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# Item 1

State of Florida



## Public Service Commission

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

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

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**DATE:** July 25, 2019

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

**FROM:** Office of the General Counsel (King, Cowdery) *AK*  
Division of Economics (Guffey, Redda) *IR*  
*MS*  
*SKG* *ED* *qth*

**RE:** Docket No. 20190094-EU – Petition for variance from or waiver of Rule 25-6.049(5) and (6), F.A.C., by Calypso Tower III, LLC.

**AGENDA:** 08/06/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Fay

**CRITICAL DATES:** October 8, 2019 – The Commission must grant or deny the petition by this date.

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On April 17, 2019, Calypso Tower III, LLC (the developer) filed a petition for a waiver of or variance from Rule 25-6.049(5) and (6), Florida Administrative Code (F.A.C.). The rule requires condominiums to individually meter electricity usage for each of its units. The developer is constructing a new condominium it is calling Calypso Tower III (Calypso) that will be subject to the rule. As its name implies, Calypso is the third tower in a three-tower resort called Calypso Resort and Towers (the resort). Calypso's two sister towers are already built and are currently operating under the resort name. The petition and this recommendation only apply to the third tower.

On April 29, 2019, staff sent a letter to the developer pursuant to Section 120.542(8), Florida Statutes (F.S.), seeking additional information necessary to dispose of the petition. The developer



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responded in part on May 16, 2019, and completed its response on June 6, 2019. However, the developer's responses raised additional questions, so staff sent the developer a second request for information on June 13, 2019. The developer responded to that second request on July 10, 2019. The developer's completed petition is deemed filed on July 10, 2019. *See* § 120.542(8), F.S.

Gulf Power filed comments on July 12, 2019. In those comments, the company expressed concern about the petition but did not expressly object to it.

Notice of the developer's petition was published in the April 24, 2019 edition of the Florida Administrative Register, Vol. 45, No. 80, as required by Section 120.542(6), F.S. In accordance with Section 120.542(8), F.S., the petition is deemed approved if the Commission does not approve or deny it by October 8, 2019, which is 90 days after the developer filed its final response to staff's data requests.

This recommendation addresses whether the Commission should grant the developer's petition. The Commission has jurisdiction under Sections 120.542, 366.04, and 366.05, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission grant the developer's petition for a waiver of subsections (5) and (6) of Rule 25-6.049, F.A.C.?

**Recommendation:** Yes. The petition should be granted because the developer has demonstrated that the purpose of the underlying statutes will be achieved by other means and that application of the rule would create a substantial hardship and violate principles of fairness. However, the waiver should be subject to the following four conditions: (1) within one year of the closing of sale of its first residential unit, Calypso must be a licensed public lodging establishment under Sections 509.241 and 509.242, F.S.; (2) 92 percent of the residential units sold must be used solely for overnight occupancy; (3) Calypso must allocate the cost of electricity to the individual owners using a reasonable apportionment method; and (4) Calypso must file a report with the Commission 12 months after the date of closing of the sale of the first residential unit. The report must include the number of units sold and, of those, the number of units that are solely used for overnight occupancy as defined in Rule 25-6.049(8)(b), F.A.C. The report must also include a copy of Calypso's public lodging license. The Commission should also put Calypso on notice that should Calypso ever fail to comply with these conditions, the rule waiver will cease to be effective and Calypso will be responsible for all costs associated with the conversion to individual metering. (King, Cowdery, Guffey, Redda)

**Staff Analysis:** Under Rule 25-6.049(5), F.A.C., each of Calypso's individual units is required to have its own electric meter. Seven exemptions to that requirement are contained in Rule 25-6.049(5)(a)–(g), F.A.C. For example, paragraph (5)(d) provides an exemption for hotels, and paragraph (5)(g) provides an exemption for condominiums that meet three specific criteria. One, the declaration of condominium must require that 95 percent of the units are used solely for overnight occupancy. Two, the condominium must maintain a registration desk, lobby, and central telephone switchboard. Three, the condominium must keep a record of guests' check in and check out dates as well as the name of the individuals registered to occupy the unit.

In addition, Rule 25-6.049(6), F.A.C., provides initial and ongoing reporting requirements for condominiums that seek an exemption to the individual metering rule under Rule 25-6.049(5)(g), F.A.C. The rule also allows the condominium's electricity provider to inspect the condominium and collect evidence to assess whether the condominium has satisfied the criteria for the exemption. Lastly, the rule provides provisions that apply if the condominium fails to meet the requirements for the exemption in Rule 25-6.049(5)(g), F.A.C.

Calypso does not qualify for any of the exemptions in the rule, so it is seeking a waiver.

### Legal Standard for Rule Waivers

Section 120.542(2), F.S., lays out a two-prong test for granting waivers to administrative rules. If the petitioner satisfies both prongs, the Commission must grant the waiver. First, the petitioner must show that "application of [the] rule would create a substantial hardship or would violate principles of fairness." A "substantial hardship" is a "demonstrated economic, technological, legal, or other type of hardship." Principles of fairness are violated when "the literal application of a rule affects a particular person in a manner significantly different from the way it affects

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other similarly situated persons who are subject to the rule.” Second, the petitioner must demonstrate that it will achieve the purpose of the underlying statutes by other means.

The individual metering requirement in Rule 25-6.049(5), F.A.C., is based on the Commission’s authority to prescribe rate classifications and service rules for investor-owned electric utilities included in Sections 366.05(1) and 366.06(1), F.S., and it implements the conservation policies in Sections 366.81 and 366.82, F.S., also known as the Florida Energy Efficiency and Conservation Act, or FEECA.

Under Section 120.542(1), F.S., the Commission can grant conditional waivers so long as the conditions are necessary to ensure the purposes of the underlying statutes are achieved.

### **The Developer’s Petition**

According to the developer’s petition and the declaration of condominium it provided in response to staff’s data requests, Calypso is the third and final tower in the Calypso Resort and Towers development. Calypso is currently under construction and will include 250 residential units and 13 commercial units. It is located on the north side of Front Beach Road, across the street from its two sister towers, which are currently operating under the resort name. The developer states that when Calypso becomes a part of the resort, it will be managed by the same company managing the resort. According to the developer, the resort management and staff will conserve energy by ensuring that all electrical components are turned off when guests are not present. The developer further states that the building will use motion sensing technology to turn certain fixtures and appliances off automatically, and the resort staff will also maintain that equipment to ensure it is functioning properly.

