 'customer-owned renewable generation' does not preclude the customer of record from contracting for the purchase, lease, operation, or maintenance of an on-site renewable generation system with a third-party under terms and conditions that do not include the retail purchase of electricity from the third person." Gulf Power and FPUC point to Order No. PSC-13-0652-DS-EQ, issued Dec. 11, 2013, in Docket No. 130235-EQ, *In re: Petition for declaratory statement regarding co-ownership of electrical co-generation facilities in Hendry County by Southwest Renewable Fuels, LLC*, at p. 6 (*Southeast*), for the proposition that Sunrun must provide a lease agreement for the Commission's review. Staff disagrees.

In *Southeast*, the Commission denied the declaratory statement petition because the companies failed to provide the business arrangement contract documentation. The Commission determined that the business arrangement between Southeast Renewable Fuels, Inc., and its Confidential Partner would give rise to the possibility of a retail transaction between unrelated entities, which could fall within the definition of a public utility and invoke the Commission's regulatory jurisdiction. However, Sunrun's facts are different from the *Southeast* set of facts. The leasing agreement described in Sunrun's Petition outlines the relevant factors to show self-generation, which is more consistent with *Monsanto* than with *Southeast*. Sunrun's Petition can be distinguished from *Southeast* because there is no issue of two unrelated entities joining together to generate electricity for joint use and for compensation. Sunrun's Petition states that lessees would be leasing solar panels for the purposes of generating electricity for their own personal use, which is in contrast to the complex business arrangement outlined in *Southeast.*

Staff believes that Sunrun's Petition contains the necessary facts to support its request for a declaratory statement, and that production of a lease agreement is unnecessary for the requested relief. The Petition describes the proposed lease agreement obligations for the lessor and lessee with respect to both warranty and repairs.[3] While Gulf Power and FPUC speculate about facts that may be included in the lease agreement that are contrary to those presented in the Petition, it is well settled that declaratory statements are inherently limited to the facts upon which they are based.[4] When the Commission issues the declaratory statement, it will be controlling only as to the facts relied upon and not as to other, different or additional facts. If Sunrun attempted to go outside the clear bounds of its Petition as suggested by Gulf Power or FPUC by, for example, providing energy performance guarantees and other obligations in the lease that were not presented in their declaratory statement set of facts, then the Commission's declaratory statement would not apply to these alternate set of facts.

[3]See Sunrun Petition at 2, 3, 7 and 14.

[4]Rule 28-105.003, F.A.C. (agency may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts). See also Order No. 23729, issued November 7, 1990, in Docket No. 900699-EQ, *In re: Petition of Seminole Fertilizer Corporation for a declaratory statement concerning the financing of a cogeneration facility.*

Conclusion

For the reasons set forth above, staff recommends that the Commission grant Sunrun's Petition for Declaratory Statement and declare that based on the facts presented by Sunrun: (1) Sunrun's residential solar equipment lease does not constitute a sale of electricity; (2) offering its solar equipment lease to customers in Florida will not cause Sunrun to be deemed a public utility under Florida law; and (3) the residential solar equipment lease described in its petition will not subject Sunrun or Sunrun's customer-lessees to regulation by the Commission. The Commission should also state that its declaration is limited to the facts described in Sunrun's Petition and would not apply to different, alternative facts.

Issue 2: Should this docket be closed?

Recommendation: Yes, if the Commission votes to either grant or deny the Petition for Declaratory Statement, the docket should be closed.

Staff Analysis: Whether the Commission grants or denies Sunrun's Petition, a final order will be issued. Upon issuance of the final order, the docket should be closed.

Item 4

FILED 2/16/2018
DOCUMENT NO. 01291-2018
FPSC - COMMISSION CLERK

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: February 22, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of the General Counsel (Page) PHP S.M.C.
Division of Economics (Daniel, Hudson) SH

RE: Docket No. 20170259-WU – Petition for declaratory statement regarding the applicability of approved water service availability charges in Lake County, by Harbor Waterworks, Inc.

AGENDA: 03/01/18 – Regular Agenda – Petition for Declaratory Statement - Participation is at the Commission's discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: March 12, 2018 – Order must be issued by this date pursuant to Section 120.565(3), F.S.

SPECIAL INSTRUCTIONS: None

Case Background

On December 12, 2017, Harbor Waterworks, Inc. (Harbor Waterworks), a water and wastewater utility regulated by the Commission, filed a Petition for Declaratory Statement (Petition) regarding the applicability of Commission approved water service availability charges to an irrigation connection for homes in Phase 6 of the Harbor Hills subdivision. Pursuant to Rule 28-105.0024, Florida Administrative Code (F.A.C.), a Notice of Declaratory Statement was published in the December 14, 2017 edition of the Florida Administrative Register to inform interested persons of the petition.

On January 4, 2018, Harbor Hills Development LP (Development) and Harbor Hills Homeowners' Association, Inc. (Association) filed a Petition to Intervene and requested full

party status in the declaratory statement proceeding. By Order No. PSC-2018-0083-PCO-WU, issued February 16, 2018, intervention was granted to the Development and the Association. The Intervenors filed a response to Harbor Waterworks' Petition for Declaratory Statement on February 19, 2018.

This recommendation addresses Harbor Waterworks Inc.'s Petition for Declaratory Statement. Pursuant to Section 120.565(3), F.S., a final order on the Petition for Declaratory Statement must be issued within 90 days. The statutory deadline for this declaratory statement proceeding is March 12, 2018. The Commission has jurisdiction pursuant to Section 120.565 and Chapter 367, F.S.

Discussion of Issues

Issue 1: Should the Commission grant Harbor Waterworks' Petition for Declaratory Statement?

Recommendation: The Commission should grant the Petition to the extent that it addresses the very narrowly framed question posed in staff's analysis and declare that Order Nos. 23039 and 23039-A, which established service availability charges for Harbor Waterworks, apply to the utility's irrigation connections. The Commission should state that the declaratory statement is controlling only as to the facts described in Harbor Waterworks' Petition and would not apply to different, alternative facts. (Page)

Staff Analysis: The Commission should grant the Petition and declare that the service availability charges established in Order Nos. 23039 and 23039-A, apply to Harbor Waterworks' irrigation connections. Below is staff's analysis.

Law Governing Petitions for Declaratory Statement

Section 120.565, F.S., sets forth the necessary elements of a petition for declaratory statement. This section provides:

> (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
>
> (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule or order that the petitioner believes may apply to the set of circumstances.

Rule 28-105.001, FA.C., states the purpose of a declaratory statement:

> A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Rule 28-105.002(5), F.A.C., requires that a petition for declaratory statement include a description of how the statutes, rules or orders may substantially affect the petitioner in the petitioner's particular set of circumstances. A party seeking a declaratory statement must not only show that it is in doubt as to the existence of some right or status, but also that there is a bona fide, actual, present, and practical need for the declaration. *State Department of Environmental Protection v. Garcia*, 99 So. 2d 539, 544-45 (Fla. 3d DCA 2011). A declaratory statement is intended to enable members of the public to definitely resolve ambiguities of law in the planning of their future affairs and to enable the public to obtain definitive binding advice as to the applicability of agency law to a particular set of facts. *Department of Business and*

Professional Regulation, Div. of Pari-Mutual Wagering v. Investment Corp. of Palm Beach, 747 So. 2d 374, 382 (Fla. 1999).

Harbor Waterworks' Petition for Declaratory Statement

Harbor Waterworks' particular circumstances and facts

Harbor Waterworks' water service availability charges, including the plant capacity charge, main extension charge, meter installation fee, and tap fee, were established by the Commission in Order No. 23039, Docket No. 890554-WU, issued June 6, 1990, *In re: Application of Lake Griffin Utilities, Inc. for Water Certificate in Lake County*. Order No. 23039 was amended by Order No. 23039-A, issued June 11, 1990, to include allowance for funds prudently invested (AFPI) charges that were inadvertently omitted from the prior order. The water service availability charges for Harbor Waterworks have not been revised by the Commission since that time.

According to Order Nos. 23039 and 23039-A and Harbor Waterworks' approved tariffs, the water service availability charges for both Main Extension Charges and Plant Capacity Charges are based upon one equivalent residential connection set at 350 gallons per day (GPD). This equates to approximately 10,500 gallons per month (350 GPD x 30 days).

As stated in the Petition, based on historical actual water usage for the 12 month period October 2016 through September 2017, the average residential water usage for Harbor Waterworks is 38,751 gallons per month for all existing customers. The average irrigation only usage for the existing homes in Phase 6 for the same 12 month period was approximately 44,000 gallons a month. The utility asserts that this does not include the potable water used inside the homes, which goes through a separate meter. Harbor Waterworks contends that these irrigation connections are placing additional capacity demands upon the existing water system.

Harbor Waterworks states that due to excessive water consumption, it received a letter of non-compliance with its St. Johns River Water Management-issued consumptive use permit. Also, Harbor Waterworks states that it is in the process of obtaining additional land to install a back-up well to meet the current demand on the water system in case one of the existing wells becomes inoperable. Harbor Waterworks asserts that without the additional back-up well, it would be unable to meet the current demand in the event one of the existing wells cannot operate.

The Development has been and is presently building and selling homes in the Phase 6 area of the Harbor Hills subdivision. There are approximately 53 residential homes currently being served by Harbor Waterworks in Phase 6. The Development previously installed separate irrigation lines in Phase 6 that are interconnected into Harbor Waterworks potable water mains in the subdivision. The water provided via the irrigation main lines is finished potable water from Harbor Waterworks' water treatment system and distribution mains.

Harbor Waterworks states that it recently bought the separate irrigation lines installed by the Development that are presently used to provide irrigation water service to its customers in Phase 6. According to the Petition, prior to its purchase of the separate irrigation lines from the Development, Harbor Waterworks was only collecting a meter installation charge for the new homes in Phase 6.

After Harbor Waterworks bought the separate irrigation lines, the Development requested a statement of charges from Harbor Waterworks. On October 25, 2017, the utility provided an invoice of charges to the Development that indicated the service availability charges for new construction homes in Phase 6. The utility attached the invoice to its Petition. The charges for the potable water connection and the separate irrigation water lines were identified. The Petition states that the Development has contested the separate charges for the irrigation service.

Statutes, Rules, and Commission Orders Applicable to Harbor Waterworks' Facts

In its Petition, Harbor Waterworks states that its declaratory statement is sought on the following statutes, rules, and orders:

Section 367.091(4), F.S., which states in part that:

> A utility may only impose and collect those rates and charges approved by the Commission for the particular class of service involved. A change in any rate schedule may not be made without commission approval.

Section 367.101(1), F.S., addresses service availability charges and states:

> The Commission shall set just and reasonable charges and conditions for service availability. The Commission by rule may set standards for and levels of service-availability charges and service-availability conditions. Such charges shall be just and reasonable.

Rule 25-30.515(8), F.A.C., defines an Equivalent Residential Connection as:

> (a) 350 gallons per day;
> (b) The number of gallons a utility demonstrates is the average daily flow for a single residential unit; or
> (c) The number of gallons which has been approved by the Department of Environmental Protection for a single residential unit.

Commission Order No. 23039, issued June 6, 1990, in Docket No. 890554-WU, *In re: Application of Lake Griffin Utilities, Inc. for Water Certificate in Lake County*, which set the service availability charges for Harbor Waterworks.

Commission Order No. 23039-A, issued June 11, 1990, in Docket No. 890554-WU, *In re: Application of Lake Griffin Utilities, Inc. for Water Certificate in Lake County*, which amended Order No. 23039 to include the AFPI charges for Harbor Waterworks that were inadvertently omitted from Order No. 23039.

Declaratory Statement requested by Harbor Waterworks

In paragraph 24 of its Petition, Harbor Waterworks requests that the Commission issue a declaratory statement confirming that at a minimum the second irrigation connection to homes in Phase 6 are subject to the FPSC approved service availability charges including:

a. Plant Capacity Charge,
b. Main Extension Charge,
c. Service Installation Charge,
d. Meter Installation Fee, and
e. AFPI charge.

Intervenors: The Development and The Association

The Development and the Association have intervened in this proceeding. They assert that the Petition is the incorrect procedural mechanism for the relief requested by the utility and that the utility should not be allowed to use this procedure as an "end around" of the application process for new charges and rates.

The Intervenors allege that the Petition seeks permission to impose and collect charges that are not contained in Order Nos. 23039 and 23039-A. They assert that to the extent Harbor Waterworks wants to collect charges not contained in the Orders and the utility's tariffs, Harbor Waterworks should apply for approval of new charges and rates. They assert that the charges contained in the invoice attached to the Petition effectively double the connection charges that were previously being imposed and collected.

They state that the separate charges for irrigation connections that Harbor Waterworks seeks to impose and collect are not permitted under applicable rules and are not warranted. They contend that while there may be separate lines for irrigation service, the irrigation lines are interconnected into the potable water mains in the subdivision: "Given that there is only one connection to the utility's main, there should only be one connection charge imposed."

The Intervenors further state that the utility has not provided any evidence demonstrating how the additional charges for irrigation actually relate to the cost incurred by the utility. They opine that "such evidence also would be important considering that the most recent annual report for Harbor Waterworks appears to show a rate of return for water services in excess of 24%."

Staff Analysis on Harbor Waterworks' Petition

Harbor Waterworks' has met pleading requirements to issue declaratory statement

The Development and the Association raise the issue of whether a declaratory statement is the proper procedural mechanism for the resolution of the question raised by Harbor Waterworks. The purpose of a declaratory statement is to address the applicability of statutory provisions, orders, or rules of the agency in particular circumstances. *See Chiles v. Department of State, Division of Elections*, 711 So. 2d 151, 154 (Fla. 1st DCA 1998). One of the purposes of a declaratory statement is to help avoid costly administrative litigation. *Id.* at 151; *Citizens of the State of Florida v. Florida Public Service Commission and Utilities, Inc.*, 164 So. 3d 58, 62 (Fla. 1st DCA 2015).

According to Harbor Waterworks' Petition, the Development requested service availability letters with the appropriate service availability charges for new construction of homes in Phase 6. Harbor Waterworks' Petition further states that the Development has contested the separate charges for the irrigation service.

In point of fact, Harbor Waterworks has assessed the fee; however, it has not collected the fee because the Development called into question the assessment. Rule 28-105.001, F.A.C., provides that a declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules or orders over which an agency has authority. Harbor Waterworks has set forth in its Petition that it has a question concerning the applicability of Order Nos. 23039 and 23039-A to its particular facts and circumstances. Further, in the absence or denial of a declaratory statement, staff believes that this situation may likely result in administrative litigation and that a declaratory statement may help avoid costly litigation. *See Chiles* 711 S. 2d at 151; *Citizens of the State of Florida*, 164 So. 3d at 62.

The Intervenors assert in their response to the Petition that Harbor Waterworks seeks permission to impose and collect charges that are not contained in Order Nos. 23039 and 23039-A and point to the invoice attached to the Petition as evidence thereof. However, the question Harbor Waterworks is asking the Commission to address may be framed very narrowly as whether the service availability charges established in Order Nos. 23039 and 23039-A apply to irrigation connections. As a result, staff does not believe that the Petition, as framed, is an "end around" of the application process for new charges and rates.

Declaratory Statement that should be issued

Staff recommends that the Commission declare that based on the facts set forth in Harbor Waterworks' Petition, the service availability charges established in Order Nos. 23039 and 23039-A apply to the utility's irrigation connections. Order No. 23039 states that the service availability charges established in the order apply to connections made on or after the stamped approval date on the tariff sheets. The Order does not distinguish between water connections and irrigation connections.

Service availability charges are designed to reimburse the utility for a portion of the cost of its facilities based on the customers' potential demand on the system. *See* Rule 25-30.530(3)(c)2., F.A.C. (stating that the costs to be charged to a particular customer shall be determined according to the hydraulic demand of the customer) and Rule 25-30.515(12), F.A.C. (stating that the main extension charge is determined on a hydraulic share basis). As the water provided via the irrigation connections is finished potable water from Harbor Waterworks' water treatment system and distribution mains, all water demand, including irrigation service, place a demand on Harbor Waterworks' potable water system. The service availability charges established by Order Nos. 23039 and 23039-A were designed to reimburse the utility for a portion of its investment in the facilities used to provide water service, including irrigation service.

The rationale as to why the Commission establishes service availability charges and why service availability charges would apply to irrigation connections is illustrated by the facts set forth in Harbor Waterworks' Petition. The utility alleges in its Petition that the irrigation connections are

placing additional capacity demands upon the existing water system. The demand a customer places on the water system should be the basis for determining the appropriate service availability charges. *See id.*

The Development and the Association assert that Harbor Waterworks is using the declaratory statement procedure in lieu of an application for new charges and rates. Staff disagrees. Harbor Waterworks has always had the ability under Order Nos. 23039 and 23039-A and its tariff to charge for additional demand any customer, including irrigation customers, may place on the system.

Rule 28-105.001, F.A.C., states that a declaratory statement is not the appropriate means for determining the conduct of another person. Staff agrees with the Intervenors that a declaratory statement proceeding is not the proper vehicle to change Commission-approved service availability charges. To the extent Harbor Waterworks' Petition may be construed as a request to increase the utility's service availability charges in Order Nos. 23039 and 23039-A and the utility's tariffs, the Petition should be denied. To the extent Harbor Waterworks may be requesting the Commission to confirm that the charges in the invoice attached to its Petition are correct or that the Development or the Association must pay the service availability charges assessed in the invoice, the Petition should also be denied.

Conclusion

For the reasons set forth above, staff recommends that the Commission should grant the Petition to the extent that it addresses the very narrowly framed question posed in staff's analysis and declare that Order Nos. 23039 and 23039-A, which established service availability charges for Harbor Waterworks, apply to the utility's irrigation connections. The Commission should state that the declaratory statement is controlling only as to the facts described in Harbor Waterworks' Petition and would not apply to different, alternative facts.

Issue 2: Should this docket be closed?

Recommendation: Yes, if the Commission votes to either grant or deny the Petition for Declaratory Statement, the docket should be closed.

Staff Analysis: Whether the Commission grants or denies the petition, a final order will be issued. Upon issuance of the final order, the docket should be closed.

Item 5

FILED 2/16/2018
DOCUMENT NO. 01282-2018
FPSC - COMMISSION CLERK

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: February 16, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Office of Industry Development and Market Analysis (Wooten, Bates)
Division of Economics (McCoy)
Office of the General Counsel (Cuello)

RE: Docket No. 20170217-TX – Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 8604, issued to Pac-West Telecomm, Inc., effective March 19, 2013.