The developer states that ownership of Calypso’s 250 dwelling units will be structured as a condominium under Chapter 718 of the Florida Statutes, but the developer envisions Calypso will operate “as a resort or similar to a hotel/resort in most cases with short term rentals for beach vacations.” The developer predicts that “all or substantially all of the units will be used for transient rentals.” The developer initially claimed it would apply for a public lodging license, but it expressly retracted that commitment in its response to staff’s first data request. Staff questioned the developer as to the reason for the retraction and asked whether the developer intended for Calypso to “share” the resort’s public lodging license, which at the time was active but delinquent. In its responses, the developer expressed no intent for Calypso to obtain a public lodging license, and the resort’s license recently expired.

The developer also asserts the existence of several facts that support its position that Calypso is similarly situated to other resort hotels and that all or substantially all of Calypso’s units will be used for transient rentals. The developer submitted its Panama City Beach building permits for Calypso, which showed that it paid a recreational impact fee for “[l]odging hotel, resort, resort condo.” Though Calypso is still under construction, the developer claims it is planning to use “nationally known reservation software” along with a rental pool agreement to help keep guest rooms filled and the resort operating in an orderly fashion. To aid in keeping the guest rooms filled, the developer also plans to advertise with travel agents and at trade conferences. The developer plans to have a hospitality area for guests to check in and out. The developer has also designed all rooms to be ADA compliant. Staff has further discovered that the online advertising

for Calypso's resort units includes an estimate of the number of seasonal rentals each floorplan could expect and an estimate of the revenue from those rentals.<sup>1</sup>

Finally, the developer claims that by accepting electricity through a master meter, Calypso will pay Gulf Power's rates for Large Power Service (LP) rather than Residential Service (RS). It also supplied staff with Gulf Power's estimate that each individual unit would demand an average of 5 kW.

The developer argues that it is entitled to a waiver because application of the rule violates principles of fairness and creates a substantial hardship. The developer intends for Calypso to operate as a resort hotel and will directly compete with other resort hotels. The developer claims that if it is not permitted to receive electricity through a master meter and pay the lower commercial rate, it will be forced to incur electricity expenses far above those incurred by the resort hotels it will compete with. The crux of the developer's argument is that this cost difference puts it at a significant competitive disadvantage. This demonstrated economic hardship, according to the developer, amounts to a substantial hardship under Section 120.542(2), F.S. Similarly, the developer argues that application of the rule violates principles of fairness because Calypso will be similar to resort hotels but will be treated differently.

The developer further avers that it will comply with Rule 25-6.049(9)(a), F.A.C., in utilizing a reasonable apportionment method to allocate electricity costs amongst the individual unit owners based on the square footage of their individual units.

### **Gulf Power's Comments**

Gulf Power expressed two main concerns with the developer's petition, but it stopped short of objecting to the petition.

Gulf Power's first concern is that there is no way for anyone to know if Calypso's units will in fact be used for overnight occupancy because the declaration of condominium does not require any unit owner to rent its unit on a short-term basis. Gulf Power noted that the Commission has granted only a few waivers for condominiums without language in the declaration of condominium requiring a certain percentage of the units to be used for overnight occupancy, and in those cases there were other "forms of assurance that the condominium would, as a matter of fact, be operated as a transient lodging facility."<sup>2</sup>

Second, Gulf Power expressed concern about the developer's intent to not seek a public lodging license from the Department of Business and Professional Regulation. It noted that such a license submits the licensee to safety regulations typical for transient lodging facilities, and the Commission has never granted a petition for a waiver from the individual metering requirement where the condominium did not intend to apply for and maintain a public lodging license.

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<sup>1</sup> Rental Projections, Calypso Tower III, [http://www.calypsotoweriii.com/wp-content/uploads/2018/08/rental\\_projection\\_all.pdf](http://www.calypsotoweriii.com/wp-content/uploads/2018/08/rental_projection_all.pdf) (Last accessed July 16, 2019).

<sup>2</sup> Document No. 05500-2019 at 2 n3.

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### **Staff's Analysis of the Developer's Petition**

Staff recommends that the developer has established the statutory requirements for a waiver of Rule 25-6.049(5) and (6), F.A.C. However, due to the unique circumstances of this case, staff recommends the Commission order Calypso to satisfy certain conditions going forward in order for the waiver to remain in effect.

#### ***Literal Application of the Rule Would Violate Principles of Fairness and Create a Substantial Hardship for Calypso***

The developer's argument that application of the rule will violate principles of fairness rests on the premise that, when construction is complete, Calypso will function as a hotel and should be entitled to an exemption to the individual metering requirement just as hotels are. Staff has determined that it is highly probable that Calypso's resort units will be used for transient rental purposes for all the reasons stated in the developer's petition and responses to staff's data requests. In sum, Calypso will become part of a larger resort that is already functioning as a hotel. The developer's website advertises Calypso's individual units as rental investments, and the developer intends to advertise Calypso as a resort with travel agents and trade shows. The developer stated that Calypso's guests will be served by the resort staff. The developer has also shown that it paid impact fees for a resort when obtaining its building permits, and it stated that Calypso is being constructed to meet the ADA requirements for a resort. Thus, Calypso will be similarly situated to other hotels and resorts in the area, and application of the individual metering requirement would violate principles of fairness.

By extension, the developer has also established that application of the rule will cause it substantial hardship. Staff estimates that the unit owners of Calypso will save, collectively, approximately \$38,000 a year in electricity costs by being able to take advantage of Gulf Power's LP rates. Cost savings alone do not amount to a demonstrated economic hardship, but when coupled with the fact that the resort will directly compete with neighboring hotels, which are allowed to take advantage of the cost savings realized through master metering, the developer has demonstrated an economic hardship.

#### ***Calypso will Achieve the Purposes of the Underlying Statutes by Other Means***

The purpose of FEECA is to promote energy conservation in Florida. The individual metering requirement of Rule 25-6.049(5), F.A.C., is designed to achieve that purpose by directly linking the amount customers pay for electricity to the amount of electricity the customer uses. This incentivizes customers to conserve electricity in order to minimize their electricity bills. However, the individual metering requirement no longer achieves FEECA's purpose when a customer loses control over how much electricity is consumed within the unit. A customer that owns a condominium unit and rents the unit to others on a short-term basis for a flat per-night or per-week fee loses control over how much electricity is used in the unit. Thus, where the vast majority of a condominium's residential units are rented out on a short-term basis for a flat fee, the individual metering requirement does not incentivize conservation.

Condominiums that function in this manner usually have a management team and staff that serve the renters, maintain the individual units, and maintain the common areas. The management and

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staff are also in the best place to conserve electricity.<sup>3</sup> They can set air conditioners at appropriate levels and make sure lights and appliances are turned off when units are unoccupied. They can also maintain windows, doors, and appliances to ensure energy efficiency. The developer has stated that the resort management and staff will ensure the efficient day to day operations of the entire resort, including taking steps to ensure electricity is conserved where it can be. Thus, the developer has demonstrated that it will achieve the purpose of the underlying statute by other means.

### ***Recommended Conditions for the Developer's Waiver***

Assuming all or substantially all of Calypso's residential units are used solely for overnight occupancy as the developer envisions, the developer has demonstrated that the purpose of the underlying statutes will be achieved by other means and that application of the rule would both create a substantial hardship and violate principles of fairness. Therefore, the Commission should grant the petitioner a waiver to Rule 25-6.049(5) and (6), F.A.C. However, because whether Calypso's residential units are used solely for overnight occupancy is dependent solely on the independent decisions of future, unknown owners of those units, staff recommends the waiver be subject to the following four conditions.

One, Calypso must apply for a public lodging license within one year of the closing of the sale of the first of its residential units. Calypso must also maintain this license for as long as this waiver is effective. The Commission has made the maintenance of a public lodging license a condition of every one of the waivers it has previously granted.<sup>4</sup> Section 509.013(4)(a), F.S., defines a public lodging establishment as any unit or group of units advertised or held out to the public as a place regularly rented to guests. And such establishments are required to be licensed under Section 509.241(1), F.S. In short, if the developer asserts that Calypso will function like a hotel, it should be licensed like a hotel.

Two, 92 percent of the residential units sold must be used solely for overnight occupancy as that term is defined in Rule 25-6.049(8)(b), F.A.C. The Commission has routinely conditioned similar waivers on "all or substantially all" of the condominium's units being used on a "transient basis." But whereas the term "transient basis" is neither used nor defined in Rule 25-6.049, F.A.C., "overnight occupancy" is both used and defined within the rule. Therefore, using the latter of those two terms leads to greater clarity. Additionally, the term "all or substantially all" does not provide a measurable standard in this particular case. Calypso currently has no residential unit owners, and the declaration of condominium does not require any future owner to use its unit solely for overnight occupancy. Therefore, there is no evidence to establish what percentage would constitute "substantially all." An analysis of the Commission's past waivers shows that those condominiums receiving waivers from the individual metering rule have demonstrated that, on average, 92.5 percent of their individual units were either currently being

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<sup>3</sup> E.g., Order No. PSC-2018-0351-PAA-EU, issued July 18, 2018, in Docket No. 20180113-EU, *In re: Petition for variance from or waiver of individual metering requirements of Rule 25-6.046(5) and (6), F.A.C., by 4000 South Ocean Property Owner, LLLP.*; Order No. PSC-15-0565-PAA-EU, issued Dec. 15, 2015, in Docket No. 20150222-EU, *In re: Petition for variance from or waiver of Rule 25-6.049(5) and (6), F.A.C., by 4111 South Ocean Drive, LLC.*

<sup>4</sup> E.g., Order No. PSC-98-1193-FOF-EU, issued Sept. 8, 1998, in Docket No. 19980667-EU, *Petition by Holiday Villas II Condominium Association, Inc., for variance from or waiver of Rule 25-6.049(5)(a), F.A.C., Regarding Electric Metering.*

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used on a transient basis or would be used on a transient basis. Therefore, 92 percent should be achievable.<sup>5</sup>

Three, Calypso must allocate the cost of electricity to the individual owners using a reasonable apportionment method. This is a requirement of Rule 25-6.049(9)(a), F.A.C., and has been incorporated into previous waivers.<sup>6</sup>

Four, Calypso must file a report with the Commission 12 months after the date of closing of the sale of the first residential unit. The report must include the number of units sold and, of those, the number of units that are solely used for overnight occupancy as defined in Rule 25-6.049(8)(b), F.A.C. The report must also include a copy of Calypso's public lodging license. This condition is necessary because Calypso is still under construction, and in the future no residential unit owner will be required to use its unit for overnight occupancy. Thus, there is some uncertainty as to whether Calypso will in fact function like a hotel once it is occupied. The Commission has made this same requirement in two similar waiver cases.<sup>7</sup>

### Conclusion

Staff recommends granting the developer's petition for a waiver of Rule 25-6.049(5) and (6), F.A.C., with the following conditions:

1. Within one year of the closing of sale of its first residential unit, Calypso must be a licensed public lodging establishment under Sections 509.241 and 509.242, F.S. Calypso must also continually maintain that license.
2. On an average annual basis, 92 percent of the residential units sold must be used solely for overnight occupancy.
3. Calypso must allocate the cost of electricity to the individual owners using a reasonable apportionment method.
4. Calypso must file a report with the Commission 12 months after the date of closing of the sale of the first residential unit. The report must include the number of units sold and, of those, the number of units that are solely used for overnight occupancy as defined in Rule 25-6.049(8)(b), F.A.C. The report must also include a copy of Calypso's public lodging license.

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<sup>5</sup> As discussed above, the first criterion for an exemption from the individual metering requirement for condominiums is that the declaration of condominium requires 95 percent of the condominium's individual units be used solely for overnight occupancy. Rule 25-6.049(5)(g)1., F.A.C.

<sup>6</sup> E.g., Order No. PSC-11-0253-PAA-EU, issued June 13, 2011, in Docket No. 20110063-EU, *In re: Petition for variance from or waiver of individual metering requirements of Rule 25-6.049(5)(a), F.A.C., by Destin Gulfgate Owners Association, Inc.*

<sup>7</sup> Order No. PSC-05-1261-PAA-EU, issued Dec. 27, 2005, in Docket No. 20050601-EU, *In re: Petition for variance or waiver from individual metering requirements of Rule 25-6.049(5)(1), F.A.C., by Fontainebleau Florida Tower 3, LLC d/b/a Fontainebleau III Ocean Club*; Order No. PSC-03-0195-PAA-EU, issued Feb. 10, 2003, in Docket No. 20021005-EU, *In re: Petition for emergency variance from or waiver of individual metering requirement of Rule 25-6.049(5)(a), F.A.C., by Luxury Resorts International, Inc. d/b/a The Atlantic.*

The Commission should also put Calypso on notice that should Calypso ever fail to comply with these conditions or file the report, the rule waiver will cease to be effective and Calypso will be responsible for all costs associated with the conversion to individual metering.