AGENDA: 03/01/18 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On December 2, 2005, the Florida Public Service Commission issued competitive local exchange telecommunications company (CLEC) Certificate No. 8604 to Pac-West Telecomm, Inc. (Pac-West or Company). On April 30, 2007, Pac-West filed for Chapter 11 bankruptcy protection in the US Bankruptcy Court for the Western District of Texas – Austin Division. On December 8, 2011, the Federal Communications Commission (FCC) granted a transfer of control of Pac-West to UPH Holdings, Inc., which is not certificated in Florida, and the bankruptcy case was terminated on March 19, 2013. Pac-West has not paid regulatory assessment fees and penalties and interest for years 2013, 2014, 2015, 2016, and 2017. Uncollected regulatory assessment fees were written off as uncollectible in years 2011 and 2012 due to the collections statute of limitations. All mail sent from the Commission is being returned by the US Postal Service

marked "unable to forward" and the telephone numbers on file for the company are out of service. There has been no response for requests to update contact information or data requests. Staff researched the Florida Department of State, Division of Corporations' records, which show that the company's last Annual Report was filed on April 26, 2012, and its corporate status was listed as "revoked for annual report" on September 27, 2013. The Company has no agent, and the last registered agent resigned on September 30, 2016. The Federal Communications Commission Form 499 Filer Database listed Pac-West as "(n)o longer active as of Jan 1, 2014." It also stated "(a)ll assets of this company have been sold to another party." [1,2]

The Commission has jurisdiction over this matter pursuant to Sections 364.02, 364.336, Florida Statutes.

[1] PSC-05-1118-PAA-TX, issued December 2, 2005, Docket No. 050579-TX, *In re: Application for certificate to provide competitive local exchange telecommunications service by Pac-West Telecomm, Inc.*
[2] See Attachment B for supporting documents.

Discussion of Issues

Issue 1: Should the Commission cancel Pac-West Telecomm, Inc.'s, CLEC certificate, service schedule (if any), and change the company's status to "cancelled" in the Master Commission Directory on its own motion effective the date the company's Chapter 11 Bankruptcy case was terminated; direct the Division of Administrative and Information Technology Services (AIT) to write off any statutory late payment charges, or penalty and interest instead of requesting collection services; and require the company to immediately cease and desist providing telecommunications services in Florida?

Recommendation: Yes, the Pac-West's CLEC certificate should be cancelled on the Commission's own motion due to the company lack of payment of regulatory fees. AIT should write off any unpaid statutory late payment charges, or penalty and interest instead of requesting collection service. (Wooten, Bates, McCoy)

Staff Analysis: See attachment A, proposed Order. (staff analysis)

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. (Cuello)

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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Bankruptcy cancellation by Florida Public Service Commission of CLEC Certificate No. 8604 issued to Pac-West Telecomm, Inc., effective March 19, 2013.	DOCKET NO. 20170217-TX

The following Commissioners participated in the disposition of this matter:

ART GRAHAM, Chairman
JULIE I. BROWN
DONALD POLMANN
GARY F. CLARK
ANDREW GILES FAY

NOTICE OF PROPOSED AGENCY ACTION
ORDER CANCELLING COMPETITIVE LOCAL EXCHANGE
TELECOMMUNICATIONS COMPANY CERTIFICATES
AND SERVICE SCHEDULES DUE TO BANKRUPTCY
ON THE COMMISSION'S OWN MOTION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

Pac-West Telecomm, Inc. (Pac-West) currently holds competitive local exchange telecommunications services (CLEC) Certificate No. 8604, issued by the Commission on December 2, 2005.

Pursuant to Section 364.336, Florida Statutes, telecommunications companies must pay a minimum annual Regulatory Assessment Fee (RAF) if the certificate was active during any portion of the calendar year and provides for late payment charges as outlined in Section 350.113, Florida Statutes, for any delinquent amounts.

Pursuant to 11 U.S.C. § 362 (b)(4) of the US Bankruptcy Code, the filing of a petition for bankruptcy relief acts as an automatic stay that enjoins a governmental entity from exercising its regulatory authority to collect a pre-petition debt. Additionally, in any bankruptcy liquidation or reorganization, secured creditors are given the highest priority in the distribution and, normally, receive all of the distributed assets. RAFs, late payment charges, and penalties owed by a company to the Florida Public Service Commission, as well as monetary settlements of cases resolving issues of failure to pay such fees, are not secured debts and, as a practical matter, are

uncollectible. Therefore, this Commission would be prevented from collecting the RAFs owed by these companies, and from assessing and collecting a penalty for failure to pay the fees.

This Commission monitors companies that have previously filed for bankruptcy protection to further attempt collection of the past due RAFs. Monitoring is conducted using internet-based Public Access to Court Electronic Records (PACER). In many cases, companies under bankruptcy protection discontinue providing telecommunications services and close their operations.

PACER indicates that Pac-West filed for Chapter 11 bankruptcy protection in the US Bankruptcy Court for the Western District of Texas – Austin Division on April 30, 2007. On December 8, 2011, the Federal Communications Commission granted a transfer of control of Pac-West Telecomm, Inc. to UPH Holdings, Inc., which is not certificated in Florida. The bankruptcy case was terminated on March 19, 2013. All mail from this Commission is being returned by the US Postal Service marked "unable to forward" and the telephone numbers on file for the company are out of service. There has been no response for requests to update contact information and data requests from the Commission. Pac-West has not paid regulatory fees and penalties and interest in years 2013, 2014, 2015 and 2016. We have researched the Florida Department of State, Division of Corporations' records, which show that the company's last Annual Report was filed on April 26, 2012, and its corporate status was listed as "revoked for annual report" on September 27, 2013. It has no agent, and the last registered agent resigned on September 30, 2016. The Federal Communications Commission Form 499 Filer Database listed Pac-West Telecomm, Inc. as "(n)o longer active as of Jan 1, 2014." It also stated "(a)ll assets of this company have been sold to another party."

Pac-West's bankruptcy case has closed, and it appears to no longer be providing service in Florida and to no longer exist. We are vested with jurisdiction over this matter pursuant to Sections 364.02, 364.336, 364.285, Florida Statutes.

Accordingly, we shall cancel Pac-West's CLEC certificate, service schedule (if any), and remove its name from the Master Commission Directory on this Commission's own motion, effective March 19, 2013, In addition, any unpaid statutory late payment charges, or penalty and interest shall not be sent to the Florida Department of Financial Services for collection, and permission for this Commission to write off the uncollectible amount shall be requested.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Pac-West Telecomm, Inc.'s CLEC Certificate No. 8604 is cancelled and its status changed to "cancelled" in the Master Commission Directory, effective March 19, 2013. It is further

ORDERED that each entity's unpaid statutory late payment charges, or penalty and interest, shall not be sent to the Department of Financial Services for collection. The Division of Administrative and Information Technology Services shall request permission to write-off the uncollectible amount. It is further

ORDERED that if Pac-West Telecomm, Inc.'s respective CLEC certificate and service schedule (if any) are cancelled and its status changed to "cancelled" in the Master Commission Directory in accordance with this Order, the entity shall immediately cease and desist providing telecommunications service in Florida. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, F.A.C., is received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this _____ day of _______________, __________.

____
Carlotta Stauffer
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SAC

FILED JUN 15, 2015
DOCUMENT NO. 03654-15
FPSC - COMMISSION CLERK

Nonnye Grant

To: Bob Casey
Subject: RE: Companies out of chapter 11 bankruptcy

15 0000-OT

Good afternoon Bob, appreciate the email regarding removing the "bankruptcy status" from TX857 – Pac-West Telecomm. I will remove that status per your memo. Again, thanks for letting me know that it needs to be removed. Thanks and have a nice day. Nonnye

From: Bob Casey
Sent: Monday, June 15, 2015 2:00 PM
To: Nonnye Grant
Cc: Beth Salak; Toni Earnhart; Bob Casey
Subject: RE: Companies out of chapter 11 bankruptcy.

I have one more for you to mark out of Chapter 11 bankruptcy. Toni is following up on RAFs owed.

TX 857 - Pac-West Telecomm, Inc. exited Chapter 11 bankruptcy 3/19/2013.

07-10562-BLS Pac-West Telecomm, Inc.
Case type: bk **Chapter:** 11 **Asset:** Yes **Vol:** v **Judge:** Brendan Linehan Shannon
Date filed: 04/30/2007 **Date of last filing:** 04/08/2013 **Plan confirmed:** 11/19/2007
Date terminated: 03/19/2013

Case Summary

Office: Delaware
County: OUTSIDE HOME STATE
Fee: Paid
Origin: 0
Previous term:
Joint: n
Filed: 04/30/2007
Terminated: 03/19/2013
Debtor discharged:
Reopened:
Converted:
Debtor dismissed:
Confirmation hearing:
Current chapter: 11
Debtor disposition: Discharge Not Applicable
Nature of debt: business
Related adversary proceedings: 08-50608-KG
Pending status: Awaiting First Meeting ,Case Closed
Flags: LEAD, CONFIRMED, CLOSED

Trustee:	**City:**	**Phone:**	**Fax:**	**Email:**
United States Trustee	Wilmington	302-573-6491	302-573-6497	USTPREGION03.WL.ECF@USDOJ.GOV

Party 1: Pac-West Telecomm, Inc. (Debtor)
Tax ID / EIN: 68-0383568

15 JUN 15 PM 2:22

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 11-1865
Released: November 7, 2011

DOMESTIC SECTION 214 APPLICATION FILED FOR THE TRANSFER OF CONTROL OF PAC-WEST TELECOMM, INC. AND NWIRE, LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 11-173

Comments Due: November 21, 2011
Reply Comments Due: November 28, 2011

On October 14, 2011, UPH Holdings, Inc. (UPH), UPH Acquisition Sub Inc. (UPH-AS), Pac-West Acquisition Company, LLC (PWAC), and Pac-West Telecomm, Inc. (Pac-West) (collectively, Applicants) filed an application pursuant to section 63.03 of the Commission's rules[1] to transfer Pac-West, including its U.S.-based wholly-owned subsidiaries, Pac-West Telecomm of Virginia, Inc. and Tex-Link Communications, Inc., as a result of the planned acquisition of 100 percent of the shares of Pac-West by UPH. As part of the proposed transaction, Applicants also request authority to transfer control of nWire, LLC, an indirect subsidiary of UPH, upon the current shareholders in PWAC obtaining an ownership interest in UPH.

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

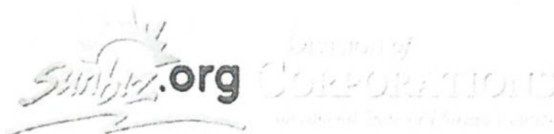
News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

DA 11-1999
December 8, 2011

NOTICE OF DOMESTIC SECTION 214 AUTHORIZATION GRANTED

WC Docket Nos. 11-173

The Wireline Competition Bureau (Bureau) has granted the application listed in this notice pursuant to the Commission's streamlined procedures for domestic section 214 transfer of control applications, 47 C.F.R. § 63.03. The Bureau has determined that grant of this application serves the public interest.[1] For purposes of computation of time when filing a petition for reconsideration or application for review, or for judicial review of the Commission's decision, the date of "public notice" shall be the release date of this notice.[2]



Department of State / Division of Corporations / Search Records / Detail By Document Number /

Detail by Entity Name

Foreign Profit Corporation
PAC-WEST TELECOMM, INC.

Filing Information

Document Number	F05000004643
FEI/EIN Number	68-0383568
Date Filed	08/10/2005
State	CA
Status	INACTIVE
Last Event	REVOKED FOR ANNUAL REPORT
Event Date Filed	09/27/2013
Event Effective Date	NONE

Principal Address

4210 CORONADO AVENUE
SUITE 300
STOCKTON, CA 95204 UN

Changed: 04/26/2012

Mailing Address

4210 CORONADO AVENUE
STOCKTON, CA 95204

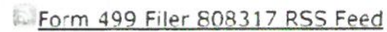
Changed: 03/14/2007

Registered Agent Name & Address

NONE
Registered Agent Resigned: 09/30/2016

FCC Form 499 Filer Database

DETAILED INFORMATION



Form 499 Filer 808317 RSS Feed

Filer Identification Information

No Longer Active as of Jan 1 2014 .
All assets of this company have been sold to another party.

Replaced by filer: 829775

Historical Data:

499 Filer ID Number:	**808317**
Registration Current as of:	**Apr 1 2013 12:00AM**
Legal Name of Reporting Entity:	**Pac-West Telecomm, Inc.**
Doing Business As:	**Pac-West Telecomm, Inc.**
Principal Communications Type:	**CAP/LEC**
Universal Service Fund Contributor:	**No**
(Contact USAC at 888-641-8722 if this is not correct.)	
Holding Company:	**UNIPOINT HOLDINGS INC**
Registration Number (CORESID):	**0001735224**
Management Company:	
Headquarters Address:	**6500 River Place Blvd** **Bldg. 2 Ste. 200**
City:	**Austin**
State:	**TX**
ZIP Code:	
Customer Inquiries Address:	**4210 Coronado Ave**
City:	**Stockton**
State:	**CA**
ZIP Code:	**95204**
Customer Inquiries Telephone:	**877-626-4325 Ext:**
Other Trade Names:	

State of Florida
Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

7006 0100 0003 1098 9622

TX857
Pac-West Telecomm, Inc.
Lynne Martinez
Regulato
4210 Co
Stockton

NIXIE 957 DE 1 0001/12/17
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD
BC: 32399085099 *0741-08947-28-18

OFFICE OF TELECOMMUNICATIONS
17 JAN 23 AM 9:20

(Enc)
N/C 11/28

Item 6

FILED 2/16/2018
DOCUMENT NO. 01290-2018
FPSC - COMMISSION CLERK

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: February 16, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Mtenga)
Division of Economics (Draper)
Office of the General Counsel (Dziechciarz)

RE: Docket No. 20170252-EI – Petition for approval of experimental curtailable demand-side management program, by Gulf Power Company.

AGENDA: 03/01/18 – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: 60-Day Tariff Suspension waived until 03/01/2018

SPECIAL INSTRUCTIONS: None

Case Background

On May 16, 2017, the Florida Public Service Commission (Commission) issued Order No. PSC-2017-0178-S-EI, approving a Stipulation and Settlement Agreement (Settlement) which resolved all outstanding issues in the Gulf Power Company (Gulf or Company) 2016 base rate proceeding.[1] On November 28, 2017, as a result of section 19 of the Settlement, Gulf filed a petition for approval of its experimental Curtailable Load program as part of its Demand-Side Management (DSM) plan. The proposed rate rider and associated tariffs are shown in Attachment A.

[1]Order No. PSC-2017-0178-S-EI, issued May 16, 2017, in Docket No. 20160186-EI, *In re: Petition for Rate Increase by Gulf Power Company.* An updated settlement agreement was filed on February 14, 2018, in Docket Nos. 20160186-EI and 20160170-EI, which will be addressed at a later Commission proceeding. This agreement only addresses changes to the tax code and does not impact the program addressed here.

The Commission has jurisdiction over this matter pursuant to Sections 366.80 through 366.83 and 403.519, Florida Statutes.

Discussion of Issues

Issue 1: Should the Commission approve Gulf Power Company's request to include its experimental Curtailable Load program and associated tariffs in the Company's DSM plan?

Recommendation: Yes. The Curtailable Load program fulfills a requirement of the Settlement reached in Gulf's 2016 base rate proceeding. It fulfills the policy objectives of the Florida Energy Efficiency and Conservation Act (FEECA), it is directly monitorable, yields measurable results and it is cost effective. Staff recommends approval of Gulf's proposed experimental Curtailable Load program and associated tariffs. (Mtenga)

Staff Analysis: The criteria used to review the appropriateness of DSM programs are: (1) whether the program advances the policy objectives of the FEECA and its implementing rules; (2) whether the program is directly monitorable and yields measurable results; and (3) whether the program is cost-effective.[2] Staff has reviewed Gulf's petition for its experimental Curtailable Load program and it appears to be consistent with these criteria.

Program Description

The Curtailable Load program is available to industrial and commercial customers who take service under rates LP, LPT, PX, or PXT. This program provides qualifying customers capacity payments for load which can be curtailed during certain conditions. Customers who qualify for the program must commit to a minimum non-firm demand reduction of 4,000 kilowatts (kW). A customer must execute a Curtailable Load Service Agreement (CL Service Agreement) for a term of 10 years beyond the anticipated in-service date of Gulf's next generation capacity need in 2023. Multiple accounts may be combined to meet the demand and load factor requirements provided that the demand response is coordinated from a single location and a single point of contact is provided to Gulf for notification. The program is only applicable to locations at which the interruption of electric service will primarily affect only the customer and will not significantly affect members of the general public, nor interfere with functions performed for the protection of public health or safety unless adequate on-site backup generation is available. The program will be closed to additional customers when the total non-firm demand subject to CL Service Agreements reaches 50 megawatts.

A curtailment period may be designated by Gulf when non-firm demand curtailment is necessary to alleviate any conditions that could lead to the interruption of power supply in the local area or region. Gulf expects to provide at least 30 minutes advance notice of the curtailment period. Gulf may terminate service under the program at any time for the customer's failure to comply with the terms and conditions of the CL Service Agreement. An incident of non-compliance will be considered to have occurred if the customer's maximum integrated 15 minute demand to the nearest kW during a curtailment period is greater than the firm demand. Customers may terminate their CL Service Agreement without penalty or liability by providing the Company with at least five years advance written notice, which staff deems sufficient for planning purposes to acquire or build firm capacity. The program as described meets the requirement of

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[2]Order No. 22176, issued November 14, 1989, in Docket No. 890737-PU, *In re: Implementation of section 366.80-85 Florida Statutes, Conservation Activities of Electric and Natural Gas Utilities.*

the Settlement to offer a curtailable rate program. In response to staff's data request, Gulf stated that the signatories to the Settlement did not indicate any material concerns with the petition.

FEECA Policy Objectives/Program Monitoring and Evaluation

FEECA emphasizes reducing the growth rate of peak demand and reducing and controlling growth rates of electricity consumption. The program allows qualified customers an incentive to decrease their firm peak demand. Customers taking service under the program will initially receive a monthly bill credit of $3.35 per kW which is subject to curtailment. This initial monthly credit was determined by Gulf to be the maximum recurring monthly credit that would not cause the programs costs to be higher than the benefits realized from the avoided capacity. The bill credit amount will be subject to review and adjustment in the Company's Energy Conservation Cost Recovery (ECCR) Clause proceedings. The program is experimental in nature with a December 31, 2021, termination date unless Gulf files for an extension through the Commission. Gulf will use several criteria in evaluating this program. These include: customers' interest in the program, customers' responses to curtailment periods, program implementation and management costs and the Company's capacity needs.

Cost-Effectiveness Review

Pursuant to Rule 25-17.008, Florida Administrative Code, Gulf provided a cost-effectiveness analysis of the program using the Participant test, the Rate Impact Measure (RIM) test, and the Total Resource Cost (TRC) test. The Participant test analyzes the costs and benefits from a program participants' point of view. The RIM test ensures that all ratepayers will benefit from a proposed DSM program, not just the program participants. The TRC test measures the overall economic efficiency of a DSM program from a system perspective. Each test estimates the benefits and costs, and the program is determined to be cost-effective if the ratio of benefits to costs is greater than one. Staff has reviewed the assumptions associated with Gulf's program savings and recommends that they are reasonable. Table 1-1 below shows the results for cost-effectiveness for the Rate Rider program.