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

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

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

# Item 2

State of Florida



## Public Service Commission

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

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

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**DATE:** July 25, 2019

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

**FROM:** Office of the General Counsel (Cowdery) *K S.M.C.*  
Division of Economics (Higgins) *W.M. J.H.*

**RE:** Docket No. 20190130-EI – Petition for waiver of depreciation study filing requirement in Rule 25-6.0436(4)(a), F.A.C., by Florida Public Utilities Company.

**AGENDA:** 08/06/19 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** September 16, 2019 – The Commission must vote to grant or deny the petition by this date.

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On June 17, 2019, Florida Public Utilities Company (FPUC) filed a petition for a temporary waiver of Rule 25-6.0436(4)(a), Florida Administrative Code (F.A.C.). The rule requires all electric public utilities to file a depreciation study at least once every four years from the submission date of its previous study or as specified in a Commission order. FPUC filed its last depreciation study on July 1, 2015. Therefore, pursuant to Rule 25-6.0436(4)(a), F.A.C., FPUC's next depreciation study was due July 1, 2019. FPUC is requesting that it be permitted to submit its study no later than September 3, 2019. It also requests that subsequent due dates be based on the September filing date.

Notice of FPUC's petition was published in the June 20, 2019, edition of the Florida Administrative Register, Vol. 45, No. 120, as required by Section 120.542(6), Florida Statutes

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Date: July 25, 2019

(F.S.). No one commented on the petition within the 14-day comment period provided by Rule 28-104.003, F.A.C. Pursuant to Section 120.542(8), F.S., the petition is deemed approved if the Commission does not grant or deny it by September 16, 2019.

The Commission has jurisdiction under Sections 120.542, 350.115, 366.04, and 366.06, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission grant FPUC's request for a temporary waiver of Rule 25-6.0436(4)(a), F.A.C.?

**Recommendation:** Yes. The Commission should grant FPUC's petition and require that it file a depreciation study no later than September 3, 2019. The Commission should also order that FPUC's next depreciation study will be due within four years from the date that it files its September 2019 depreciation study. (Cowdery, Higgins)

**Staff Analysis:** FPUC is requesting that the Commission grant it a temporary waiver of Rule 25-6.0436(4)(a), F.A.C. Pursuant to the rule, FPUC was required to file a depreciation study by July 1, 2019.

### Legal Standard for Rule Waivers

Pursuant to Section 120.542(2), F.S., the Commission is required to grant waivers and variances from its rules "when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness." The statute defines a "substantial hardship" as a "demonstrated economic, technological, legal, or other type of hardship."

Under Rule 25-6.0436(4)(a), F.A.C., electric public utilities are required to submit a depreciation study for Commission review at least once every four years. The rule implements several statutes. Section 350.115, F.S., allows the Commission to "approve or establish adequate, fair, and reasonable depreciation rates and charges." Section 366.06(1), F.S., requires the Commission to "investigate and determine the actual legitimate costs of the property of each utility company, . . . less accrued depreciation." To accomplish these tasks, the Commission is permitted under Section 366.04(2)(f), F.S., to "prescribe and require the filing of periodic reports and other data as may be reasonably available."

### FPUC's Petition

FPUC's current depreciation study was due on July 1, 2019, but it asserts that preparing the study by that date would create a substantial hardship. FPUC states that it continues to be hindered by resource constraints due to the impact of Hurricane Michael on its Northwest Division. FPUC states that preparing the depreciation study is a time-consuming, difficult task under ordinary circumstances, but under current circumstances it has not been able to finalize the figures reflecting the full impact of Hurricane Michael on the Northwest Division's plant.

FPUC has asked that it be permitted to submit its study on or before September 3, 2019. FPUC has also requested that its next depreciation study be due within four years of the extended September 2019 filing date.

FPUC states that the purpose of the underlying statutes, Sections 350.115 and 366.06, F.S., will still be fulfilled should the Commission grant the waiver. This is because FPUC will provide the Commission with the required depreciation study by September 3, 2019, which is only nine weeks after the current due date.

### **Staff's Analysis and Conclusion**

The Commission has recently granted FPUC a waiver from the rule requiring it to send out monthly billing statements under Rule 25-6.100(1), F.A.C., based on the effects of Hurricane Michael.<sup>1</sup> The Commission also granted FPUC a temporary waiver of Rule 25-7.045, F.A.C., and extended the time for filing FPUC's natural gas depreciation study because of substantial hardship caused by Hurricane Michael.<sup>2</sup> Staff believes FPUC has demonstrated that it would have been a substantial hardship for it to file a depreciation study by July 1, 2019, given its constrained resources resulting from Hurricane Michael.

Section 366.04(2)(f), F.S., allows the Commission to require a utility to periodically file depreciation studies in order to facilitate the Commission's duty under Sections 350.115 and 366.06(1), F.S., to determine accurate depreciation costs for the utility. The short delay will not affect the Commission's ability to establish adequate, fair, and reasonable depreciation rates and charges. For this reason, staff believes that FPUC has demonstrated that the purpose of the underlying statute will be achieved if FPUC is granted a nine-week extension of time to submit its depreciation study.

Staff believes that FPUC's request for a temporary rule waiver is reasonable and recommends that FPUC should be allowed to file its depreciation study on or before September 3, 2019. Moreover, the Commission should order that FPUC's next depreciation study will be due within four years from the date that it files its September 2019 depreciation study.

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<sup>1</sup> Order No. PSC-2018-0529-PAA-EI, issued Nov. 8, 2018, in Docket No. 20180195-EI, *In re: Petition for temporary waiver of Rule 25-6.100, F.A.C., by Florida Public Utilities Company.*

<sup>2</sup> Order No. PSC-2019-0067-PAA-GU, issued February 22, 2019, in Docket No. 20180230-GU, *In re: Petition for temporary waiver of Rule 25-7.045, F.A.C., by Florida Public Utilities Company.*

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

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

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

# Item 3



State of Florida



# Public Service Commission

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

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

**DATE:** July 25, 2019

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

**FROM:** Division of Accounting and Finance (Norris, Sowards)  
Division of Economics (Bruce, Hudson, Ramos) MR  
Division of Engineering (Ellis) POE  
Office of the General Counsel (Trierweiler, Cowdery)

*Handwritten initials and signatures:* BS, TB, ALM, MR, EAD, JSC, 9JH, and a circled signature.