Table 1-1
Cost-Effectiveness Test Results

Participant Test	RIM Test	TRC Test
∞	1.00	17.11

Source: Gulf's Petition

Gulf anticipates current customers receiving service under the Critical Peak Option for Rate LPT to be likely participants in the program, which would result in an increase of approximately $134,000 to the ECCR clause in 2018. The estimated monthly rate impact to the ECCR factor for this scenario is $0.02/1,000 kWh for a residential customer. The impact to the ECCR clause for 1000 kWh if all 50 MW are subscribed is $0.15 per customer.

Conclusion

The Curtailable Load program fulfills a requirement of the Settlement reached in Gulf's last base rate proceeding. It fulfills the policy objectives of FEECA, it is directly monitorable, yields measurable results and it is cost effective. Staff recommends approval of Gulf's proposed experimental Curtailable Load program and associated tariffs.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed and the tariffs shall become effective upon the issuance of the consummating order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the consummating order. If a timely protest is filed, the tariffs should not go into effect, pending resolution of the protest. (Dziechciarz)

Staff Analysis: This docket should be closed and the tariffs shall become effective upon the issuance of the consummating order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the consummating order. If a timely protest is filed, the tariffs should not go into effect, pending resolution of the protest.

Section No. VI
Original Sheet No. 6.105

Rate Rider CL
CURTAILABLE LOAD
LIMITED AVAILABILITY EXPERIMENTAL RIDER
(OPTIONAL RIDER)

PAGE	EFFECTIVE DATE
1 of 5	

AVAILABILITY:

Available throughout the entire territory served by the Company to Customers receiving electric service under Rate Schedules LP, LPT, PX, and PXT that commit to a minimum Non-Firm Demand of 4,000 kW. Customers cannot participate in Rate Rider CL in conjunction with the Critical Peak Option for Rate LPT. Service under this rate schedule is subject to installation of equipment necessary for implementation.

This Rider will be closed to further subscription when the total Non-Firm Demand subject to executed Curtailable Load Service Agreements reaches 50 MW. Excepting contracts which have been signed before the termination date, service under this Rider shall terminate on December 31, 2021, unless extended by order of the Florida Public Service Commission.

APPLICABILITY:

This Rider is applicable to any Customer whose actual measured demand through one or more accounts is not less than 4,000 kW during the previous 12 months and who maintains an annual load factor of not less than sixty percent (60%). Multiple accounts may be combined to meet the demand and load factor requirements provided the demand response is coordinated from a single location and a single point of contact is provided to the Company for notification. Participating Customers are required to execute a Curtailable Load Service Agreement with the Company.

This Rider is also applicable only to premises at which an interruption of electric service will primarily affect only the Customer, its employees, agents, lessees, tenants or business guests, and will not significantly affect members of the general public, nor interfere with functions performed for the protection of public health or safety unless adequate on-site backup generation is available.

This Rider is offered in conjunction with the rates, terms, and conditions of the rate schedule under which the Customer takes service and affects the total bill only to the extent that the rates, terms, and conditions under this Rider differ from the rates, terms, and conditions of such rate schedule.

ISSUED BY: S.W. Connally, Jr.

Section No. VI
Original Sheet No. 6.106

PAGE 2 of 5	EFFECTIVE DATE

(Continued from Rate Rider CL, Sheet No. 6.105)

DETERMINATION OF CURTAILMENT PERIODS:

A curtailment period may be designated by the Company when Non-Firm Demand curtailment is necessary to alleviate any conditions that could lead to the interruption of power supply in the Southern Balancing Area, a local area or a region. Such conditions include, but are not limited to, those where curtailment is necessary to prevent capacity or energy emergencies and avert potential widespread power outages, facility overloads or voltage collapse. The curtailment period designation will follow Company-applicable NERC, regional, state, public service commission or local standards or guidelines. Typically, the Company will provide advance notice of 30 minutes or more prior to a curtailment period. If requested, the Company will respond to inquiries from the Customer regarding a curtailment period and provide requested information regarding the event to the extent such information is not confidential, proprietary, or non-public transmission information.

COMPLIANCE INCENTIVE:

The Company may terminate service under this Rider at any time for the Customer's failure to comply with the terms and conditions of this Rider or the Curtailable Load Service Agreement. In such event, the Company shall be entitled to immediately suspend future monthly credits under this Rider and bill the Customer for the total value of the credits received during the lesser of: (i) the prior 60 months; (ii) the number of months which have elapsed since the occurence of the most recent curtailment period; or (iii) the number of months which have elapsed since the Customer began service under this Rider.

An incident of non-compliance will be considered to have occurred if the Customer's maximum integrated fifteen (15) minute demand to the nearest kilowatt (kW) during a curtailment period or test period is greater than the Firm Demand.

ISSUED BY: S.W. Connally, Jr.

Section No. VI
Original Sheet No. 6.107

PAGE	EFFECTIVE DATE
3 of 5	

(Continued from Rate Rider CL, Sheet No. 6.106)

DETERMINATION OF FIRM DEMAND AND NON-FIRM DEMAND:

Firm Demand is defined as the amount of demand that the Customer's measured demand cannot exceed during a curtailment period or test period.

Non-Firm Demand is defined as the amount of demand that the Customer agrees to reduce during a curtailment period or test period.

The Customer's Firm Demand and Non-Firm Demand shall be established in the Curtailable Load Service Agreement with the Company. The sum of a Customer's Firm Demand and Non-Firm Demand shall not exceed the Customer's maximum measured demand. If the sum of a Customer's Firm Demand and Non-Firm Demand exceeds the Customer's maximum measured demand during a year, the Non-Firm Demand for the following year will be reduced by the difference. The contracted Firm and Non-Firm Demand may be adjusted proactively by mutual agreement of the Customer and the Company.

CREDIT:

Monthly credits will be paid to the Customer based on the product of the Non-Firm Demand and Credit Value as specified in the Curtailable Load Service Agreement. Should the sum of a Customer's Firm Demand and Non-Firm Demand exceed the Customer's maximum measured demand during a year, the subsequent monthly credits for the following year will be reduced by the difference between the sum of the Customer's Non-Firm Demand and Firm Demand and the Customer's maximum measured demand for the prior year multiplied by the Credit Value.

DEMONSTRATION PERIOD:

Prior to the Customer taking service under this Rider, the Customer must demonstrate their ability to reduce their electrical demand to a level equal to, or below, their Firm Demand as specified in the Curtailable Load Service Agreement. The Customer will be notified 30 minutes prior to the required demonstration period. The demonstration period will occur within 30 days of the Company being notified by the Customer that it wishes to take service under this Rider. The demonstration will be for a period of no more than two consecutive hours.

ISSUED BY: S.W. Connally, Jr.

Section No. VI
Original Sheet No. 6.108

PAGE 4 of 5	EFFECTIVE DATE

(Continued from Rate Rider CL, Sheet No. 6.107)

SPECIAL PROVISIONS:

1. Service under this Rider is not available to a Customer whose premises are designated by one or more governmental agencies for use as a public shelter during a natural disaster and/or a declared state of emergency.
2. Credits under this Rider shall commence after the successful demonstration of demand reduction by the Customer as determined by the Company.
3. The Company reserves the right to test the Customer's ability to comply with the provisions of this Rider for a one-hour test period if there has not been a curtailable period or demonstration period for the Customer during the previous 12 months. These test periods will not be considered curtailable periods.
4. If the Customer terminates participation prior to the expiration of their full contract term, the Customer will not be allowed to participate in this program for two subsequent years.
5. Customers who exit the program prior to the full expiration of their full contract term and who subsequently re-enter the program may only take service under the terms of their original contract until its expiration.
6. Customers taking service under negotiated contracts may participate in Rider CL provided that such participation is explicitly permitted in the Customer's executed contract.

TERM OF SERVICE:

Service under this Rider requires a Curtailable Load Service Agreement having a term of 10 years beyond the anticipated in-service date of the Company's Avoided Unit or Resource. Customers may terminate their Curtailable Load Service Agreement without penalty or liability by providing the Company with at least five (5) years advanced written notice. In such event, the Curtailable Load Service Agreement will automatically terminate on the day following the fifth anniversary of the date of the Customer's termination notice.

If the Customer ceases taking service under the Rider prior to the expiration of the full contract term and without the required advanced written notification, the Company will bill the Customer for the total value of the credits received during a period equal to the lesser of: (i) the prior 60 months; (ii) the number of months which have elapsed since the occurence of the most recent curtailment period; or (iii) the number of months which have elapsed since the Customer began service under this Rider.

Service under this Rider is subject to Rules and Regulations of the Company and the Florida Public Service Commission.

ISSUED BY: S.W. Connally, Jr.

Section No. VI
Original Sheet No. 6.109

PAGE 5 of 5	EFFECTIVE DATE

(Continued from Rate Rider CL, Sheet No. 6.108)

TAX ADJUSTMENT:
See Sheet No. 6.37

FRANCHISE FEE BILLING:
See Sheet No. 6.37

ENERGY CONSERVATION:
See Sheet No. 6.38

GROSS RECEIPTS TAX ADJUSTMENT:
See Sheet No. 6.37

PAYMENT OF BILLS:
See Sheet No. 6.37

ISSUED BY: S.W. Connally, Jr.

CURTAILABLE LOAD SERVICE AGREEMENT

Form 30

This Agreement is made this _______ day of ____________________, ________ by and between ____ (the "Customer") located at ____ in _________________, Florida and Gulf Power Company, a Florida corporation (the "Company" or "Gulf Power").

WITNESSETH

That for and in consideration of the mutual covenants and agreements set forth herein, the Company and the Customer agree as follows:

1. The Company agrees to furnish and the Customer agrees to take service under rate schedule ________ and the Curtailable Load Experimental Rider CL (the "Curtailable Rider") (attached as Exhibit "A" and incorporated herein by reference) as currently approved by the Florida Public Service Commission (the "FPSC") or as said rate schedule or rider may be modified in the future and approved by the FPSC.

2. The Customer and the Company will, throughout the term of this Agreement, comply with all of the terms and conditions of the Curtailable Rider.

3. The Customer's Firm Demand for purposes of the Curtailable Rider shall be set at _____________kW. Unless otherwise modified in accordance with the terms of the Curtailable Rider, the Firm Demand shall not be subject to change during the term of this Agreement.

4. The Customer's Non-Firm Demand for purposes of the Curtailable Rider shall be set at ______________kW. Unless otherwise modified in accordance with the terms of the Curtailable Rider, the Non-Firm Demand shall not be subject to change during the term of this Agreement. Upon receipt of notice from the Company, the Customer agrees to curtail its Non-Firm Demand during all curtailment periods and test periods designated by the Company.

5. In consideration of the Customer's agreement to curtail its Non-Firm Demand, the Company will provide the Customer with a monthly billing credit of $ ______ per kW for each kW of Non-Firm Demand identified in section 4 above. Unless otherwise modified in accordance with the terms of the Curtailable Rider, the amount of the foregoing billing credit shall not be subject to change during the term of this Agreement.

6. The Company will endeavor to provide at least thirty (30) minutes advance notice to the Customer of the time the curtailment period begins. Such notice may be electronic, oral or written. The Company shall not be responsible for the Customer's failure to receive or act upon such notice. Upon request, the Customer will provide the Company with the following information to facilitate delivery of all communications relating to curtailment periods and designate the preferred manner of communication, which will be the manner of communication the Company initially uses when seeking to curtail load:

Form 30 (Continued)

Name of Contact Person(s);
Office and/or Cellular Telephone Number(s); and
Email Address(es)

The Customer will notify the Company immediately should there be a need to change contact information. Any changes to the above manner of communication made by the Customer or the Company shall be made in writing.

For all office and cellular telephone numbers and email addresses provided by the Customer to the Company, the Customer authorizes the Company to deliver or cause to be delivered all notices and messages associated with the Curtailable Rider, any of which may be through the use of an automatic telephone dialing system or an artificial or prerecorded voice. Delivery of an artificial message, prerecorded message or human voicemail shall constitute effective notice for purposes of the notice requirements under this Agreement. Further, in the event that any office or cellular telephone number provided to the Company by the Customer is a personal (as opposed to Customer issued) telephone number for individual employees, agents or representatives of the Customer, then the Customer hereby certifies to the Company that such individual user has provided the Customer with express prior written consent to receive communications from the Company on behalf, or for the benefit, of the Customer, as well as express prior written consent to receive communications from the Customer itself. The Customer understands and acknowledges that it is not required to agree to receive promotional messages as a condition of taking service under the Curtailable Rider. In the event that a telephone number provided to the Company by Customer is reassigned, disconnected or belongs to an individual whose relation to the Customer is terminated or otherwise discontinued, the Customer shall immediately notify Company that said number should be removed from the Company's notification list.

7. The Customer assumes full responsibility for any loss of product or production, business loss of any kind, equipment damage, injury to employees or others, inconvenience, or any other damages experienced as result of the curtailment of electric service.

8. The term of this Agreement shall commence on ________________, ______, ________ and end on ___________________, ______, _______; provided, however, that the Customer may terminate this Agreement prior to the expiration of its term without penalty or further obligation by providing the Company with at least 60 months advanced written notice. Upon the expiration of the term of this Agreement, the Customer may choose to enter into a new Curtailable Load Service Agreement pursuant to the terms and conditions of the Curtailable Rider or any successors thereto. The Customer acknowledges the Company's need for generation planning lead time and that the Company has depended upon the Customer to provide written notice in advance of termination of the Customer's obligation to remain a Curtailable Rider program participant.

9. This Agreement may be terminated if termination is required in order to comply with regulatory rulings.

ISSUED BY: S. W. Connally, Jr. Effective:

Form 30 (Continued)

10. The failure or delay by either party in exercising any rights or remedies, either provided herein or by law, shall not be deemed to constitute a waiver of any provisions hereof.

11. This Agreement supersedes all previous agreements or representations, either written, verbal, or otherwise between the Company and the Customer, with respect to the matters contained herein and constitutes the entire agreement of the parties. This Agreement incorporates by reference the terms of the tariff filed with the FPSC by the Company, as amended from time to time. To the extent of any conflict between this Agreement and such tariff, the tariff shall control.

12. This Agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto. If this Agreement is assigned, which may be done provided that the assignee is qualified to take service under the Curtailable Rider, the Customer will notify the Company prior to the effective date of the assignment.

13. Any modifications to this Agreement must be approved, in writing, by the Company and the Customer.

14. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes.

IN WITNESS WHEREOF, the Customer and the Company have executed this Agreement the day and year first written above.

Charges and Terms Accepted:

____
Customer Name

By: ________________________
Signature (Authorized Representative)

____
(Print or type name)

Title: ______________________

GULF POWER COMPANY

By: ___________________________
(Signature)

____
(Print or type name)

Title: _________________________

Attest: ________________________

Gulf Power

Twenty-Ninth Thirtieth Revised Sheet No. ii
Canceling Twenty-EighthNinth Revised Sheet No. ii

TABLE OF CONTENTS

PAGE	EFFECTIVE DATE
1 of 4	July 1, 2017

Section	Description
Section I	Description of Territory Served
Section II	Miscellaneous
Section III	Technical Terms and Abbreviations
Section IV	Rules and Regulations
Section V	List of Communities Served
Section VI	Rate Schedules

RS - Residential Service
GS - General Service - Non-Demand
GSD - General Service - Demand
LP - Large Power Service
PX - Large High Load Factor Power Service
OS - Outdoor Service
BB - Budget Billing (Optional Rider)
CR - Cost Recovery Clause - Fossil Fuel & Purchased Power
PPCC - Purchased Power Capacity Cost Recovery Clause
ECR - Environmental Cost Recovery Clause
-- - Billing Adjustments and Payment of Bills
ECC - Cost Recovery Clause - Energy Conservation
FLAT-1 - Residential/Commercial FlatBill
GSTOU - General Service Time-of-Use Conservation (Optional)
GSDT - General Service - Demand - Time-of-Use Conservation (Optional)
LPT - Large Power Service - Time-of-Use Conservation (Optional)
PXT - Large High Load Factor Power Service - Time-of-Use Conservation (Optional)
SBS - Standby and Supplementary Service
ISS - Interruptible Standby Service
RSVP - Residential Service Variable Pricing
SP - Surge Protection
RTP - Real Time Pricing
CIS - Commercial/Industrial Service Rider (Optional)
BERS - Building Energy Rating System (BERS)
MBFC - Military Base Facilities Charge (Optional Rider)
LBIR - Large Business Incentive Rider (Optional Rider)
MBIR - Medium Business Incentive Rider (Optional Rider)
SBIR - Small Business Incentive Rider (Optional Rider)
RSTOU - Residential Service – Time-of-Use
CS - Community Solar (Optional Rider)
XLBIR - Extra-Large Business Incentive Rider (Optional Rider)
CL - Curtailable Load (Optional Rider)

ISSUED BY: S. W. Connally, Jr.

Gulf Power

~~Fourth~~ Fifth Revised Sheet No. iv
Canceling ~~Third~~ Fourth Revised Sheet No. iv

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(continued)

PAGE	EFFECTIVE DATE
3 of 4	~~March 1, 2016~~

Section **Description**

Section VII Standard Contract Forms (continued)

Form 26 Master Contract for Electric Service
Form 27 Premises Exhibit to Master Contract for Electric Service
Form 28 Certificate of Compliance – Small Power Generation Systems
Form 29 Community Solar Customer Five-Year Participation Agreement
Form 30 Curtailable Load Service Agreement

Section VIII Special Contracts and Agreements

Section IX Cogeneration Rate Schedules

Schedule COG-1 – Standard Rate For Purchase of As-Available Energy From Qualifying Cogeneration and Small Power Production Facilities (Qualifying Facilities)

Schedule COG-2 – Standard Offer Contract Rate For Purchase of Firm Capacity and Energy From Small Qualifying Facilities (less than 75 MW) or From Solid Waste Facilities

Standard Offer Contract For the Purchase of Firm Energy and Capacity From a Qualifying Facility

Form 12 – Application for Interconnection of Customer-Owned Generation

Standard Interconnection Agreement

Standard Interconnection Agreement for Customer-Owned Tier 1 Renewable Generation Systems (10kW or less)

Standard Interconnection Agreement for Customer-Owned Tier 2 Renewable Generation Systems (Greater than 10 kW and Less than or Equal to 100 kW)

Standard Interconnection Agreement for Customer-Owned Tier 3 Renewable Generation Systems (Greater than 100 kW and Less than or Equal to 2 MW)

Standard Interconnection Application for Customer-Owned Renewable Generation Systems

ISSUED BY: S. W. Connally, Jr.

Section No. VI
Thirty-~~Second~~Third Revised Sheet No. 6.2
Canceling Thirty-~~First~~Second Revised Sheet No. 6.2

PAGE	EFFECTIVE DATE
2 of 2	~~July 1, 2017~~

Designation	URSC	Classification	Sheet No.
RSVP	RS1	Residential Service Variable Pricing (Optional)	6.75
SP		Surge Protection	6.79
RTP		Real Time Pricing	6.80
CIS		Commercial/Industrial Service (Optional Rider)	6.84
BERS		Building Energy Rating System (BERS)	6.87
MBFC		Military Base Facilities Charge (Optional Rider)	6.91
LBIR		Large Business Incentive Rider (Optional Rider)	6.92
MBIR		Medium Business Incentive Rider (Optional Rider)	6.94
SBIR		Small Business Incentive Rider (Optional Rider)	6.96
RSTOU		Residential Service – Time-of-Use	6.98
CS		Community Solar (Optional Rider)	6.101
XLBIR		Extra-Large Business Incentive Rider (Optional Rider)	6.103
CL		Curtailable Load (Optional Rider)	6.105

ISSUED BY: S. W. Connally, Jr.

Section No. VI
Twenty-~~Seventh~~Eighth Revised Sheet No. 6.38
Canceling Twenty-~~Sixth~~Seventh Revised Sheet No. 6.38

RATE SCHEDULE ECC
COST RECOVERY CLAUSE
ENERGY CONSERVATION

PAGE	EFFECTIVE DATE
1 of 1	

APPLICABILITY:

Applicable to the monthly rate of each filed retail rate schedule under which a Customer receives service.

DETERMINATION OF ENERGY CONSERVATION COST RECOVERY CLAUSE ADJUSTMENT:

Bills should be decreased or increased by an adjustment calculated in accordance with the formula and procedure specified by the Florida Public Service Commission designed to reflect the recovery of conservation related expenditures by the Company.

Each rate schedule shall be increased or decreased to the nearest .001 cents for each kWh of sales to reflect the recovery of conservation related expenditures by the Company. The Company shall record both projected and actual expenses and revenues associated with the implementation of the Company's Energy Conservation Plan as authorized by the Commission. The total cost recovery adjustment per kWh applicable to energy delivered will include, when applicable, a true-up with interest to prior actual costs which will be determined in accordance with the formula and procedures specified by the Florida Public Service Commission and is subject to Commission approval. Such increase or decrease shall be adjusted for taxes which are based upon revenues. The procedure for the review, approval, recovery and recording of such costs and revenues is set forth in Commission Rule 25-17.015, F.A.C.

Energy Conservation Cost Recovery Clause factors are shown below:

Rate Schedule	Energy Conservation Cost Recovery Factor ¢/kWh
RS	0.140
RSVP Tier 1	(3.000)
RSVP Tier 2	(0.952)
RSVP Tier 3	7.772
RSVP Tier 4	68.008
RSTOU On-Peak	17.250
RSTOU Off-Peak	(3.205)
RSTOU Critical Peak Credit	$5.00 per Event
GS	0.137
GSD, GSDT, GSTOU	0.132
LP, LPT	0.127
LPT-CPO On-Peak	($2.14) per kW
LPT-CPO Critical	$25.68 per kW
CL Credit	($3.35) per kW
PX, PXT, RTP, SBS	0.124
OS-I/II	0.108
OS-III	0.124

Service under this rate schedule is subject to Rules and Regulations of the Company and the Florida Public Service Commission.

ISSUED BY: S. W. Connally, Jr.

Section No. VII
~~Fourth~~ Fifth Revised Sheet No. 7.2
Canceling ~~Third~~ Fourth Revised Sheet No. 7.2

PAGE	EFFECTIVE DATE
2 of 2	~~March 1, 2016~~

Contract	Description	Sheet No.
Form 28	Certificate of Compliance – Small Power Generation Systems	7.62
Form 29	Community Solar Customer Five-Year Participation Agreement	7.63
Form 30	Curtailable Load Service Agreement	7.66

ISSUED BY: S. W. Connally, Jr.

Item 7

FILED 2/16/2018
DOCUMENT NO. 01289-2018
FPSC - COMMISSION CLERK

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-

RECEIVED-FPSC
2018 FEB 16 AM 11: 04
COMMISSION
CLERK

DATE: February 16, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Bruce)
Office of the General Counsel (Trierweiler)

RE: Docket No. 20170223-SU – Application for establishment of wastewater allowance for funds prudently invested (AFPI) charges in Highlands, Lake, Marion, Pasco and Pinellas Counties, by Utilities, Inc. of Florida.

AGENDA: 03/01/18 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 06/16/18 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

Utilities, Inc. of Florida (UIF or utility) is a Class A utility providing water and wastewater services to 27 systems in the following counties: Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole. The utility reported in its 2016 annual report, water operating revenues in the amount of $2,498,891 and $1,440,710 for wastewater.

On October 16, 2017, the utility filed an application to establish allowance for funds prudently invested (AFPI) charges for the LUSI, Labrador, Lake Placid, Mid-County, and UIF-Marion wastewater systems, including tariff sheets reflecting the proposed charges. Subsequently, on February 8, 12, and 15, 2018, the utility filed revised tariffs to reflect the change to the corporate income tax rate which became effective on January 1, 2018, and to correct calculation errors in the proposed tariffs. The utility is requesting AFPI charges because the above-mentioned wastewater systems were considered less than 100 percent used and useful (U&U) by Order No.

PSC-2017-0361-FOF-WS, issued September 25, 2017.[1] The utility's proposed AFPI tariffs were suspended by Order No. PSC-2017-0477-PCO-SU, issued December 21, 2017, in the instant docket, pending further investigation.

This recommendation addresses UIF's request to establish AFPI charges for its LUSI, Labrador, Lake Placid, Mid-County, and UIF-Marion wastewater systems. The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.).

[1] Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket No. 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

Discussion of Issues

Issue 1: Should UIF be authorized to collect the proposed AFPI charges for its Labrador, Lake Placid, Mid-County, and UIF-Marion wastewater systems?

Recommendation: Yes. UIF should be authorized to collect the proposed AFPI charges, shown on Attachment A, from future wastewater customers in its Labrador, Lake Placid, Mid-County, and UIF-Marion systems. After December 31, 2020, the utility should be allowed to collect the constant charge until the projected ERCs included in the calculation of the charge have been added, upon which the charges should be discontinued. The AFPI charges should apply to future connections of 155 ERCs for Labrador, 226 ERCs for Lake Placid, 203 ERCs for Mid-County, and 45 ERCs for the UIF-Marion system.

UIF should provide notice to property owners who have requested service during the 12 months prior to the month the request for AFPI charges was filed. The approved charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The Utility should provide proof of noticing within 10 days of providing its approved notice. (Bruce)

Staff Analysis: Pursuant to Rule 25-30.434, Florida Administrative Code (F.A.C.), an AFPI charge is a mechanism designed to allow a utility the opportunity to earn a fair rate of return on prudently constructed plant held for future use from the customers that will be served by that plant. This one-time charge is assessed based on the date the future customer connects to the utility's system.

The utility's proposed AFPI charges for the Labrador, Lake Placid, Mid-County, and UIF-Marion wastewater systems (Attachment A) are based on the non-U&U adjustments associated with those wastewater treatment plants (WWTP) in Order No. PSC-2017-0361-FOF-WS. The Labrador WWTP was determined to be 79.94 percent U&U, the Lake Placid WWTP was 29.79 percent U&U, the Mid-County WWTP was 93.67 percent U&U, and the UIF-Marion WWTP was 68.65 percent U&U. The U&U adjustments in that rate case excluded a return on the non U&U portion of the investments and the associated depreciation, property taxes, and regulatory assessment fees from the approved revenue requirement. The proposed tariffs filed on February 8, 12, and 15, 2018, reflect the new corporate federal tax rate that became effective on January 1, 2018.

Pursuant to Rule 25-30.434(4), F.A.C., the beginning date for accruing the AFPI charges should agree with the month following the end of the test year that was used to establish the amount of non-U&U plant. The test year used in Docket No. 201610101-WS for establishing the amount of non-U&U plant was the year ended December 31, 2015; therefore, the beginning date for accruing the AFPI in this case is January 1, 2016. The proposed AFPI charges were calculated for a five-year period consistent with Rule 25-30.434(5), F.A.C. After December 31, 2020, the utility should be allowed to collect the constant charge (reflecting the costs accrued through the fifth year) until the projected equivalent residential connections (ERCs) included in the calculation of the charge have been added, upon which the charges should be discontinued. The AFPI charges should apply to future connections of 155 ERCs for Labrador, 226 ERCs for Lake Placid, 203 ERCs for Mid-County, and 45 ERCs for the UIF-Marion system.

UIF should provide notice to property owners who have requested service during the 12 months prior to the month the request for AFPI charges was filed. The approved charges should be effective for connections made on or after the stamped approval date on the tariff sheets. In accordance with Rule 25-30.434(4), F.A.C., no charge may be collected for connections made prior to the effective date of the AFPI charges. The Utility should provide proof of noticing within 10 days of providing its approved notice. The charges reflect the costs associated with one ERC based on 280 gallons per day (gpd) per ERC. If a future customer is expected to place more demand on the system than one ERC, the charge should be multiplied by the number of ERCs of demand which are needed to provide service to the customer.

Conclusion

Based on the above, UIF should be authorized to collect the proposed AFPI charges from future wastewater customers in its Labrador, Lake Placid, Mid-County, and UIF-Marion systems. After December 31, 2020, the utility should be allowed to collect the constant charge until the projected ERCs included in the calculation of the charge have been added, upon which the charges should be discontinued. The AFPI charges should apply to future connections of 155 ERCs for Labrador, 226 ERCs for Lake Placid, 203 ERCs for Mid-County, and 45 ERCs for the UIF-Marion system.

UIF should provide notice to property owners who have requested service during the 12 months prior to the month the request for AFPI charges was filed. The approved charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The Utility should provide proof of noticing within 10 days of providing its approved notice.

Issue 2: Should UIF be authorized to collect the proposed AFPI charges for its LUSI wastewater system?

Recommendation: No. UIF's proposed tariff as filed should be denied. UIF should be given the option to file a revised tariff within 10 days of the Commission's vote, for administrative approval by staff, that reflects the non U&U costs associated with the LUSI WWTP, pursuant to Order No. PSC-2017-0361-FOF-WS, and accrued beginning January 1, 2016.

Upon staff's administrative approval, UIF should be authorized to collect the proposed AFPI charges from future wastewater customers in its LUSI system. After December 31, 2020, the utility should be allowed to collect the constant charge until the projected ERCs included in the calculation of the charge have been added, upon which the charges should be discontinued. The AFPI charges should apply to 1,471 future ERCs.

UIF should provide notice to property owners who have requested service during the 12 months prior to the month the request for AFPI charges was filed. The approved charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The Utility should provide proof of noticing within 10 days of providing its approved notice. (Bruce)

Staff Analysis: The utility's proposed AFPI charges for the LUSI WWTP (Attachment B) are based on the non-U&U adjustments determined in Order No. PSC-2017-0361-FOF-WS. The proposed tariff filed on February 8, 2018, reflects the new corporate federal tax rate that became effective on January 1, 2018. However, staff believes that, because the utility's proposed tariff reflects costs accrued beginning in 2010, the proposed tariff is inconsistent with Rule 25-30.434(4), F.A.C. As discussed in Issue 1, the rule provides that the beginning date for accruing the AFPI charges should agree with the month following the end of the test year that was used to establish the amount of non-U&U plant which, in this case, is January 1, 2016. The utility contends that the AFPI charges should not be reset (accrued beginning January 1, 2016), but should continue from the prior U&U adjustments.

AFPI charges applicable to the LUSI WWTP (formerly known as Lake Groves) were previously approved in 1991 in the utility's original certificate case.[2] At that time, the capacity of the system was 160,000 gpd and the AFPI charges were based on the 545 ERCs which the system was originally designed to serve. UIF purchased the Lake Groves system in 1998 and increased the capacity to 500,000 gpd in 2000.[3] In 2007, the treatment capacity was expanded to 1,000,000 gpd and in a subsequent rate case, Docket No. 20070693-WS, the Commission found the wastewater treatment plant to be approximately 53 percent U&U.[4] The utility was serving approximately 2,860 wastewater customers at that time. In the utility's next rate case, Docket

[2] Order No. 24283, issued March 25, 1991, in Docket No. 900957-WU, *In re: Application of Lake Groves Utilities, Inc. for water and sewer certificates in Lake County.*
[3] Order No. PSC-00-1657-PAA-WS, issued September 18, 2000, in Docket No. 000430-WS, *In re: Application for amendment of Certificates Nos. 534-W and 465-S to add territory in Lake County by Lake Groves Utilities, Inc.*
[4] Order No. PSC-09-0101-PAA-WS, issued February 16, 2009, in Docket No. 070693-WS, *In re: Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.*

No. 20100426-WS, the Commission again found the 1,000,000 gpd WWTP to be 53 percent U&U based on the U&U percentage from the prior order.[5]

Pursuant to Order No. PSC-2017-0361-FOF-WS, the utility's most recent rate case, the Commission found the LUSI WWTP to be 58.78 percent U&U (including prepaid commitments).[6] However, because the LUSI WWTP was serving in excess of the original 545 ERCs the system was designed to serve, the LUSI WWTP AFPI charges were discontinued and an investigation was opened to determine whether there was an over collection of AFPI charges.[7] The investigation addresses AFPI collections prior to 2018, while the proposed charges in this docket will be collected from future connections.

Although it was determined that the utility had non-U&U plant in prior dockets, the AFPI charges were not re-evaluated by staff and the utility did not request that the LUSI AFPI charges be revised following the addition of the original 545 ERCs and the plant expansion that occurred in 2007. Because it is incumbent upon the utility to request consideration of AFPI charges for non-U&U capacity, staff does not believe it is appropriate to accrue AFPI charges prior to January 1, 2016. However, the utility should be given the option to file a revised tariff within 10 days of the Commission's vote, for administrative approval by staff, that reflects the non U&U costs associated with the LUSI WWTP, pursuant to Order No. PSC-2017-0361-FOF-WS, and accrued beginning January 1, 2016.

Upon staff's administrative approval, UIF should be authorized to collect the proposed AFPI charges from future wastewater customers in its LUSI system. After December 31, 2020, the utility should be allowed to collect the constant charge until the projected ERCs included in the calculation of the charge have been added, upon which the charges should be discontinued. The AFPI charges should apply to 1,471 future ERCs.

UIF should provide notice to property owners who have requested service during the 12 months prior to the month the request for AFPI charges was filed. The approved charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The Utility should provide proof of noticing within 10 days of providing its approved notice.

[5] Order No. PSC-11-0514-PAA-WS, issued November 3, 2011, in Docket No. 20100426-WS, *In re: Application for increase in water and wastewater rates in Lake County by Lake Utility Services, Inc.*

[6] Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket No. 20160101-WS, *In re: Application in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida.*

[7] Pending Docket No. 20180014-WS, *In re: Investigation of Allowance For Funds Prudently Invested in Lake County*

Issue 3: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, the docket should remain open pending staff's verification that the revised tariff sheets and notice have been filed by the utility and approved by staff. If a protest is filed within 21 days of the issuance date of the Order, the approved tariff should remain in effect with the charge held subject to refund pending resolution of the protest. If no timely protest is filed, a consummating order should be issued.

If the Commission approves staff's recommendation in Issue 2, UIF timely files a revised AFPI tariff for its LUSI wastewater system, and a protest is filed within 21 days of the issuance of the order, the revised tariffs should remain in effect, with any revenues held subject to refund, pending staff's verification that the revised tariff sheets and notice have been filed by the utility and approved by staff; the docket should remain open pending resolution of the protest. If UIF timely files a revised AFPI tariff for its LUSI wastewater system and no timely protest is filed with respect to that issue, the docket should remain open pending staff's verification that the revised tariff sheets and notice have been filed by the utility and approved by staff, a consummating order should be issued, and the docket should be closed administratively.

If the Commission approves staff's recommendation in Issue 2, UIF does not timely file a revised AFPI tariff meeting the conditions of the order, and a protest is filed within 21 days of the issuance of the order, the tariffed charges originally requested by UIF could be placed into effect, with any revenues held subject to refund, pending staff's verification that the revised tariff sheets and notice have been filed by the utility and approved by staff; the docket should remain open pending resolution of the protest. If UIF does not timely file a revised AFPI tariff with respect to its LUSI wastewater system and no timely protest is filed, a consummating order should be issued, and the docket closed administratively. (Crawford)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, the docket should remain open pending staff's verification that the revised tariff sheets and notice have been filed by the utility and approved by staff. If a protest is filed within 21 days of the issuance date of the Order, the approved tariff should remain in effect with the charge held subject to refund pending resolution of the protest. If no timely protest is filed, a consummating order should be issued.

If the Commission approves staff's recommendation in Issue 2, UIF timely files a revised AFPI tariff for its LUSI wastewater system, and a protest is filed within 21 days of the issuance of the order, the revised tariffs should remain in effect, with any revenues held subject to refund, pending staff's verification that the revised tariff sheets and notice have been filed by the utility and approved by staff; the docket should remain open pending resolution of the protest. If UIF timely files a revised AFPI tariff for its LUSI wastewater system and no timely protest is filed with respect to that issue, the docket should remain open pending staff's verification that the revised tariff sheets and notice have been filed by the utility and approved by staff, a consummating order should be issued, and the docket should be closed administratively.

If the Commission approves staff's recommendation in Issue 2, UIF does not timely file a revised AFPI tariff meeting the conditions of the order, and a protest is filed within 21 days of the issuance of the order, the tariffed charges originally requested by UIF could be placed into effect, with any revenues held subject to refund, pending staff's verification that the revised tariff sheets and notice have been filed by the utility and approved by staff; the docket should remain open pending resolution of the protest. If UIF does not timely file a revised AFPI tariff with respect to its LUSI wastewater system and no timely protest is filed, a consummating order should be issued, and the docket closed administratively.

UTILITIES, INC. OF FLORIDA
WASTEWATER TARIFF

ORIGINAL SHEET NO. 16.4

ALLOWANCE FOR FUNDS PRUDENTLY INVESTED

Formerly Labrador Utilities, Inc.
Pasco County

An Allowance for Funds Prudently Invested (AFPI) charge is a mechanism which allows a utility the opportunity to earn a fair rate of return on prudently constructed plant held for future use from the future customers to be served by that plant in the form of a charge paid by those customers.

	2016	2017	2018	2019	2020
January	$ 23.21	$ 302.88	$ 595.78	$ 902.87	$ 1,225.15
February	$ 46.43	$ 327.19	$ 621.27	$ 929.61	$ 1,253.24
March	$ 69.64	$ 351.50	$ 646.75	$ 956.36	$ 1,281.33
April	$ 92.86	$ 375.81	$ 672.24	$ 983.10	$ 1,309.43
May	$ 116.07	$ 400.12	$ 697.72	$ 1,009.85	$ 1,337.52
June	$ 139.28	$ 424.43	$ 723.21	$ 1,036.59	$ 1,365.61
July	$ 162.50	$ 448.74	$ 748.70	$ 1,063.34	$ 1,393.70
August	$ 185.71	$ 473.05	$ 774.18	$ 1,090.08	$ 1,421.79
September	$ 208.93	$ 497.36	$ 799.67	$ 1,116.83	$ 1,449.88
October	$ 232.14	$ 521.67	$ 825.15	$ 1,143.57	$ 1,477.97
November	$ 255.35	$ 545.98	$ 850.64	$ 1,170.32	$ 1,506.07
December	$ 278.57	$ 570.29	$ 876.13	$ 1,197.06	$ 1,534.16

The approved AFPI charges, which are based on one equivalent residential connection (ERC), will be collected from 155 additional ERCs as of December 31, 2015. The amount of the charge will be based on the month in which the connection to the utility is made. If by December 31, 2020, any number of ERCs remain unconnected, the remaining ERCs shall be charged the constant maxmium charge of $1,534.16 until all 155 additional ERCs are connected, afterwhich the charge will cease.