**RE:** Docket No. 20160101-WS – 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.

**AGENDA:** 08/06/19 – Regular Agenda – Decision on Remand – Parties May Participate on Issues 1, 2, 3, and 4 – Proposed Agency Action Issue 5 – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

### Case Background

Utilities, Inc. of Florida (UIF or Utility) is a Class A utility providing water and wastewater service to 27 systems in the following counties: Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole. As the result of a corporate reorganization and name change, UIF is the sole surviving corporation that owns and operates the water and

wastewater systems that are the subject of this rate case application.<sup>1</sup> UIF is a wholly-owned subsidiary of Utilities, Inc. (UI).<sup>2</sup>

On November 22, 2016, UIF completed the minimum filing requirements for its application requesting approval of interim and final water and wastewater rate increases. The test year established for interim and final rates was the historical 13-month average period ended December 31, 2015, with requested adjustments for pro forma projects. UIF requested a final revenue increase of \$2,721,001 for water and \$4,194,453 for wastewater. Additionally, the Utility requested a single, consolidated rate structure.

By Order No. PSC-2016-0526-PCO-WS, issued November 22, 2016, the Commission authorized the collection of interim water and wastewater rates, subject to refund pursuant to Section 367.082, Florida Statutes (F.S.). The approved interim revenue requirements represented an increase of \$348,309 for water and \$209,440 for wastewater operations.<sup>3</sup> Additionally, the Commission ordered the collection of revenues totaling \$530,900 held subject to refund for systems that appeared to be earning above their maximum return on equity (ROE).<sup>4</sup>

A formal evidentiary hearing was held May 8-10, 2017. By Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, the Commission approved in part the requested increase in water and wastewater rates. The approved revenue requirements represented an increase of \$1,924,677 for water and \$3,287,999 for wastewater operations.<sup>5</sup> The Commission ordered the partial refund of interim revenues collected.<sup>6</sup> Additionally, the Commission approved a single, consolidated rate structure.

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<sup>1</sup> For the purposes of this recommendation, the discussion of individual systems will reference the former utility it belonged to prior to the corporate reorganization, as follows: Cypress Lake Utilities, Inc. (Cypress Lakes), Utilities, Inc. of Eagle Ridge (Eagle Ridge), Labrador Utilities, Inc. (Labrador), Lake Placid Utilities, Inc. (Lake Placid), Lake Utility Services, Inc. (LUSI), Utilities, Inc. of Longwood (Longwood), Mid-County Services, Inc. (Mid-County), Utilities, Inc. of Pennbrooke (Pennbrooke), Utilities Inc. of Sandalhaven (Sandalhaven), Sanlando Utilities Corporation (Sanlando), Tierra Verde Utilities, Inc. (Tierra Verde), and Utilities, Inc. of Florida (UIF-Marion, UIF-Pinellas, UIF-Orange, UIF-Pasco, and UIF-Seminole).

<sup>2</sup> Order No. PSC-2016-0143-FOF-WS, issued April 12, 2016, in Docket No. 20150235-WS, *In re: Joint application for acknowledgement of corporate reorganization and request for approval of name changes on water and/or wastewater certificates of Cypress Lakes Utilities, Inc. in Polk County; Utilities, Inc. of Eagle Ridge in Lee County; Utilities, Inc. of Florida in Marion, Orange, Pasco, Pinellas, and Seminole Counties; Labrador Utilities, Inc. in Pasco County; Lake Placid Utilities, Inc. in Highlands County; Lake Utility Services, Inc. in Lake County; Utilities, Inc. of Longwood in Seminole County; Mid-County Services, Inc. in Pinellas County; Utilities Inc. of Pennbrooke in Lake County; Utilities, Inc. of Sandalhaven in Charlotte County; Sanlando Utilities Corporation in Seminole County; and Tierra Verde Utilities, Inc. in Pinellas County, to Utilities, Inc. of Florida.*

<sup>3</sup> Order No. PSC-2016-0526-PCO-WS, issued November 22, 2016, 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.* (Systems authorized to collect interim rates were Lake Placid, UIF-Marion, UIF-Pinellas, UIF-Pasco, Tierra Verde, and the UIF-Seminole water system.)

<sup>4</sup> *Id.* (Systems with revenues held subject to refund were LUSI, Labrador, Pennbrooke, Longwood, Eagle Ridge, Cypress Lakes, and the UIF-Seminole wastewater system.)

<sup>5</sup> 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.*

<sup>6</sup> *Id.* (Systems requiring refunds were Lake Placid, UIF-Marion, UIF-Pasco, Eagle Ridge, Labrador, Pennbrooke, and the UIF-Seminole wastewater system.)

On October 20, 2017, the Office of Public Counsel (OPC) and Seminole County each filed a notice of administrative appeal with the First District Court of Appeal (First DCA or Court).<sup>7</sup> The Commission's decision was affirmed by the First DCA in the appeal by Seminole County.<sup>8</sup> In OPC's appeal, the Court affirmed the Commission's order except as to that portion of the Commission's used and useful determination involving prepaid connections. The Court remanded this issue to the Commission to determine the extent to which prepaid connections meet the requirements of Section 367.081(2)(a)2.b., F.S. For property to be considered used and useful in the public service under Section 367.081(2)(a)2.b., F.S., it must be shown to be "needed to serve customers 5 years after the end of the test year."

This recommendation addresses the reversed and remanded portion of OPC's appeal, its effect on the Commission's previous decisions, and the Utility's motion for appellate rate case expense. The Commission has jurisdiction pursuant to Section 367.081, F.S.

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<sup>7</sup> Document Nos. 09000-2017 and 09009-2017

<sup>8</sup> No. 1D17-4438

## Discussion of Issues

**Issue 1:** What adjustments should be made to comply with the First District Court of Appeal's mandate?

**Recommendation:** Based on the record, the flows associated with prepaid customers do not meet the statutory criteria of Section 367.081(2)(a)2.b., F.S., and should be removed. Therefore, the revised used and useful (U&U) values for LUSI's wastewater treatment plant (WWTP) and Sandalhaven's Englewood Water District (EWD) capacity should be 53.54 percent and 42.24 percent, respectively. To reflect the revised U&U percentages, wastewater rate base should be decreased by \$476,060, net depreciation expense should be decreased by \$24,888, and Taxes Other Than Income (TOTI) should be decreased by \$13,426. Additionally, Accumulated Deferred Income Taxes (ADITs) should be reduced by \$6,853. (Ellis, Sowards, Trierweiler, Cowdery)

**Staff Analysis:** In OPC's appeal, the Court affirmed the Commission's order except as to that portion of the Commission's used and useful determination involving prepaid connections. The Court remanded this issue to the Commission to determine the extent to which prepaid connections meet the requirements of Section 367.081(2)(a)2.b., F.S. For property to be considered used and useful in the public service under Section 367.081(2)(a)2.b., F.S., it must be shown to be "needed to serve customers 5 years after the end of the test year." Because this issue was fully addressed on the record and by the parties' post-hearing briefs, the record contains all facts needed by the Commission to make a determination.