EFFECTIVE DATE –

TYPE OF FILING – Limited Proceeding

WS-17-0089

JOHN P. HOY
ISSUING OFFICER

PRESIDENT
TITLE

UTILITIES, INC. OF FLORIDA
WASTEWATER TARIFF

ORIGINAL SHEET NO. 16.5

ALLOWANCE FOR FUNDS PRUDENTLY INVESTED

Formerly Lake Placid Utilities, Inc.
Highlands County

An Allowance for Funds Prudently Invested (AFPI) charge is a mechanism which allows a utility the opportunity to earn a fair rate of return on prudently constructed plant held for future use from the future customers to be served by that plant in the form of a charge paid by those customers.

	2016	2017	2018	2019	2020
January	$ 6.16	$ 80.33	$ 157.35	$ 237.47	$ 320.87
February	$ 12.32	$ 86.72	$ 164.01	$ 244.40	$ 328.09
March	$ 18.48	$ 93.12	$ 170.66	$ 251.32	$ 335.31
April	$ 24.64	$ 99.52	$ 177.32	$ 258.25	$ 342.53
May	$ 30.80	$ 105.92	$ 183.97	$ 265.17	$ 349.75
June	$ 36.96	$ 112.31	$ 190.62	$ 272.10	$ 356.97
July	$ 43.12	$ 118.71	$ 197.28	$ 279.02	$ 364.19
August	$ 49.28	$ 125.11	$ 203.93	$ 285.95	$ 371.41
September	$ 55.45	$ 131.51	$ 210.58	$ 292.87	$ 378.62
October	$ 61.61	$ 137.91	$ 217.24	$ 299.80	$ 385.84
November	$ 67.77	$ 144.30	$ 223.89	$ 306.72	$ 393.06
December	$ 73.93	$ 150.70	$ 230.54	$ 313.65	$ 400.28

The approved AFPI charges, which are based on one equivalent residential connection (ERC), will be collected from 226 additional ERCs as of December 31, 2015. The amount of the charge will be based on the month in which the connection to the utility is made. If by December 31, 2020, any number of ERCs remain unconnected, the remaining ERCs shall be charged the constant maxmium charge of $400.28 until all 226 additional ERCs are connected, afterwhich the charge will cease.

EFFECTIVE DATE –

TYPE OF FILING – Limited Proceeding

WS-17-0089

JOHN P. HOY
ISSUING OFFICER

PRESIDENT
TITLE

UTILITIES, INC. OF FLORIDA
WASTEWATER TARIFF

ORIGINAL SHEET NO. 16.6

ALLOWANCE FOR FUNDS PRUDENTLY INVESTED

Formerly Mid-County Services, Inc.
Pinellas County

An Allowance for Funds Prudently Invested (AFPI) charge is a mechanism which allows a utility the opportunity to earn a fair rate of return on prudently constructed plant held for future use from the future customers to be served by that plant in the form of a charge paid by those customers.

	2016	2017	2018	2019	2020
January	$ 5.23	$ 68.19	$ 133.47	$ 201.28	$ 271.75
February	$ 10.46	$ 73.61	$ 139.11	$ 207.13	$ 277.84
March	$ 15.69	$ 79.03	$ 144.74	$ 212.98	$ 283.93
April	$ 20.92	$ 84.46	$ 150.37	$ 218.84	$ 290.01
May	$ 26.15	$ 89.88	$156.00	$ 224.69	$ 296.10
June	$ 31.38	$ 95.30	$ 161.63	$ 230.54	$ 302.19
July	$ 36.61	$ 100.73	$ 167.26	$ 236.40	$ 308.28
August	$ 41.84	$ 106.15	$ 172.90	$ 242.25	$ 314.37
September	$ 47.07	$ 111.57	$ 178.53	$ 248.10	$ 320.46
October	$ 52.30	$ 117.00	$ 184.16	$ 253.95	$ 326.55
November	$ 57.53	$ 122.42	$ 189.79	$ 259.81	$ 332.63
December	$ 62.76	$ 127.84	$ 195.42	$ 265.66	$ 338.72

The approved AFPI charges, which are based on one equivalent residential connection (ERC), will be collected from 203 additional ERCs as of December 31, 2015. The amount of the charge will be based on the month in which the connection to the utility is made. If by December 31, 2020, any number of ERCs remain unconnected, the remaining ERCs shall be charged the constant maxmium charge of $338.72 until all 203 additional ERCs are connected, afterwhich the charge will cease.

EFFECTIVE DATE –

TYPE OF FILING – Limited Proceeding

WS-17-0089

JOHN P. HOY
ISSUING OFFICER

PRESIDENT
TITLE

UTILITIES, INC. OF FLORIDA
WASTEWATER TARIFF

ORIGINAL SHEET NO. 16.7

ALLOWANCE FOR FUNDS PRUDENTLY INVESTED

Formerly UIF Marion
Marion County

An Allowance for Funds Prudently Invested (AFPI) charge is a mechanism which allows a utility the opportunity to earn a fair rate of return on prudently constructed plant held for future use from the future customers to be served by that plant in the form of a charge paid by those customers.

	2016	2017	2018	2019	2020
January	$ 6.97	$ 90.83	$ 177.36	$ 266.73	$ 359.16
February	$ 13.94	$ 98.03	$ 184.79	$ 274.41	$ 367.11
March	$ 20.91	$ 105.22	$ 192.21	$ 282.09	$ 375.06
April	$ 27.88	$ 112.41	$ 199.64	$ 289.77	$ 383.01
May	$ 34.85	$ 119.60	$ 207.06	$ 297.45	$ 390.96
June	$ 41.82	$ 126.79	$ 214.49	$ 305.13	$ 398.91
July	$ 48.79	$ 133.98	$ 221.92	$ 312.81	$ 406.86
August	$ 55.76	$ 141.17	$ 229.34	$ 320.49	$ 414.82
September	$ 62.73	$ 148.36	$ 236.77	$ 328.17	$ 422.77
October	$ 69.70	$ 155.55	$ 244.19	$ 335.85	$ 430.72
November	$ 76.67	$ 162.74	$ 251.62	$ 343.53	$ 438.67
December	$ 83.64	$ 169.93	$ 259.05	$ 351.21	$ 446.62

The approved AFPI charges, which are based on one equivalent residential connection (ERC), will be collected from 45 additional ERCs as of December 31, 2015. The amount of the charge will be based on the month in which the connection to the utility is made. If by December 31, 2020, any number of ERCs remain unconnected, the remaining ERCs shall be charged the constant maxmium charge of $446.62 until all 45 additional ERCs are connected, afterwhich the charge will cease.

EFFECTIVE DATE –

TYPE OF FILING – Limited Proceeding

WS-17-0089

JOHN P. HOY
ISSUING OFFICER

PRESIDENT
TITLE

UTILITIES, INC. OF FLORIDA
WASTEWATER TARIFF

ORIGINAL SHEET NO. 16.3

ALLOWANCE FOR FUNDS PRUDENTLY INVESTED

Formerly Lake Utility Services, Inc.
Lake County

An Allowance for Funds Prudently Invested (AFPI) charge is a mechanism which allows a utility the opportunity to earn a fair rate of return on prudently constructed plant held for future use from the future customers to be served by that plant in the form of a charge paid by those customers.

	2016	2017	2018	2019	2020
January	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
February	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
March	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
April	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
May	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
June	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
July	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
August	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
September	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
October	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
November	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70
December	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70	$ 1,171.70

The approved AFPI charges, which are based on one equivalent residential connection (ERC), will be collected from 1,471 additional ERCs as of December 31, 2015. The 1,471 ERCs shall be charged a constant charge of $1,171.70 until all ERCs are connected, afterwhich the charge will cease.

EFFECTIVE DATE –

TYPE OF FILING – Limited Proceeding

WS-17-0089

JOHN P. HOY
ISSUING OFFICER

PRESIDENT
TITLE

Item 8

FILED 2/16/2018
DOCUMENT NO. 01288-2018
FPSC - COMMISSION CLERK

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: February 16, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Economics (Bruce, Hudson)
Office of the General Counsel (Crawford)
Division of Accounting and Finance (Cicchetti)

RE: Docket No. 20180025-WS – Application for approval of tariff for the gross-up of CIAC in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.

AGENDA: 03/01/18 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 03/30/18 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

RECEIVED-FPSC
2018 FEB 16 AM 10: 18
COMMISSION CLERK

Case Background

Utilities, Inc. of Florida (UIF or utility) is a Class A utility providing water and wastewater services to 27 systems in the following counties: Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole. The utility reported in its 2016 annual report, water operating revenues in the amount of $2,498,891 and $1,440,710 for wastewater.

On January 29, 2018, UIF filed an application for approval of a tariff to allow for gross-up of contributions in aid of construction (CIAC) in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk and Seminole Counties. As discussed in Issue 1, the utility indicated that a change in tax law may cause it to be at risk of the opportunity to earn a reasonable return on its used and useful property if it is not allowed to collect the impact on receipt of CIAC.

This recommendation addresses the utility's request for approval of a gross-up tariff. ; The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should UIF's request for approval of a tariff to allow the gross-up of CIAC be approved?

Recommendation: Yes, the proposed tariff should be approved. The gross-up amounts should be collected subject to refund pending resolution of Docket No. 20180013-PU and guaranteed by a corporate undertaking. UIF should provide notice to property owners who have requested service during the 12 months prior to the month the request for gross-up of CIAC was filed. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The utility should provide proof of noticing within 10 days of rendering its approved notice. In addition, UIF should be required to file with its Annual Report, a calculation detailing: (1) the amounts of cash and property contributions received during the reporting year; (2) the calculation of the utility's tax liability for the reporting year; and (3) the amount of taxes actually collected on CIAC for the reporting year. The reporting requirement should begin with the 2018 Annual Report and continue each year thereafter. (Bruce, Hudson, Cicchetti)

Staff Analysis: Effective January 1, 2018, the Federal Tax Cuts and Jobs Act amended Section 118 of the Internal Revenue Code. Prior to the amendments, CIAC was exempt from taxable gross income for water and wastewater utilities. As a result of the amendments, both cash and property CIAC are now taxable gross income for water and wastewater utilities. In recognition of this change in the tax law, the Commission has opened Docket No. 02180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings by Office of Public Counsel*, to address the potential rate impacts on regulated electric, gas, water, and wastewater utilities.

A similar law, the Tax Reform Act of 1986, became effective in 1987.[1] In Docket No. 860184-PU, the Commission found that it was appropriate to allow water and wastewater utilities to recover the tax on CIAC from the contributor, including the tax associated with the additional tax that would also become taxable income. For those utilities that were approved to collect the gross-up on CIAC, the gross-up amounts collected were held subject to refund and were evaluated on a case-by-case basis as to whether any refunds were subsequently required.

In its petition, the utility included a proposed tariff (Attachment A) to gross-up cash service availability charges and property contributions to recover the federal and state corporate income taxes associated with those contributions. According to the utility, UIF could risk loss of its opportunity to earn a reasonable return on its property used and useful in the public service if it is not allowed to collect the tax impact on receipt of CIAC.[2]

The gross-up amounts collected by UIF should be subject to refund pending resolution of Docket No. 20180013-PU and guaranteed by a corporate undertaking. In addition, UIF should be required to file with its Annual Report, a calculation detailing: (1) the amounts of cash and property contributions received during the reporting year; (2) the calculation of the utility's tax

[1] The amendment was repealed in 1996.
[2] According to the 2016 Annual Report, UIF collected approximately $835,000 in cash and property CIAC.

liability for the reporting year; and (3) the amount of taxes actually collected on CIAC for the reporting year. The reporting requirement should begin with the 2018 Annual Report and continue each year thereafter.

Based on the above, the proposed tariff should be approved. The gross-up amounts should be collected subject to refund pending resolution of Docket No. 20180013-PU and guaranteed by a corporate undertaking. UIF should provide notice to property owners who have requested service during the 12 months prior to the month the request for gross-up of CIAC was filed. The approved gross-up charges should be effective for connections made on or after the stamped approval date on the tariff sheets. The utility should provide proof of noticing within 10 days of rendering its approved notice. In addition, UIF should be required to file with its Annual Report, a calculation detailing: (1) the amounts of cash and property contributions received during the reporting year; (2) the calculation of the utility's tax liability for the reporting year; and (3) the amount of taxes actually collected on CIAC for the reporting year. The reporting requirement should begin with the 2018 Annual Report and continue each year thereafter.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation in Issue 1, the docket should remain open pending resolution of Docket No. 20180013-PU. (Crawford)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, the docket should remain open pending resolution of Docket No. 20180013-PU.

UTILITIES, INC. OF FLORIDA
WASTEWATER TARIFF

Original Sheet No. 21.1

Income Taxes Related to Cash and Property Contributions in Aid of Construction

The utility may gross-up cash service availability charges and property contributions in aid of construction in order to recover the federal and state corporate income taxes associated with those contributions. The formulae to be used to gross-up cash service availability charges and contributed property are as follows:

TAX IMPACT = R / 1.0-R X (F + P)

1) R = Applicable marginal rate of Federal and State Corporate Income Tax if one is payable on the value of contributions which must be included in taxable income of the utility.

2) R shall be determined as follows:

R = ST + FT (1-ST)

ST = Applicable marginal rate of State Corporate Income Tax

FT = Applicable marginal rate of Federal Income Tax, either corporate or individual.

3) F = Dollar Amount of charges paid to a utility as contributions in aid of construction which must be included in taxable income of the utility, and which had been excluded in taxable income pursuant to Section 118(b) of the Internal Revenue Code.

4) P = Dollar amount of property conveyed to utility which must be included in taxable income of the utility, and, which had been excluded from taxable income pursuant to Section 118(b) of the Internal Revenue Code.

EFFECTIVE DATE – March 1, 2018

JOHN P. HOY
ISSUING OFFICER

TYPE OF FILING - Tariff Filing

PRESIDENT
TITLE

Item 9

FILED 2/16/2018
DOCUMENT NO. 01334-2018
FPSC - COMMISSION CLERK

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: February 16, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Engineering (Wooten, Ellis, King)
Division of Accounting and Finance (Buys, Cicchetti, Richards)
Division of Economics (Higgins, Stratis, Wu)
Office of the General Counsel (Murphy, Cuello)

RE: Docket No. 20170225-EI – Petition for determination of need for Dania Beach Clean Energy Center Unit 7, by Florida Power & Light Company.

AGENDA: 03/01/18 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Graham, Brown, Clark

PREHEARING OFFICER: Clark

CRITICAL DATES: 03/15/18 – Final decision within 135 days of petition per 403.519, Florida Statutes.

SPECIAL INSTRUCTIONS: None

Case Background

On October 20, 2017, Florida Power & Light (FPL or Company) filed a petition and supporting testimony to determine the need for the construction of a new combined cycle generating unit at FPL's existing Fort Lauderdale power plant in Broward County, Florida. This plant would utilize existing facilities, including transmission lines, substation facilities, and gas infrastructure. The petition was filed pursuant to Sections 366.04 and 403.519, Florida Statutes (F.S.), and Rules 25-22.080, 25-22.081, 25-22.082, and 28-106.201, Florida Administrative Code (F.A.C.).

According to FPL's petition, the proposed Dania Beach Clean Energy Center Unit 7 (DBEC Unit 7) will be a natural gas, combined cycle power plant, with an expected summer peak rating of about 1,163 megawatts (MW). The new DBEC Unit 7 will replace the older, less efficient existing Lauderdale Units 4 and 5 currently at the site.

On October 21, 2017, the Office of Public Counsel (OPC) filed its Notice of Intervention. The Order Establishing Procedure, Order No. PSC-2017-0426-PCO-EI, was issued on November 6, 2017. The issues for the docket were set forth in Order No. PSC-2017-0447-PCO-EI, issued on November 17, 2017. On that same day, by Order No. PSC-2017-0448-PCO-EI, the Sierra Club was granted intervention. On December 20, 2017, by Order No. PSC-2017-0476-PCO-EI, the hearing dates for this docket were changed from January 18-19, 2018, to January 17-18, 2018. On January 10, 2018, a prehearing conference was held. The hearing was held on January 17, 2018.

The Florida Public Service Commission (Commission) has jurisdiction over the subject matter of this proceeding pursuant to Sections 366.041 and 403.519, F.S.

Discussion of Issues

Issue 1: Is there a need for the proposed Dania Beach Clean Energy Center Unit 7, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519(3), F.S.?

Recommendation: Yes. The record indicates that FPL has demonstrated a need for the DBEC Unit 7 in the 2024 to 2026 timeframe to maintain its system reliability and integrity. FPL's decision to retire the Lauderdale units in 2018 results in a significant impact on the Southeastern Florida region's reliability and FPL is responsible for ensuring that the reliability and integrity of Southeastern Florida is maintained. Once completed, the proposed DBEC Unit 7 will enhance FPL's system reliability. Further, as discussed in Issue 5, the primary issue in this proceeding is about the timing of the DBEC Unit 7 and its impact on regional reliability and system economics. (Wooten, Stratis)

Position of the Parties

FPL: Yes. There is a need for DBEC Unit 7, taking into account the need for electric system reliability and integrity. DBEC Unit 7 will enhance FPL's system reliability and integrity as measured by FPL's two reserve margin criteria. The net additional 279 MW from DBEC Unit 7 will increase FPL's system reserve margins and defer the need for future capacity additions. The new unit will also maintain and enhance reliability in the Southeastern Florida region.

Sierra Club: No. There is no reliability need for DBEC to come into service in June 2022 because—assuming that FPL retires the existing Lauderdale 4 and 5 units in 2018—FPL's own projections show 2022 is two years before any projected reserve margin shortfall, three years before any projected system balance issue, and five years before the full 1,163 MW capacity of the project is forecast to be needed for reserve margin.

OPC: No. FPL's own analysis demonstrates that there is no need for a new unit before 2024.

Parties' Arguments

FPL

FPL claims that DBEC Unit 7 will enhance FPL's system reliability and integrity as measured by FPL's 20 percent reserve margin, and that no party has contested the use of FPL's 20 percent reserve margin in this docket. (FPL BR 19)

Sierra Club

Sierra Club asserts that FPL's projected need proves that assuming the retirement of Lauderdale Units 4 and 5, DBEC Unit 7 is not needed until 2024. Sierra Club further asserts that the addition of DBEC Unit 7 in 2022 would result in a reserve margin that would exceed FPL's 20 percent reserve margin. (Sierra Club BR 7) Sierra Club suggests that the projected imbalance in the Southeastern Florida region does not support the need of DBEC Unit 7 in 2022. (Sierra Club BR 10)

OPC

OPC states that FPL does not have a projected need until 2024 and that FPL's own analyses, Ten-Year Site Plan and the construction of the Corbett-Sugar-Quarry (CSQ) line supports this assertion. (OPC BR 3-4) OPC claims that the construction of DBEC Unit 7 prior to 2024 results in a reserve margin that exceeds 20 percent yet FPL is using the planning criteria to justify the construction of DBEC Unit 7. (OPC BR 4-5) OPC explains that the FPL presented four-year period in which a major Southeastern Florida generation component would be missing is an artificial constraint on the resource plans. OPC further explains that FPL witness Sanchez does not provide adequate justification of the four-year period or reliability with this area reliability margin. (OPC BR 7-8)

Staff Analysis: As discussed below, all parties agree that FPL has demonstrated a need to retire the Lauderdale 4 and 5 Units early which results in the system reliability need to add capacity by at least 2024. Further, as discussed in Issue 5, the primary issue in this proceeding is the timing of DBEC Unit 7 and its impact on regional reliability and system economics.

Load Forecasting

FPL's forecasts of growth in net energy for load (NEL), peak demand, and customers are generated using the results of econometric models. (TR 187) FPL's customer growth model is based on variables such as population projections, while its peak demand and NEL models are based on variables such as weather conditions, energy efficiency codes and standards, customer growth, and economic conditions. (TR 188-192) At hearing, witness Feldman testified that FPL's customer and NEL forecast methods have been reviewed and accepted by the Commission in past proceedings. (TR 189)

FPL forecasts its customer base to grow by 404,377 customers from its 2016 level to over 5.2 million customers by 2022, the year that DBEC Unit 7 is scheduled to go online, as shown below in Table 1-1. This represents an average annual growth rate (AAGR) from 2016 to 2022 of 1.35 percent, as compared to an AARG of 1.15 percent over the previous 6-year period (2010-2016). (EXH 6) Growth in summer peak demand is forecasted by FPL to reach 24,967 MWs by 2022, representing an AARG of 0.76 percent from 2016 through 2022, compared to 1.39 percent annually from 2010-2016. (EXH 7) NEL growth is forecasted by FPL to reach 122,806 GWhs, representing an AAGR of 0.16 percent annually from 2016 through 2022, an increase of 1,187 GWhs over the period, compared to 1.00 percent from 2012 to 2017. (EXH 8)

Table 1-1
FPL Historical and Future Growth in Customers and Load

Year	Customers	Summer Peak (MWs)	Net Energy for Load (GWhs)
2010 (actual)	4,520,328	21,962	114,604
2016 (actual)	4,840,279	23,858	121,619
2022 (projected)	5,244,656	24,967	122,806
Growth, 2010-2016	319,951	1,896	7,015
Growth, 2016-2022	404,377	1,109	1,187
AAGR, 2010-2016*	1.15%	1.39%	1.00%
AAGR , 2016-2022*	1.35%	0.76%	0.16%
*((Final Year Units/Beginning Year Units)$^{1/6}$-1)*100			

Source: EXH 6, EXH 7, EXH 8

Intervenors provided no testimony regarding FPL's customer, peak demand, and load forecasts. At hearing and in its brief, Sierra Club questioned the accuracy of FPL's NEL forecasts, citing examples of consistent over-forecasting of load in the recent past, especially for forecasts of load five years into the future. (TR 203, TR 207- 208, TR 219, EXH 65) In particular, Sierra Club cited a recent Commission order indicating an average forecasting error of 3.52 percent for FPL forecasts produced 5 years out.[1] (TR 217-219) Sierra Club maintains that the decision that FPL seeks in this case raises a substantial risk of overforecasting. (BR 11)

FPL witness Feldman acknowledged the forecast error calculation referenced in Order No. PSC-16-0032-FOF-EI, noting that forecast errors tend to increase with forecast time horizon. (TR 207, 218) Witness Feldman also discussed the effect of the Great Recession. He testified that, during the 2006 and 2007 period, no utility was able to anticipate the impact, magnitude, or duration of the recession, which tended to magnify forecast errors throughout the utility industry. (TR 219-220, 228) Meanwhile, FPL witness Feldman testified that the Commission should have confidence that its load forecast is reasonable and accurate, citing an average summer-peak forecast error of 1 percent when projecting 5 to 6 years out, based on FPL's last four Ten Year Site Plans (TYSP). (TR 229) The Commission recognized in Order No. PSC-16-0032-FOF-EI that FPL's "five year out" forecasts included three underforecasts out of ten "five year out" forecasts, and concluded that such forecasts are not consistently overforecasts. (EXH 65) While recognizing that a five year out forecast is prone to a greater error rate than a shorter term forecast, staff recommends that the record does not support Sierra Club's claim that FPL's forecast is biased towards an overforecast in this instance.

In summary, staff analyzed FPL's load forecasting models, including the model specifications, assumptions, data inputs, and statistical output, and believes the customer, summer peak demand, and NEL models are reasonable. Staff also reviewed FPL's forecast assumptions pertaining to economic, weather, and demographic conditions, as well as data adjustments, used by FPL to

[1]Order No. PSC-16-0032-FOF-EI, p.8, issued January 19, 2016, in Docket No. 150196-EI, *In re: Petition for Determination of Need for Okeechobee Clean Energy Center Unit 1 by Florida Power and Light Company.*

construct its load forecasts. Based on staff's analysis and review, staff recommends that FPL's load forecasts as filed in this proceeding are reasonable.

Reserve Margin

FPL's projected system need is based on its 20 percent reserve margin criterion; therefore, FPL has demonstrated a need for new generation in order to maintain electric system reliability and integrity with the retirement of Lauderdale Units 4 and 5. As shown in Table 1-2 below, FPL has demonstrated a projected need in 2024 with no new capacity additions under this scenario. No party contested the values for system reliability purposes.

Table 1-2
Summer Reserve Margin Calculations

	Reserve Margin	MW Shortage
2017	21.3%	(295)
2018	21.4%	(313)
2019	20.3%	(69)
2020	21.3%	(299)
2021	21.7%	(378)
2022	21.7%	(379)
2023	21.0%	(233)
2024	19.8%	**54**
2025	18.1%	**459**
2026	16.3%	**904**

Source: EXH 3

As discussed below and later in Issue 5, the acceleration of the CSQ transmission line allows for a unique economic opportunity to retire Lauderdale Units 4 and 5, which maximizes the cost savings of no longer operating those units. (TR 85) However, the decision of replacing the older Lauderdale units exposes FPL's system and the Southeastern Florida region to reliability risks. (TR 407, TR 410-411) The Commission must balance these concerns when considering the overall need and cost-effectiveness of the proposed DBEC Unit 7.

Load/Generation Imbalance

According to FPL witness Sim, the Southeastern Florida region is expected to face a load imbalance at approximately the same time as the 2024 need. (TR 74) FPL witness Sim further elaborates that the Southeastern Florida region constitutes 44 percent of FPL's total load and is continually growing, faces lack of suitable areas for electric generation facilities and geographical constraints prevent further transmission into the region. (TR 74-75) As FPL approaches further imbalance in the region, reliability of the transmission system in the Southeastern Florida region is placed at risk. (TR 76) As discussed further in Issue 5, FPL's 2017 analyses determined that the CSQ line, to be installed by 2019, would increase transmission import capability by 1,200 MW, address a regional need until 2030 and allow a cost-effective retirement of Lauderdale Units 4 and 5 in 2018. Because of the cost-effective retirement of Lauderdale Units 4 and 5, the projected 2030 need is altered. (TR 85) With the retirement of Lauderdale Units 4 and 5 in 2018, the Southeastern Florida region is projected to become imbalanced by 2025 necessitating the replacement of the regional capacity prior to 2025. (TR 85)

As mentioned previously, the CSQ line will provide import capability in the Southeastern Florida region and the construction of DBEC Unit 7 enhances this capability. Specifically, without DBEC Unit 7 the facilities at the 500 kV substations in Broward County are more prone to exceeding their capability. With the placement of DBEC Unit 7 in Broward County, it unloads those facilities and results in an increased import capability of 400 MW for the area. (EXH 53) This would be in addition to the 800 MW of import capability provided by the construction of the CSQ transmission line for a total of approximately 1,200 MW of increased import capability. (TR 410; EXH 53)

Area Reliability Margin

In FPL witness Sanchez's rebuttal testimony, the topic of load imbalance is addressed by calculating what he terms the area reliability margin. FPL witness Sanchez states the area reliability margin combines aspects of reserve margin and load flow analysis and is different than a planning reserve margin or load flow analysis. (TR 405) The projected area reliability margins of FPL's plans are shown in Table 1-3 below.

Table 1-3
Area Reliability

Year	Maintain Lauderdale 4 and 5	2018 Retire Lauderdale 4 and 5, DBEC Unit 7 In-Service 2022	2018 Retire Lauderdale 4 and 5, DBEC Unit 7 In-Service 2024
2018	1,968	1,968	1,968
2019	3,157	1,873	1,873
2020	3,154	1,870	1,870
2021	3,055	1,771	1,771
2022	2,975	3,254	1,691
2023	2,847	3,126	1,563
2024	2,699	2,978	2,978
2025	2,566	2,845	2,845

Source: EXH 53

As illustrated above, FPL's decision to retire the Lauderdale units results in a significant impact on the Southeastern Florida area reliability for the years 2019 through 2021. If DBEC Unit 7 is added by 2022, then the Southeastern Florida region area reliability is enhanced. If DBEC Unit 7 is delayed until FPL's system need in 2024, the Southeastern Florida area reliability would also continue to degrade. As stated by FPL witness Sanchez, maintaining the area reliability margin for the Southeastern Florida region is important because it provides critical support for any combination of unexpected situations. (TR 405) The risk increases as the load continues to increase and the generation resources and import capability stay constant, and lessens the area reliability margin. DBEC Unit 7 being brought in-service as soon as possible after the retirement of the Lauderdale units lessens the risk to customers of firm load shedding that is exacerbated with a delay of DBEC Unit 7 to 2024. (TR 409, EXH 53) Regardless, if DBEC Unit 7 were to be delayed until 2024 due to events beyond FPL's control, FPL has stated that "FPL would continue to provide service to its customers in the most reliable and efficient manner that it can." (EXH 53) Staff recommends that there is value in evaluating multiple reliability perspectives in order to maintain reliability and integrity of the grid and expects FPL to maintain reliability as it has stated with the proposed DBEC Unit 7.

Conclusion

The record indicates that FPL has demonstrated a need for DBEC Unit 7 in the 2024 to 2026 timeframe to maintain its system reliability and integrity. FPL's decision to retire the Lauderdale units in 2018 results in a significant impact on the Southeastern Florida region's reliability and FPL is responsible for ensuring that the reliability and integrity of Southeastern Florida is maintained. Once completed, the proposed DBEC Unit 7 will enhance FPL's system reliability. Further, as discussed in Issue 5, the primary issue in this proceeding is about the timing of the DBEC Unit 7 and its impact on regional reliability and system economics.

Issue 2: Are there any renewable energy sources and technologies or conservation measures taken by or reasonably available to FPL, which might mitigate the need for the proposed Dania Beach Clean Energy Center Unit 7?

Recommendation: No. No additional cost-effective renewable resource has been identified in this proceeding that could mitigate the need for new generation. Similarly, no additional cost-effective Demand-Side Management (DSM) has been identified in this proceeding that could mitigate the need for new generation. (Wooten)

Position of the Parties

FPL: No. FPL took account of all cost-effective renewable energy and conservation measures reasonably available to FPL that might mitigate the need for DBEC Unit 7, including all cost-effective renewable energy generation and energy efficiency programs that might be implemented in the Southeastern Florida region. There is no record evidence supporting additional cost-effective renewable energy generation or DSM that could diminish the unquestionable benefits projected to be provided by DBEC Unit 7 beginning in 2022.

Sierra Club: Sierra Club objects to the premise that DBEC is needed in 2022. Renewable energy sources, technologies, and conservation measures are reasonably available to FPL and could be deployed incrementally to delay, or potentially entirely forestall, any need for new gas generation, and would likely reduce financial burdens on customers. FPL has not fairly evaluated these alternatives. FPL's "Plan 3", purportedly evaluating solar and storage options, constitutes a single, poorly-conceived alternative rife with artificial, cost-inflating constraints.

OPC: FPL has not adequately evaluated whether solar and battery storage might be used to meet its 20 percent margin reserve needs in 2024.

Parties' Arguments

FPL

FPL states that nothing in the record supports any additional cost-effective renewable generation available to FPL to mitigate the need for DBEC Unit 7 in 2022. (FPL BR 25) FPL further claims that all DSM conservation measures have been accounted for in its analyses, as well as the cost-effective DSM program approved by the Commission in the 2014 DSM goals set for FPL through the year 2024. FPL further states that cost-effective energy efficiency programs were not considered a viable option because it was determined the cost-effectiveness of these programs has continued to decline. (FPL BR 27)

Sierra Club

Sierra Club argues that FPL's renewable resource plan is arbitrarily and unreasonably constrained by a megawatt to megawatt match of DBEC Unit 7. (Sierra Club BR 29) Sierra Club further argues that FPL unreasonably adds a large amount of solar and storage before a reliability need. (Sierra Club BR 31)

OPC

OPC states that FPL's renewable resource plan was flawed because it did not efficiently consider deployment of clean energy sources when they are needed to meet reliability requirements and purposefully designed to not yield the lowest cost scenario for relying on clean energy resources. (OPC BR 11) OPC further states that FPL did not adequately pursue renewable energy sources and technologies or conservation measures that might have mitigated the need for DBEC Unit 7. (OPC BR 12)

Staff Analysis: According to FPL witness Sim, FPL's analyses of renewable generation options included Photovoltaic (PV) facilities of both utility-scale and distributed generation as potential sources for meeting the need. FPL witness Sim further stated that FPL's analyses accounted for all achievable cost-effective DSM programs approved by the Commission. (TR 70)

FPL's renewable evaluation assumes the retirement of Lauderdale Units 4 and 5 in late 2018 with a sufficient amount of PV and batteries to be added in the Southeastern Florida Region by 2022. This plan would approximate the incremental 1,163 MW of firm capacity that would be added by DBEC Unit 7. (TR 87-88) Specifically this evaluation assumes that 1,033 MW of PV and 755 MW of battery storage would be in place by 2022 in the Southeastern Florida region. The 1,033 MW of PV would be comprised of both utility-scale and distributed generation. (TR 88) This evaluation had a Cumulative Present Value Revenue Requirement (CPVRR) cost of $1,288 million more than the DBEC Unit 7 resource plan making it uneconomic. (EXH 5)

In response to discovery FPL provided a renewable plan that retired Lauderdale Units 4 and 5 in 2018 and would solely meet FPL's system need in 2025 instead of matching the 1,163 MW of firm capacity provided by DBEC Unit 7. This solar evaluation included both PV and batteries and totaled 433 MW. With this revised and conservative approach DBEC Unit 7 still proved to be more cost-effective when compared to the solar evaluation which had a CPVRR cost $370 million more than DBEC Unit 7. (EXH 52)

Both Sierra Club and OPC state that FPL did not evaluate a scenario that adequately evaluated renewable resources. Namely, both parties believed that FPL's initial solar evaluation did not adequately compare an efficient deployment of renewable resources to the system resource need. Staff believes this was addressed with the additional solar resource evaluation that was provided through discovery, which was shown to be less cost-effective than the DBEC Unit 7 as proposed by FPL.

Conclusion

No additional cost-effective renewable resource has been identified in this proceeding that could mitigate the need for new generation. Similarly, no additional cost-effective DSM has been identified in this proceeding that could mitigate the need for new generation.

Issue 3: Is there a need for the proposed Dania Beach Clean Energy Center Unit 7, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519(3), F.S.?

Recommendation: Yes. The record indicates that FPL's financial, fuel and environmental cost estimates are reasonable. As discussed in Issue 5, the primary driver of this proposed plan is replacing the old outdated Lauderdale units with the more efficient DBEC Unit 7. (Wooten, Buys, Higgins, Wu)

Position of the Parties

FPL: Yes. There is a need for DBEC Unit 7, taking into account the need for adequate electricity at a reasonable cost. DBEC Unit 7 is projected to be approximately $337 million CPVRR less expensive than continuing to operate the existing Lauderdale units and to result in the lowest system cost of all of the numerous resource options and plans evaluated. The new unit will not require any new gas pipeline, transmission line, or water supply.

Sierra Club: No. More cost-effective options exist. Customers will save money if FPL adds capacity commensurate with the timing and size of a projected reserve margin deficit or Southeastern regional imbalance. Locking DBEC in now, nearly a decade before a projected shortfall of so much additional capacity, would rob customers of wide-ranging benefits of investing in alternatives. Florida's Legislature has mandated utilities pursue such alternatives "to the extent reasonably available," § 403.502 Fla. Stat.

OPC: No. FPL's own analysis demonstrates that there is no need for a new unit before 2024.

Parties' Arguments

FPL

FPL asserts that DBEC Unit 7 is projected to result in the lowest system CPVRR cost of all resource options and resource plans evaluated and thus provide the lowest rates for FPL's customers. (FPL BR 28) FPL claims that DBEC Unit 7 is projected to be approximately $337 million CPVRR less expensive than continuing to operate the existing Lauderdale units. (FPL BR 29)

Sierra Club

Sierra Club states that delaying DBEC Unit 7 until 2024 and retirement of Lauderdale units in 2018 is a more cost-effective alternative to FPL's proposed plan. (Sierra Club BR 21) Sierra Club claims that FPL reviewed a limited scope of alternative plans that may have been cheaper and more cost-effective than the proposed plan. (Sierra Club BR 23)

OPC

OPC explains that FPL has not demonstrated a need for a new unit in 2022. OPC further explains that a five-year delay or six-year delay scenario would produce savings when FPL's four-year period between retirement and construction of a new unit is not observed. (OPC BR 13)

Staff Analysis: Below is a discussion of the various economic assumptions made by FPL associated with the construction of DBEC Unit 7 and the reasonableness of these assumptions.

Plant Description

FPL's proposed DBEC Unit 7 is a 1,163 MW power plant located in Broward County, Florida. (TR 285) The proposed plant will consist of two advanced technology Combustion Turbines (CTs), two heat recovery steam generators, and one steam turbine at an existing power generation site. (TR 236) DBEC Unit 7 will be located on approximately 392 acres of FPL-owned land within the cities of Dania Beach and Hollywood. (TR 244) The site is currently supporting the Lauderdale 4 and 5 Units, and a significant amount of infrastructure used in support of Lauderdale Units 4 and 5 will be reused for DBEC Unit 7. (TR 236)

Financial Assumptions

FPL's CPVRR analysis assumed an overall cost of capital of 7.57 percent on an after-tax basis. The overall cost of capital, or discount rate, is based on a capital structure of 59.6 percent equity at a cost rate of 10.55 percent and 40.4 percent debt at a cost rate of 5.17 percent. (EXH 51 and EXH 59)

In its analysis, FPL used 2.5 percent for the O&M and capital escalation rates, and 2.0 percent for the capital replacement escalation rate. (EXH 51) The escalation rates were based on input from FPL's Engineering & Construction business unit. (EXH 51) These values are consistent with escalation rates for O&M and capital that FPL used for other planning analyses that FPL conducted during 2017 and during the last few years. (EXH 51) The escalation rate of 5.0 percent for the cost of short-term Purchased Power Agreement (PPAs) was based on input from FPL's Energy Management & Trading business unit. (EXH 51) FPL noted that the PPA cost escalation rate was used for all PPAs in all of the resource plans analyzed for this docket in 2017. (EXH 51) FPL indicated that there is little difference in the level and/or timing of PPAs between these resource plans, and therefore, there is little difference in the PPA costs between these resource plans. (EXH 51) There was no evidence presented in the record that disputes the reasonableness of FPL's financial assumptions used in the Company's CPVRR analyses. Based on the record, staff recommends that the financial assumptions used for FPL's CPVRR evaluation are reasonable.