Of the systems with U&U adjustments in the Commission's previous Final Order, LUSI and Sandalhaven were the only two with prepaid connections. Staff reviewed the record for evidence showing the extent to which the prepaid connections at issue for LUSI and Sandalhaven are property needed to serve customers five years after the end of the test year.

In cross examination by OPC, UIF witness Seidman stated that prepaid customers are considered future customers by the Utility until such time as they connect to the system. (TR 1203) In response to OPC's Ninth Set of Interrogatories, No. 220, UIF states that the Utility's developer agreements do not set deadlines for construction to be completed and that the Utility does not know the construction schedules for developments involving prepaid connections. (EXH 108) As the Utility is unaware of the time period of the potential developments, it cannot be ascertained whether prepaid connections would connect within five years or more than five years based on the record. Therefore, capacity devoted to prepaid connections does not qualify under Section 367.081(2)(a)2.b., F.S., as property used and useful in the public service.

Staff revised the used and useful calculations for LUSI and Sandalhaven to eliminate the prepaid connections. The revised U&U values are 53.54 percent for LUSI's WWTP and 42.24 percent for Sandalhaven's EWD capacity. No modification is necessary to the Sandalhaven transmission system U&U value, as the Commission's U&U determination in its previous Final Order was based on the transmission system being the sole means of delivering flows to EWD for treatment, in addition to the flow calculation.

To reflect the revised U&U percentages, staff recommends that, on a consolidated basis, wastewater plant be reduced by \$1,589,473, accumulated depreciation be reduced by \$389,703, contributions in aid of construction (CIAC) be reduced by \$790,077, and accumulated amortization of CIAC be reduced by \$66,367. Corresponding adjustments should be made to decrease net depreciation expense and TOTI by \$24,888 and \$13,426, respectively, for wastewater on a consolidated basis. As such, on a consolidated basis, wastewater rate base should be decreased by \$476,060, net depreciation expense should be decreased by \$24,888, and TOTI should be decreased by \$13,426. Additionally, ADITs should be reduced by \$6,853. The adjustments are shown in Tables 1-1 and 1-2 below. The recommended adjusted rate base for wastewater is shown on Schedule No. 1. The adjusted consolidated capital structure is shown on Schedule No. 2.

**Table 1-1  
 Non-U&U Adjustments to Wastewater Rate Base**

<b>Description</b>	<b>Per Order No. PSC-2017-0361- FOF-WS</b>	<b>Staff Recommendation</b>	<b>Difference</b>
Plant	(\$927,563)	(\$2,571,036)	(\$1,589,473)
Accumulated Depreciation	371,447	761,150	389,703
CIAC	(908,978)	(118,901)	790,077
Accumulated Amortization of CIAC	<u>256,738</u>	<u>190,371</u>	<u>(66,367)</u>
Total	<u>(\$1,208,356)</u>	<u>(\$1,684,416)</u>	<u>(\$476,060)</u>

Source: Order No. PSC-2017-0361-FOF-WS

**Table 1-2  
 Non-U&U Adjustments to Wastewater Net Operating Income**

<b>Description</b>	<b>Per Order No. PSC-2017-0361- FOF-WS</b>	<b>Staff Recommendation</b>	<b>Difference</b>
Depreciation Expense (Net)	(\$70,098)	(\$94,986)	(\$24,888)
TOTI	<u>(6,388)</u>	<u>(19,814)</u>	<u>(13,426)</u>
Total	<u>(\$76,486)</u>	<u>(\$114,800)</u>	<u>(\$38,314)</u>

Source: Order No. PSC-2017-0361-FOF-WS

**Issue 2:** What is the total revenue requirement after staff's recommended adjustments made in accordance with the First District Court of Appeal's mandate?

**Recommendation:** Based on the adjustments discussed in the previous issue, staff recommends a total revenue requirement of \$15,658,716 for water and \$18,747,174 for wastewater. (Sewards)

**Staff Analysis:** The revenue requirements as calculated in Order No. PSC-2017-0361-FOF-WS as well as staff's recommended revenue requirements are show in Table 2-1 below.

**Table 2-1  
Revenue Requirement**

<b>Description</b>	<b>Per Order No. PSC-2017-0361- FOF-WS</b>	<b>Staff Recommendation</b>	<b>Difference</b>
Water	\$15,662,276	\$15,658,716	(\$3,560)
Wastewater	\$18,840,298	\$18,747,174	(\$93,124)

Source: Order No. PSC-2017-0361-FOF-WS

Staff notes that revision of the non-U&U percentage affected the rate of return and components of net operating income for both water and wastewater, resulting in the difference shown in Table 2-1 above. Based on the adjustments discussed in the previous issue, staff recommends a total revenue requirement of \$15,658,716 for water and \$18,747,174 for wastewater.

**Issue 3:** What are the appropriate rates after adjustments to comply with the First District Court of Appeal's mandate?

**Recommendation:** Staff recommends no adjustments to UIF's existing water rates. The appropriate wastewater rates are reflected on Schedule No. 4 as attached and should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.). The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved wastewater rates. In addition, the approved wastewater rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Bruce, Ramos)

**Staff Analysis:** As discussed in Issue 2, staff recommends adjustments to UIF's revenue requirements in accordance with the First DCA's mandate, which results in decreases to UIF's revenue requirements of \$3,560 (or 0.02 percent) for water and \$93,124 (or 0.49 percent) for wastewater. Staff does not recommend any adjustments to UIF's existing water rates because the 0.02 percent reduction is de minimis.

However, staff believes a reduction of \$93,124 to the Utility's wastewater revenue requirement warrants a change in wastewater rates. To determine the appropriate decrease to apply to wastewater rates, staff removed miscellaneous and reuse revenues from the revenue requirement as detailed in Table 3-1 below. As a result, staff calculated a reduction of 0.51 percent for wastewater rates and applied the reduction across-the-board.

**Table 3-1  
Wastewater Rate Decrease**

1	Revenue Requirement	\$18,840,298
2	Less: Miscellaneous and Reuse Revenues	\$414,796
3	Service Rate Revenues	\$18,425,502
4	Revenue Decrease	\$93,124
5	Percentage Service Rate Decrease (Line 4 / Line 3)	0.51%

In addition, due to the revenue requirement changes, staff evaluated whether UIF's four-year rate reduction (4YRR) calculations needed to be revised. The 4YRR calculations determine the percentage by which rates need to be reduced to reflect the removal of the amortized rate case expense. Staff determined that no revisions are necessary to the 4YRR calculations because, as a result of rounding, the resulting percentage with respect to UIF's amortized rate case expense and revenue requirements did not change from what has been approved by the Commission.