The installed cost of DBEC Unit 7 is projected to be approximately $888 million. (TR 237) DBEC Unit 7 is projected to have an average heat rate of 6,119 Btu/kWh and is expected to have a capacity factor of 90.0 percent. (EXH 16) Lauderdale Units 4 and 5 have an average heat rate of approximately 7,800 Btu/kWh showing that DBEC Unit 7 is 22 percent more fuel efficient in comparison to Lauderdale Units 4 and 5. (TR 239) The ramp rate of a generating unit is the amount of MW that can be ramped up or down over a given time and a major aspect of its flexibility. Likewise, the ramp rates for Lauderdale Units 4 and 5 are 6 MW/minute which are the slowest on FPL's system. (TR 240) The proposed DBEC Unit 7 has a projected ramp rate of 60 MW/minute, which would make it the fastest ramp rate of FPL's current units. (TR 240) FPL has experience building and operating Combined Cycle (CC) units and is confident of the accuracy of its construction estimates and projected unit estimates. (TR 237) Comparing Lauderdale Units 4 and 5 to DBEC Unit 7 shows the significant upgrade to FPL's system that occurs with the cost-effective replacement of the older Lauderdale units. As discussed in Issue 5,

the primary driver of this proposed plan is replacing the old outdated Lauderdale units with the more efficient DBEC Unit 7. No evidence was presented that challenged FPL's generation construction cost or performance projections.

Fuel Costs

FPL's fuel price forecast utilized for its economic evaluations in this case was its November 2016 forecast. (TR 262) The Company employed its standard fuel forecasting methodology in preparing its forecast. (TR 262-263) Staff notes that no intervenor presented an alternative fuel price forecast for the purpose of valuing the Company's DBEC Unit 7 proposal or any other potential resource plan scenario. Staff recommends that the fuel price forecast used in the Company's economic evaluations of potential resource options is reasonable.

The Company also performed sensitivities around its long-term fuel price forecast. The sensitivities were based on a statistical measurement of price volatility over the past eight years reflecting one standard deviation from the mean, which equates to approximately 20 percent of the base/medium forecast, both high and low. (EXH 51) However, given that the Company's as-filed cost analyses were formulated using its November 2016 fuel forecast, in discovery the Company was asked to perform the same economic evaluations using a more recent, or November 2017 (unofficial) fuel forecast. (EXH 50) The more recent fuel price forecast places downward cost pressure, in CPVRR terms, on all evaluated potential resource plan options, with DBEC Unit 7 remaining the most cost effective.

Environmental Costs

FPL asserted that the proposed DBEC Unit 7 will significantly improve the Company's air emission profile through the decrease in CO2, NO_X, and total air emissions compared to the existing Lauderdale Units 4 and 5, and promote the saving in water consumption as well. (TR 248-249) The NO_X emission rate for DBEC Unit 7, when firing natural gas, is projected to be 95 percent lower than the existing Lauderdale units. (TR 248) The anticipated reduction in the CO2 emission rate, for the new unit compared to the existing units, is approximately 22 percent. (EXH 50) The reduction of the allocation of process water for power generation is projected to be from 1.69 to 1.0 million gallons per day based on a 12-month rolling average. (TR 249)

FPL's 2017 economic analysis of DBEC Unit 7 used the same updated forecast for environmental compliance costs that were used in analyses that led to FPL's Ten-Year Site Plan filing in 2017. (TR 83) No parties contested the forecast in this proceeding. The projection of CO2 compliance costs, developed in/around January 2017, was provided by ICF, a consulting firm used by the U.S. Environmental Protection Agency to develop compliance cost projections for its Clean Power Plan, and by FPL for its resource planning work since the year 2007. (EXH 50) Typically, FPL includes a projection of the CO2 emission compliance costs in its resource planning analyses. In this proceeding, FPL performed scenario analyses in which it analyzed combinations of high, medium, and low cost forecasts for fuel and various projections of environmental compliance costs. (EXH 50) Results show that DBEC Unit 7 is projected to result in significant savings for FPL's customers in comparison to the other resource plans evaluated, regardless of whether a high, medium, or low fuel cost forecast and environmental compliance cost forecasts are assumed. (EXH 58)

Conclusion

The record indicates that FPL's financial, fuel and environmental cost estimates are reasonable.

Issue 4: Is there a need for the proposed Dania Beach Clean Energy Center Unit 7, taking into account the need for fuel diversity and supply reliability, as this criterion is used in Section 403.519(3), F.S.?

Recommendation: While DBEC Unit 7 will not improve FPL's overall fuel diversity, the unit efficiency allows FPL to reduce the total amount of natural gas needed to serve the need of its customers. In addition, overall fuel supply reliability will be maintained because DBEC Unit 7 will use the existing oil backup infrastructure on the site. (Wooten)

Position of the Parties

FPL: Yes. There is a need for DBEC Unit 7, taking into account the need for fuel diversity and supply reliability. Because of DBEC Unit 7's high level of fuel efficiency, the unit is projected to lower the total amount of natural gas used by FPL's generating fleet compared to continuing to operate the existing Lauderdale Units 4 & 5 in a status quo scenario.

Sierra Club: No. DBEC will prolong potentially until 2061 FPL's dangerous over-reliance on one fuel: gas, which currently represents 71% of FPL's generation. Fuel efficiency does not remedy adding gas burning generation to an already overburdened system, where, despite dual fuel capability, DBEC is designed primarily to burn gas. Conversely, investing in alternatives, especially solar and demand-side energy efficiency, would provide much needed fuel diversity, including protection from gas price and supply risks and pollution abatement costs.

OPC: No. The proposed Dania Unit 7 uses natural gas and would replace the Fort Lauderdale Units 4&5 that use natural gas. At best, the replacement with a more efficient natural gas plant has scant impact on FPL's overall reliance on natural gas. However, FPL's own analysis demonstrates that there is no need for a new unit fueled by natural gas or otherwise before 2024.

Parties' Arguments

FPL

FPL states that because DBEC Unit 7 will be a very fuel efficient unit, with a projected heat rate of 6,119 BTU/kWh, the total usage of natural gas will decrease on a system-wide basis compared to running the Lauderdale units and therefore improves fuel diversity and supply reliability of the system. (FPL BR 30) FPL further adds that while DBEC Unit 7 will be fueled primarily by natural gas, it will have the capability to burn light fuel oil to ensure reliable service. (FPL BR 31)

Sierra Club

Sierra Club asserts that FPL is currently overly reliant on gas-burning generation and DBEC Unit 7 would negatively affect that reliance. (Sierra Club BR 35) Sierra Club states that FPL should diversify its generation portfolio with non-gas generation resources such as solar. (Sierra Club BR 37)

OPC

OPC states that although FPL claims that DBEC Unit 7 will be more fuel efficient than Lauderdale Units 4 and 5 and lower system natural gas usage, the replacing of a natural gas unit with another is not an effective way to enhance FPL's fuel diversity. (OPC BR 14) OPC further states that if the Lauderdale units were retired and renewable resources or DSM were utilized to replace the capacity, then fuel diversity would actually be enhanced. (OPC BR 15)

Staff Analysis: The record reflects that FPL's proposed DBEC Unit 7 will be fueled by natural gas, and to enhance fuel supply reliability, it will use ultra-low sulfur distillate light oil as a backup fuel. Because DBEC Unit 7 will be replacing the existing gas-fired Lauderdale Units 4 and 5, FPL will serve DBEC Unit 7 via the existing Florida Gas Transmission Company gas transportation infrastructure currently serving the site. (TR 263) Light fuel oil is currently located onsite to serve the existing units and will continue to be stored in sufficient quantities to allow both the DBEC Unit 7 and existing units operate at the full capacity for approximately 72 hours of continuous operation and can be resupplied with truck deliveries. (TR 263) DBEC Unit 7 will continue FPL's dependence on natural gas however; the efficiency of DBEC Unit 7 allows FPL to reduce the total usage of natural gas on a system-wide basis. (TR 96)

Conclusion

While DBEC Unit 7 will not improve FPL's overall fuel diversity, the unit efficiency allows FPL to reduce the total amount of natural gas needed to serve the need of its customers. In addition, overall fuel supply reliability will be maintained because DBEC Unit 7 will use the existing infrastructure on the site.

Issue 5: Will the proposed Dania Beach Clean Energy Center Unit 7 provide the most cost-effective alternative available, as this criterion is used in Section 403.519(3), F.S.?

Recommendation: Yes. The retirement and replacement of the Lauderdale units with DBEC Unit 7 is estimated to result in a net present value (NPV) savings of approximately $299 million to $364 million. Therefore, DBEC Unit 7 is the most cost-effective alternative that maintains FPL's system and Southeastern Florida area reliability compared to other alternatives. (Wooten)

Position of the Parties

FPL: Yes. DBEC Unit 7 is the most cost-effective alternative to meet the needs of FPL's customers for both FPL's system and the Southeastern Florida region beginning in 2022. It is projected to save FPL's customers hundreds of millions of dollars CPVRR over status quo and solar and storage resource plan alternatives analyzed. A one year or two year a delay of DBEC Unit 7 would be millions of dollars CPVRR more expensive for FPL's customers.

Sierra Club: No. Less costly alternatives include delaying DBEC until 2024-the earliest date when FPL projects a reliability issue. FPL did not adequately consider other potential cost-saving alternatives, such as forestalling the need for DBEC by adding incremental, renewable, or demand-side alternatives. As Dr. Hausman explained, FPL's Plan 3 is unreliable and obscures the cost-effectiveness of alternatives. See Reply to Issues 2. 3.

OPC: No. Retiring the Fort Lauderdale Units 4&5 in late 2018 with a delay in replacement power until 2024 is more economical than FPL's proposed Dania Unit 7 replacement into service in 2022.

Parties' Arguments

FPL

FPL asserts that after analyses of a variety of generation types, DBEC Unit 7 proved to be the most cost-effective alternative available to reliably serve FPL's customers. FPL further asserts that in comparison to continuing to run the Lauderdale units or supplying an equivalent amount via renewable resources there is a CPVRR savings of $337 million and $1,288 million, respectively. (FPL BR 32) FPL explains that the 2016 analyses performed determined that the CSQ transmission line was sufficient in meeting the regional need but opened a window of opportunity that could allow for the retirement and replacement of the Lauderdale units. (FPL BR 33) FPL states that the 2017 analyses determined that the retirement of the Lauderdale units in 2018 along with the construction of DBEC Unit 7 with an in-service date of 2022 was the most economic option for FPL's customers. (FPL BR 34) FPL further claims delaying DBEC Unit 7 past the 2022 in-service date would increase costs to customers and if not coupled with a delay of the Lauderdale unit's retirement would compromise the reliability of the region. (FPL BR 35)

Sierra Club

Sierra Club states that delaying DBEC Unit 7 until 2024 and retirement of Lauderdale units in 2018 is a more cost-effective alternative to FPL's proposed plan. (Sierra Club BR 21) Sierra Club claims that FPL reviewed a limited scope of alternative plans that may have been cheaper and more cost-effective than the proposed plan. (Sierra Club BR 23) Sierra Club states that FPL's renewable resource plan is arbitrarily and unreasonably constrained by a megawatt to megawatt match of DBEC Unit 7. (Sierra Club BR 28 - 29) Sierra Club further states that FPL adds a large amount of solar and storage in 2018 through 2022 before a reliability need. (Sierra Club BR 30)

OPC

OPC claims that retiring the Lauderdale units in late 2018 and delaying replacement power until 2024 is more cost-effective that DBEC Unit 7 being placed into service in 2022. (OPC BR 16) OPC further claims not forcing customers to pay for the resource two years before it is needed will produce savings for customers. (OPC BR 16)

Staff Analysis: FPL witness Sim's direct testimony provided an overview of FPL's analyses to determine the best option to meet its projected 2024 need and maintain load balance in the Southeastern Florida region. FPL's evaluation was a multi-staged process over multiple analyses that resulted in the proposed DBEC Unit 7, a 1,163 MW combined cycle power plant located on the existing Lauderdale Units 4 and 5 sites. (TR 64)

FPL's first analyses were performed in mid-2016, when a 2024 system need for a resource addition was identified in FPL's 2016 TYSP. Concurrently, an examination of the load balance in the Southeastern Florida region was performed and had projected an imbalance in the region to occur at approximately the same time. (TR 74) FPL's first stage was conducting analyses that contained various generation and transmission options that could be used to form resource plans that would address the issues. This included resource plans that considered CCs and CTs outside of the Southeastern Florida region, CCs and CTs inside the Southeastern Florida region, PV and/or batteries inside the Southeastern Florida region, and a modernization of existing sites. (TR 78) The conclusion of these analyses was that a new transmission line into Southeastern Florida was needed in all resource plans, which was determined to be the CSQ line. The addition of this line was projected to address the Southeastern Florida region need until 2027. (TR 82) The analyses further highlighted that not retiring Lauderdale Units 4 and 5 would cause FPL to incur significant expenses. (TR 83) With the retirement of Lauderdale Units 4 and 5 in 2018, the Southeastern Florida region is projected to become imbalanced by 2025 necessitating the replacement of the regional capacity prior to 2025. (TR 85) The uncertainty involved in project planning, such as changes in FPL's generating units or higher than projected loads, made FPL look into resource plans that would provide additional capacity at a date earlier than 2025. (TR 85 - 86) Therefore, FPL explored options to replace the Lauderdale units.

FPL's 2017 analyses used updated load, fuel costs, and environmental compliance costs; the same updated forecasts as were used in FPL's 2017 TYSP and 2017 Solar Base Rate Adjustment filings. (TR 83) These new analyses included the additional utility-scale PV capacity that was scheduled to be implemented due to the 2017 TYSP. (TR 83-84) The 2017 analyses established the addition of the CSQ line by mid-2019, which determined it would address regional need until

2030. (TR 85) The results of the new analyses presented FPL with three resource plans to evaluate including the updated forecasts. Plan 1 considered continued operation of Lauderdale Units 4 and 5. Plan 2 is a retirement of Lauderdale Units 4 and 5 in 2018, with DBEC Unit 7 added in 2022. Plan 3 is a retirement of Lauderdale Units 4 and 5 in 2018, with an addition of a combined 1,163 MW of PV and battery storage. (TR 87) These three initial plans formed the basis of FPL's petition in this docket.

As discussed previously in Issue 2, FPL considered a mix of PV facilities and battery storage as generation options in the 2017 analyses, but this resource option proved to be less cost-effective than DBEC Unit 7. While comparing the remaining resource plans, the continued operation of Lauderdale Units 4 and 5 has a CPVRR cost of $337 million more than DBEC Unit 7. (EXH 5) The result of the evaluation was FPL deciding on a resource plan comprised of a 2018 retirement of the Lauderdale units with DBEC Unit 7 being constructed on the Lauderdale site in 2022, also known as FPL Plan 2. Based on the results of the analyses FPL concluded this was the most cost-effective resource plan. (EXH 5)

FPL also provided sensitivities which showed the impact of delaying the construction of DBEC Unit 7 one and two years. The results showed an estimated CPVRR increase in cost of $12 million for a one year delay and $38 million for a two-year delay. (TR 93) These scenarios also delayed the retirement of the Lauderdale units an equivalent amount of time. Therefore, further discovery was conducted, which requested a resource plan that would retire Lauderdale Units 4 and 5 in 2018 and delay the construction of DBEC Unit 7 to 2024. This evaluation showed that when compared to FPL's Plan 2, there was a savings of $27.4 million. (EXH 52) Although savings occur when delaying the unit to 2024, FPL states there is an operations risk associated with taking a plant out-of-service with no replacement. (EXH 52) Accordingly, delaying the construction to 2024 would negatively impact the Southeastern Florida regional reliability and reduce the import capability provided by the CSQ line. (EXH 52, TR 410-411) FPL states that the delay scenario would also increase both system natural gas usage and system emissions. (EXH 52) FPL deemed the delay scenario unreasonable to pursue as delaying DBEC Unit 7 would result in increased operational challenges and risks to serving customers in the Southeastern Florida region. (TR 411) The potential economic savings compared to increased reliability risk is one that the Commission must balance while evaluating FPL's proposed plan.

Table 5-1 below is a CPVRR analysis of all of the scenarios compared to FPL's proposed DBEC Unit 7 resource plan.

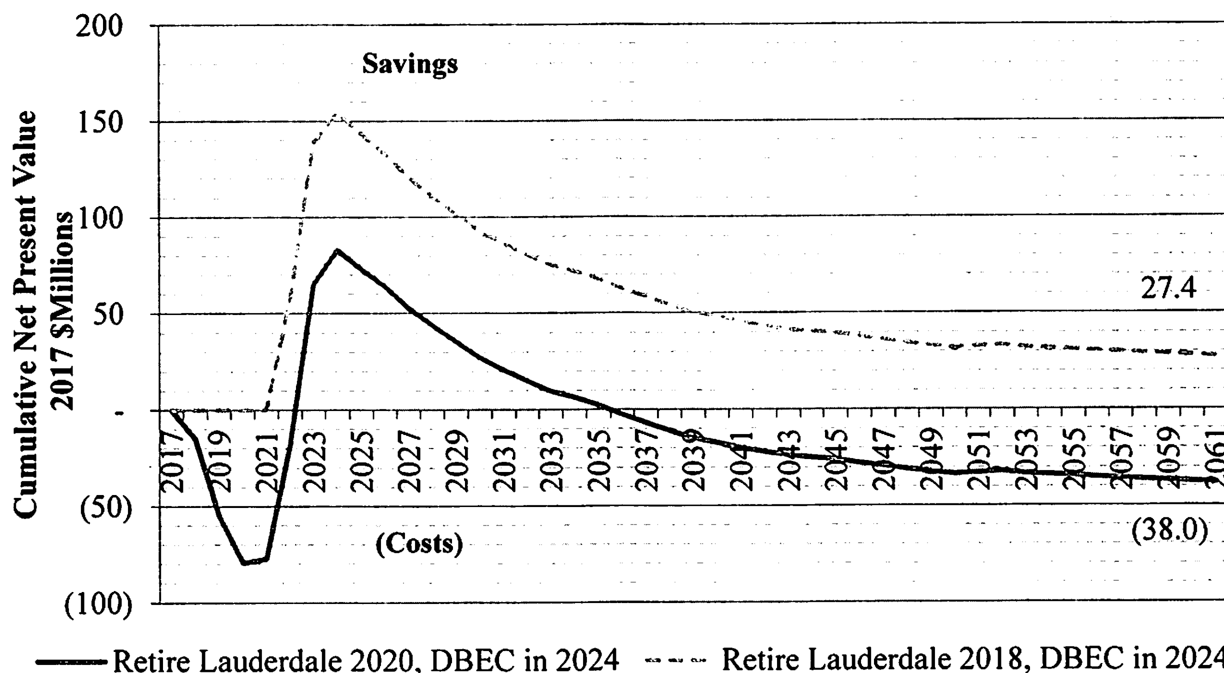
Table 5-1
Cumulative Net Present Value Comparison of Resource Plans to FPL Plan 2

Resource Plan	CPVRR 2017 $Millions Savings/(Costs)
Lauderdale 4 and 5, Continued Operation	**(337)**
FPL Renewable Evaluation (1,163 MW PV/Batteries)	**(1,288)**
Retire Lauderdale 2018, DBEC in-service 2024	**27**
Retire Lauderdale 2020, DBEC in-service 2024	**(38)**
Staff Renewable Evaluation (433 MW PV/Batteries)	**(370)**

Source: EXH 52, EXH 59

As can be seen in the table above, only two resource plans are comparable to FPL's proposed resource plan while shifting the timing of DBEC Unit 7 to align with FPL's system generation need. Staff concentrated its efforts on evaluating these prevailing resource plans. Figure 5-1 below shows the annual CPVRR comparison of these resource plans.

Figure 5-1
Annual Comparison to FPL's Proposed Plan 2



Source: EXH 53, EXH 59

Staff recommends that the resource plans evaluated in Table 5-1 and Figure 5-1, shows that the continued operation of Lauderdale Units 4 and 5 would be uneconomic. Namely, the retirement of the Lauderdale units and replacement with DBEC Unit 7 would present an estimated NPV savings of approximately $299 million and $364 million for FPL customers. Both Sierra Club and OPC stated that retiring the Lauderdale units in 2018 and delaying the in-service date of DBEC Unit 7 until 2024 is more economic than FPL's proposed plan. Staff agrees that such a resource plan would result in projected savings for the customers but would ignore the diminished Southeastern Florida area regional reliability. Staff also agrees with witness Sanchez that this increased reliability risk is not worth the potential economic impact to FPL's customers. (TR 410-411) As discussed in Issue 3, FPL's DBEC Unit 7 would be one of the most efficient units on FPL's system. As established in Docket No. 20160021-EI, FPL's current incentive mechanism has a sharing threshold of $40 million that obliges FPL to pass savings to customers if they occur.[2] The addition of DBEC Unit 7 in 2022 may result in additional opportunities for FPL to make off system sales for the benefit of its customers.

[2]Order No. PSC-16-0560-AS-EI, issued December 15, 2016, in Docket No. 20160021-EI, *In re: Petition for rate increase by Florida Power & Light Company.*

Conclusion

The retirement and replacement of the Lauderdale units with DBEC Unit 7 is estimated to result in a NPV savings of approximately $299 million to $364 million. Therefore, the proposed DBEC Unit 7 is the most cost-effective alternative that maintains FPL's system and the Southeastern Florida area reliability compared to other alternatives.

Issue 6: Based on the resolution of the foregoing issues and other matters within its jurisdiction which it deems relevant, should the Commission grant FPL's petition to determine the need for the proposed Dania Beach Clean Energy Center Unit 7?

Recommendation: Yes. (Wooten)

Position of the Parties

FPL: Yes. DBEC Unit 7 is the best, most cost-effective choice for meeting the needs of FPL's customers beginning June 1, 2022. It is the most cost-effective choice based on extensive analyses, taking into account all reasonably available renewable energy and conservation measures. For the benefit of FPL's customers, it will deliver significant cost savings, enhance system and regional reliability, and reduce system emissions and usage of natural gas a as a fuel source for generation.

Sierra Club: No. FPL has not met its burden to demonstrate that DBEC is needed. Potential alternatives exist to satisfy future needs at less cost, and with wide-ranging benefits of alternatives, including greater fuel diversity. Moreover, to avoid the material risk of DBEC becoming a stranded asset, the Commission needs more information on the pledges to transition to renewable energy by local governments and customers in FPL's service area well before 2061.

OPC: No, not at this time. Delaying Dania Unit 7 by a year or two and retiring the Fort Lauderdale Units 4&5 in late 2018 is the least costly option based on all the circumstances provided in this case.

Parties' Arguments

FPL

FPL states that as demonstrated in Issues 1 through 5, the DBEC Unit 7 is the most cost-effective alternative with which to maintain and enhance reliable service system-wide and in the Southeastern Florida region. FPL adds that using the existing infrastructure of the retired Lauderdale units for DBEC Unit 7 is consistent with the Commission's policy that before a utility constructs a new generating unit at a greenfield site, it must consider the modernization of existing units. (FPL BR 36)

Sierra Club

Sierra Club explains that there is no reliability need for DBEC Unit 7, and the addition of the unit would exceed FPL's reserve margin. (Sierra Club BR 7) Sierra Club further explains that the projected imbalance for the Southeastern Florida region does not support a need for DBEC Unit 7. (Sierra Club BR 10) Sierra Club claims that FPL reviewed a limited scope of alternative plans that may have been cheaper than the proposed plan. (Sierra Club BR 23)

OPC

OPC asserts that DBEC Unit 7 is not needed until 2024 and FPL's 20 percent reserve margin criterion will remain sufficiently met with a 2024 in-service date. (OPC BR 16-17) OPC agrees with Sierra Club witness Hausman that DBEC Unit 7 will provide excess capacity available for sale that would be under FPL's asset optimization. (OPC BR 17) OPC asserts that the addition of

resources before the 2024 need is not conducive to meeting a need determination. (OPC BR 17-18)

Staff Analysis: Pursuant to Section 403.519, F.S., the Commission is the sole forum for the determination of need for major new power plants. In making its determination, the Commission must take into account the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, the need for fuel diversity and supply reliability, and whether the proposed plant is the most cost-effective alternative available. The Commission must also expressly consider whether renewable generation or conservation measures taken by or reasonably available to the Utility might mitigate the need for the proposed plant. The Commission's decision on a need determination petition must be based on the facts as they exist at the time of the filing with the underlying assumptions tested for reasonableness.

As shown in Issues 1 through 5, the record supports the need for DBEC Unit 7 in 2022. The following summarizes the previous issues:

1. FPL has demonstrated that it has a system need for capacity additions in the 2024 through 2026 timeframe to meet its 20 percent reserve margin criterion.

2. No cost-effective DSM or renewable resources have been identified that could mitigate the need for DBEC Unit 7.

3. DBEC Unit 7 is expected to provide adequate electricity at a reasonable cost to FPL's customers.

4. DBEC Unit 7 is projected to reduce overall natural gas consumption and reduce emissions compared to maintaining the existing Lauderdale units.

5. DBEC Unit 7 is the most cost-effective alternative that maintains FPL's system and Southeastern Florida area reliability compared to other alternatives. The retirement and replacement of the Lauderdale units with DBEC Unit 7 is estimated to result in a NPV savings of approximately $299 million to $364 million.

Staff recommends that there is value in evaluating multiple reliability perspectives in order to maintain reliability and integrity of the grid and expects FPL to maintain reliability as it has stated with the proposed DBEC Unit 7. Based on the record above, staff recommends that the Commission grant FPL's requested determination of need.

It is prudent for a utility to continue to evaluate whether it is in the best interests of its ratepayers for a utility to participate in a proposed power plant before, during, and after construction of a generating unit. If conditions change from what was presented at the need determination proceeding, then a prudent utility would be expected to respond appropriately. In addition, the Commission has ongoing authority and an obligation to ensure fair, just, and reasonable rates for Florida's utilities and ratepayers. Pursuant to Rule 25-22.082(15), F.A.C., if the public utility selects a self-build option, costs in addition to those identified in the need determination proceeding shall not be recoverable unless the utility can demonstrate that such costs were prudently incurred and due to extraordinary circumstances.

Issue 7: Should this docket be closed?

Recommendation: Yes. Upon issuance of an order on FPL's petition to determine the need for the proposed DBEC Unit 7, this docket shall be closed after the time for filing an appeal has run. (Murphy, Cuello)

Position of the Parties

FPL: Yes. Upon issuance of an order granting FPL's petition to determine the need for DBEC Unit 7, this docket should be closed.

Sierra Club: This docket should be closed consistent with the above positions, and with instructions for FPL to undertake the competitive bidding process identified in docket 20170122-EI. Only at the conclusion of such a process, supplemented by a Commission request for information on solar and solar/storage projects, would it have the evidence needed to render the requisite independent, record-based decision under section 403.519, Florida Statutes on what constitutes the "most cost-effective alternative."

OPC: Yes.

Staff Analysis: Upon issuance of an order on FPL's petition to determine the need for the proposed DBEC Unit 7 this docket should be closed after the time for filing an appeal has run.

Item 10

FILED 2/16/2018
DOCUMENT NO. 01286-2018
FPSC - COMMISSION CLERK

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: February 16, 2018

TO: Office of Commission Clerk (Stauffer)

FROM: Division of Accounting and Finance (Passett, Mouring, D. Buys)
Division of Economics (Draper, Guffey)
Division of Engineering (P. Buys, Graves)
Office of the General Counsel (Crawford, Mapp, Janjic)

RE: Docket No. 20170271-EI – Petition for recovery of costs associated with named tropical systems during the 2015, 2016, and 2017 hurricane seasons and replenishment of storm reserve subject to final true-up, Tampa Electric Company.

AGENDA: 03/01/18 – Regular Agenda – Preliminary Procedural -- Interested Persons May Participate

COMMISSIONERS ASSIGNED: ~~All Commissioners~~ Brown, Polmann, Fay

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On December 28, 2017, Tampa Electric Company (Tampa Electric) filed a petition for a limited proceeding seeking authority to implement interim Storm Cost Recovery Charge factors to recover a total of $87.4 million for the incremental restoration costs related to tropical systems named by the National Hurricane Center ("NHC") during the 2015, 2016, and 2017 hurricane seasons and to replenish its storm reserve subject to true-up.

On January 30, 2018, Tampa Electric filed an amended petition, updating the recovery amount to $102.5 million. In its amended petition, Tampa Electric asserts that as a result of Tropical Storms Erika and Colin, and Hurricanes Hermine, Matthew and Irma, Tampa Electric incurred total

retail recoverable costs of approximately $102.5 million, less its pre-storm storm reserve balance of $55.9 million, resulting in net recoverable costs of $46.6 million. In addition, Tampa Electric proposes to replenish its storm reserve to the $55.9 million balance that existed on October 31, 2013. The regulatory assessment fee gross-up adds an additional $74,000 to the recoverable costs.

Tampa Electric filed its amended petition pursuant to the provisions of the Amended and Restated Stipulation and Settlement Agreement (ARSSA) approved by the Commission in Order No. PSC-2017-0456-S-EI.[1] Pursuant to Paragraph 5 of the ARSSA, Tampa Electric may petition the Commission to allow the Company to increase the initial 12 month recovery at rates greater than $4.00/1,000 kWh or for a period longer than 12 months if Tampa Electric incurs in excess of $100 million of storm recovery costs that qualify for recovery in a given calendar year, inclusive of the amount needed to replenish the storm reserve. In its amended petition, Tampa Electric is seeking recovery through an interim Storm Cost Recovery Charge factor of $10.07/1,000 kWh beginning with the first billing cycle in April 2018 and concluding when the storm reserve has been replenished, which is estimated to be in December 2018.

The Florida Industrial Power Users Group petitioned to intervene in this docket on January 10, 2018.[2]

The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, 366.06, and 366.076, Florida Statutes.

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[1] Order No. PSC-2017-0456-S-EI, Docket Nos. 20170210-EI, *In re: Petition for limited proceeding to approve 2017 amended and restated stipulation and settlement agreement, by Tampa Electric Company* and 20160160-EI, *In re: Petition for approval of energy transaction optimization mechanism, by Tampa Electric Company*, issued November 27, 2017.

[2] Document No. 00222-2018, issued January 10, 2018, in Docket No. 20170271-EI, *In re: Petition for recovery of costs associated with named tropical systems during the 2015, 2016, and 2017 hurricane seasons and replenishment of storm reserve subject to final true-up, by Tampa Electric Company.*

Discussion of Issues

Issue 1: Should the Commission authorize Tampa Electric to implement interim Storm Cost Recovery Charge factors?

Recommendation: Yes, the Commission should authorize Tampa Electric to implement interim Storm Cost Recovery Charge factors, subject to refund. Once the total actual storm costs are known, Tampa Electric should be required to file documentation of the storm costs for Commission review and true-up of any excess or shortfall.

The appropriate security to guarantee the funds collected subject to refund is a corporate undertaking. (Passett, D. Buys)

Staff Analysis: As stated in the case background, Tampa Electric filed an amended petition for a limited proceeding seeking authority to implement interim Storm Cost Recovery Charge factors to recover a total of $102.5 million for the incremental restoration costs related to named tropical storms and hurricanes during the 2015, 2016, and 2017 hurricane seasons and to replenish its storm reserve. The requested recovery of $102.5 million[3] represents net retail recoverable costs of approximately $46.6 million, plus an additional $55.9 million to replenish the storm reserve to the balance that existed on October 31, 2013. In addition, the $102.5 million includes a regulatory assessment fee gross-up of $74,000. The amended petition was filed pursuant to the provisions of the ARSSA approved by the Commission in Order No. PSC-2017-0456-S-EI.[4] Tampa Electric further asserts that this amount was calculated in accordance with the Incremental Cost and Capitalization Approach (ICCA) methodology prescribed in Rule 25-6.0143, Florida Administrative Code (F.A.C.).

Pursuant to Paragraph 5 of the ARSSA, Tampa Electric may petition the Commission to allow the Company to increase the initial 12 month recovery at rates greater than $4.00/1,000 kWh or for a period longer than 12 months if Tampa Electric incurs in excess of $100 million of storm recovery costs that qualify for recovery in a given calendar year, inclusive of the amount needed to replenish the storm reserve. Tampa Electric has requested an interim Storm Cost Recovery Charge factor of $10.07 on a monthly 1,000 kWh residential bill, effective from April 2018 through December 2018.

The approval of interim Storm Cost Recovery Charge factors is preliminary in nature and is subject to refund pending a further review once the total actual storm restoration costs are known. After the actual costs are reviewed for prudence and reasonableness, and are compared to the actual amount recovered through the interim storm charge, a determination will be made whether any over/under recovery has occurred. The disposition of any over/under recovery, and associated interest, would be considered by the Commission at a later date.

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[3] See Document No. 00787-2018, Exhibit D, Page 2 of 2 (Tampa Electric Amended Petition).
[4] Order No. PSC-2017-0456-S-EI, Docket Nos. 20170210-EI, *In re: Petition for limited proceeding to approve 2017 amended and restated stipulation and settlement agreement, by Tampa Electric Company* and 20160160-EI, *In re: Petition for approval of energy transaction optimization mechanism, by Tampa Electric Company*, issued November 27, 2017.

Based on a review of the information provided by Tampa Electric in its amended petition, staff recommends that the Commission authorize Tampa Electric to implement interim Storm Cost Recovery Charge factors, subject to refund. Once the total actual storm costs are known, Tampa Electric should be required to file documentation of the storm costs for Commission review and true-up of any excess or shortfall. It is important to emphasize that this recommendation is only for interim Storm Cost Recovery Charge factors, and is not a confirmation of prudence of costs nor an approval of Tampa Electric's plans. This is merely a recommendation to allow the Company to begin recovery on an interim basis in accordance with the current ARSSA, subject to refund following a hearing or a full opportunity for a formal proceeding.

Staff recommends that all funds collected subject to refund be secured by a corporate undertaking. The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff believes TECO has adequate resources to support a corporate undertaking in the amount requested.

Issue 2: Should the Commission approve Tampa Electric's proposed tariffs and associated charges?

Recommendation: Yes. The Commission should approve Tampa Electric's tariffs as proposed in the amended petition to go into effect with the first billing cycle in April 2018. (Guffey)

Staff Analysis: Tampa Electric is seeking approval of interim Storm Cost Recovery Charge factors as shown in proposed Fourth Revised Tariff Sheet No. 6.022 (Attachment A to this recommendation). Appendix F to the amended petition includes revisions to all tariffs reflecting the addition of the interim storm recovery charges as shown on Tariff Sheet No. 6.022. A residential customer who uses 1,000 kilowatt-hours will see a $10.07 increase on the monthly bill for the period beginning with the first billing cycle in April 2018.

In response to staff's request for additional information, Tampa Electric stated that customers will be notified of the interim Storm Cost Recovery Charge factors via bill inserts on the first billing cycle in February 2018. The company has also prepared a FAQ document for Tampa Electric Customer Service Professionals to use for customer inquiries regarding the interim storm recovery charge. Tampa Electric also issued a news/press release which outlined the interim Storm Cost Recovery Charge factors on December 28, 2017 and provided customer notices for staff review.

Staff recommends that the Commission should approve Tampa Electric's proposed tariffs to go into effect with the first billing cycle in April 2018.

Issue 3: Should this docket be closed?

Recommendation: No, this docket should remain open pending final reconciliation of actual recoverable storm costs with the amount collected pursuant to the interim Storm Cost Recovery Charge factors, and the calculation of a refund or additional charge if warranted. (Janjic)

Staff Analysis: This docket should remain open pending final reconciliation of actual recoverable storm costs with the amount collected pursuant to the interim Storm Cost Recovery Charge factors, and the calculation of a refund or additional charge if warranted.

FOURTH REVISED SHEET NO. 6.022
CANCELS THIRD REVISED SHEET NO. 6.022

Continued from Sheet No. 6.021

2018 Interim Storm Cost Recovery Charge: The following charges shall be applied to each kilowatt-hour delivered and billed on monthly bills from April 2018 through December 2018. The following factors by rate schedule were calculated using the approved formula and allocation method approved by the Florida Public Service Commission:

Rate Schedule	Interim Storm Cost Recovery Charge Factor (cents/kWh)
RS (all tiers), RSVP-1 (all pricing periods)	1.007
GS, GST (all pricing periods), CS	1.027
GSD, SBF, GSDT and SBFT (all pricing periods)	0.305
IS, IST and SBI (all pricing period)	0.056
LS-1	0.582

FLORIDA GROSS RECEIPTS TAX: In accordance with Section 203.01 of the Florida Statutes, a factor of 2.5641% is applicable to electric sales charges for collection of the state gross receipts tax.

FRANCHISE FEE ADJUSTMENT: Customers taking service within franchised areas shall pay a franchise fee adjustment in the form of a percentage to be added to their bills prior to the application of any appropriate taxes. This percentage shall reflect the Customers' pro rata share of the amount the Company is required to pay under the franchise agreement with the specific governmental body in which the customer is located, plus the appropriate gross receipts taxes and regulatory assessment fees resulting from such additional revenue.

PAYMENT OF BILLS: Bills for service will be rendered monthly by the Company to the customer. Payment is due when the bill is rendered, and becomes delinquent twenty (20) days after mailing or delivery to the customer. Five (5) days written notice separate from any billing will be given before discontinuing service. Payment may be made at offices or authorized collecting agencies of the Company. Care will be used to have bills properly presented to the customer, but nonreceipt of the bill does not constitute release from liability for payment.

ISSUED BY: N. G. Tower, President **DATE EFFECTIVE:**