In the Final Order, the Commission determined the quality of service for Cypress Lakes, Mid-County, and Pennbrooke was marginal. Additionally, the quality of service for Summertree was deemed unsatisfactory. As a result, a penalty to the return on equity (ROE) for these systems was imposed as a credit that would flow back to the benefit of the customers. Staff evaluated whether the Utility's ROE credits needed to be recalculated and determined no adjustments are necessary, because the change is de minimis and has no impact on the amount of the existing credits.

Based on the above, staff recommends no adjustments to UIF's existing water rates. The appropriate wastewater rates are reflected on Schedule No. 4 as attached and should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved wastewater rates. In addition, the approved wastewater rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.



**Issue 4:** Should Utilities, Inc. of Florida be required to make refunds to comply with the First District Court of Appeal's mandate?

**Recommendation:** Yes. The calculated 0.02 percent refund for water, as well as the Lake Placid additional water interim refund of 0.01 percent, should be booked to CIAC in lieu of a refund to water customers. A 0.49 percent refund should be made to all wastewater customers. In addition, interim refunds are due as detailed in the table below, and because of the de minimis amount, these should be added to the consolidated wastewater refunds made to all customers.

System	Additional Interim Refund Percentage Due
Eagle Ridge – Wastewater	0.02%
Labrador – Wastewater	0.02%
Pennbrooke – Wastewater	0.02%
UIF Marion – Wastewater	0.01%
UIF Pasco – Wastewater	0.01%
UIF Seminole – Wastewater	0.02%

The refunds should be made with interest in accordance with Rule 25-30.360(4), F.A.C., The Utility should be required to submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. The Utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C. (Sewards, Trierweiler)

**Staff Analysis:** As a result of the adjustments recommended by staff in accordance with the First DCA's mandate, the final revenue requirements as presented in Issue 2 are less than those approved by the Commission in its previous Final Order.<sup>9</sup> As such, refunds are necessary as discussed below.

By Order No. PSC-2017-0361-FOF-WS, the Commission approved a total revenue requirement of \$15,662,276 for water and \$18,840,298 for wastewater. As discussed in Issue 2, staff is recommending an adjusted total revenue requirement of \$15,658,716 and \$18,747,174 for water and wastewater, respectively, which represents a reduction of \$3,560 for water and \$93,124 for wastewater. As a result, refunds are due to all water and wastewater customers for the time period between the issuance of the previous Final Order in September 2017, and the issuance of the Final Order on this matter, currently scheduled in August 2019.

As discussed in Issue 3, the Commission approved ROE penalties for Cypress Lakes, Mid-County, Pennbrooke, and Summertree which were imposed as credits for the customers of those systems. These credits were calculated using the incremental change in revenue requirement associated with the respective ROE penalties for each system. Based on the reduction in revenue requirement, UIF is also due a refund, as the Utility issued more credits than due to its customers since the Final Order. On an annual basis, these excessive credits total \$29 and \$20 for all water

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<sup>9</sup> 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.*

and wastewater customers, respectively. Given the de minimis amount of excessive credits, staff recommends the ROE penalty credits due to the Utility be offset against the total reductions to final revenue requirements in calculating the total refund percentages for the water and wastewater systems, collectively.

Based on a net reduction of \$3,531 (\$3,560 - \$29) for water and \$93,105 (\$93,125 - \$20) for wastewater, staff calculated a total refund percentage of 0.02 percent for water and 0.49 percent for wastewater.

By the previous Final Order, the Commission also approved total interim refunds in the amount of \$298,354. Staff recalculated the impact on interim refunds associated with the recommended revenue requirements and has determined that additional interim refunds as listed in the table below.

**Table 4-1  
 Interim Refunds**

<b>System</b>	<b>Refunds Per Order No. PSC-2017- 0361-FOF-WS</b>	<b>Staff Recommended Refunds</b>	<b>Additional Interim Refund Percentage Due</b>
Lake Placid – Water	\$2,429	\$2,440	0.01%
Eagle Ridge – Wastewater	19,250	19,453	0.02%
Labrador – Wastewater	83,236	83,410	0.02%
Pennbrooke – Wastewater	768	850	0.02%
UIF Marion – Wastewater	17,863	17,872	0.01%
UIF Pasco – Wastewater	97,162	97,210	0.01%
UIF Seminole – Wastewater	<u>77,646</u>	<u>77,793</u>	0.02%
<b>Total</b>	<b><u>\$298,354</u></b>	<b><u>\$299,028</u></b>	

Source: Order No. PSC-2017-0361-FOF-WS

Using monthly revenues provided by the Utility and the 30-day Financial Commercial Paper rate, staff estimated the cumulative refund amount for the water and wastewater systems using the refund percentages discussed above.<sup>10</sup> The total estimated refund due to water customers is \$6,831 and \$186,987 for wastewater customers. This includes the reduction to the revenue requirement, the excessive ROE penalties, and the additional interim refunds.

Given the relatively small estimated amount of refunds due to all water customers, staff recommends booking the refunds to CIAC once the Utility calculates the final amount. The Commission has previously ordered this same treatment of refunds based on specific circumstances, such as the relative magnitude.<sup>11</sup> Booking the water refunds to CIAC will benefit the general body of rate payers by decreasing rate base.

<sup>10</sup> Document No. 04116-2019

<sup>11</sup> Order No. PSC-2003-0351-PAA-SU, issued March 11, 2003, in Docket No. 20020344-SU, *In re: Application for rate increase in Monroe County by Key Haven Utility Corporation*.

The estimated amount of additional interim refunds due to wastewater customers is only \$527. Staff believes the administrative costs of issuing these refunds on a system specific basis, given the relatively small estimated amount, would be unreasonable. As such, once the Utility calculates the final amount of wastewater refunds, staff recommends aggregating the additional interim refunds to the total refund made to all wastewater customers in lieu of the individual interim systems.

Based on the above, staff recommends that the calculated 0.02 percent refund for water, as well as the Lake Placid additional water interim refund of 0.01 percent, should be booked to CIAC in lieu of a refund to water customers. A 0.49 percent refund should be made to all wastewater customers. In addition, interim refunds are due as detailed in Table 4-1 above, and because of the de minimis amount, these should be added to the consolidated wastewater refunds made to all customers. The refunds should be made with interest in accordance with Rule 25-30.360(4), F.A.C. The Utility should be required to submit proper refund reports pursuant to Rule 25-30.360(7), F.A.C. the Utility should treat any unclaimed refunds as CIAC pursuant to Rule 25-30.360(8), F.A.C.

**Issue 5:** Should the Commission grant Utilities, Inc. of Florida's Motion for Recovery of Appellate Rate Case Expense?

**Recommendation:** Yes. The appropriate amount of appellate rate case expense is \$39,727. Further, rate case expense should be allocated between the consolidated water and wastewater systems based on equivalent residential connections (ERCs). Additionally, staff recommends the authorization of a regulatory asset to recover the expense in the Utility's next rate proceeding. (Sewards, Trierweiler)

**Staff Analysis:** On May 21, 2019, UIF filed a Motion for Appellate and Remand Rate Case Expense.<sup>12</sup> In its motion, the Utility requested recovery of its appellate and remand rate case expense in the amount of \$39,727. The Utility's requested rate case expense consists of \$300 in accounting fees and \$28,687 in legal fees incurred to date. It also includes estimated legal fees of \$9,690 and \$1,050 in travel costs for legal and Utility representatives to attend the Agenda Conference. To support its motion, UIF cited a decision on remand made by the Commission for Sunshine Utilities of Central Florida (Sunshine).<sup>13</sup> In the Sunshine case, the Utility initiated the appeal process and was the cost causer. The Commission determined that Sunshine was entitled to partially recover rate case expense based on the number of appealed issues on which the Utility had prevailed.

In its motion, UIF stated it would be erroneous to reduce the rate case expense based upon the allocation methodology used for Sunshine. The Utility contended that because it did not file the appeal, the full amount of rate case expense requested should be granted, as it was necessary for the Utility to defend itself as the appellee on all issues.

On May 31, 2019, OPC filed a response to UIF's comments on remand.<sup>14</sup> In its response, OPC disagreed with the Utility's position. OPC asserted that, according to Commission precedent established in the Sunshine case, only rate case expense associated with issues the Utility prevailed on should be awarded.

In the instant docket, OPC and Seminole County filed an appeal while UIF did not. As the Utility is not the cost driver of the appeal, staff believes that, regardless of the outcome of each issue, the Utility was prudent in its decision to incur rate case expense to defend itself. As such, staff recommends that the appellate rate case expense awarded should not be based on an allocation methodology.

In its response, OPC also contended that recovery of estimated fees and costs to completion is inappropriate. In support of its argument, OPC cited an Order detailing a decision made for estimated appellate rate case expense for Southern States Utilities (SSU).<sup>15</sup>

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<sup>12</sup> Document No. 04461-2019

<sup>13</sup> Order No. PSC-1994-0738-FOF-WU, issued June 15, 1994, in Docket No. 19900386-WU, *In re: Application for a Rate Increase in Marion County by Sunshine Utilities of Central Florida, Inc.*

<sup>14</sup> Document No. 04674-2019

<sup>15</sup> Order No.1996-1320-FOF-WS, issued October 30, 1996, in Docket No. 19950495-WS, *In re: Application for rate increase and increase in service availability charges by Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County; and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee,*

In the SSU case, the Utility requested rate case expense for a possible appeal it would file following the issuance of the Final Order. SSU's request was based on the assumption that it would eventually file an appeal. Upon review, staff believes that the SSU case is not representative of the facts in the instant docket. In the current case, the appeal process has already been completed, and the estimated costs are for events that are scheduled and required to complete the current docket. As such, staff believes the recovery of estimated fees and costs to completion are appropriate, and UIF should be allowed to recover these costs.

Pursuant to Section 367.081(7), F.S., the Commission must determine the reasonableness of the requested rate case expense. Staff has examined the requested actual expenses, supporting documentation and estimated expenses and believes the requested rate case expense of \$39,727 is reasonable.

Pursuant to Section 367.081(8), F.S., rate case expense should be amortized over four years unless a longer period can be justified and is in the public interest. The amortization period of the appellate rate case expense was not addressed by the Utility or OPC. By Final Order, the Commission established a recovery period of four years for the rate case expense approved in that order. As current rates have been in effect for approximately two years, staff believes that the inclusion of the appellate rate case expense in the existing balance would violate Section 367.081, F.S., as the new rate case expense would be recovered in a period shorter than four years.

Alternatively, the appellate rate case expense could be amortized separately, which would require an additional rate reduction four years later. However, the rate reduction would only be approximately \$5,000 each for water and wastewater. Staff believes the administrative costs of an additional rate reduction, given the relative size of the amount, would be unreasonable. Further, staff notes the additional rate reduction could potentially cause undue confusion to customers.

Staff believes a more reasonable approach is the creation of a regulatory asset that would allow the Utility to seek recovery of the expense through rates in its next rate proceeding. The Commission has previously ordered similar treatment of rate case expense associated with UIF's Phoenix Project.<sup>16</sup> Accounting Standards Codification 980 allows regulated companies to defer costs and create regulatory assets, provided that it is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes. This concept of deferral accounting allows utilities to defer costs due to events beyond their control and seek recovery through rates at a later time.

Based on the above, staff recommends that UIF be granted recovery of appellate rate case expense in the amount of \$39,727. Further, rate case expense should be allocated between the consolidated water and wastewater systems based on ERCs. Additionally, staff recommends the authorization of a regulatory asset to recover the expense in the Utility's next rate proceeding.

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*Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties.*

<sup>16</sup> Order No. PSC-2014-0521-FOF-WS, issued September 30, 2014, in Docket No. 20120161-WS, *In re: Analysis of Utilities, Inc.'s financial accounting and customer service computer system.*

**Issue 6:** Should this docket be closed?

**Recommendation:** No. This docket should remain open for staff's verification that the Utility has completed the recommended refunds, filed revised tariff sheets, and filed customer notices. For Issue 5, related to the appellate rate case expense, if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order will be issued and the portion of the Order dealing with appellate rate case expense will become final. Once all actions are complete, the docket should be closed. (Trierweiler, Cowdery)

**Staff Analysis:** This docket should remain open for staff's verification that the Utility has completed the recommended refunds, filed revised tariff sheets, and filed customer notices. For Issue 5, related to the appellate rate case expense, if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, a consummating order will be issued and the portion of the Order dealing with appellate rate case expense will become final. Once all actions are complete, the docket should be closed.

<b>Utilities, Inc. of Florida</b>		<b>Schedule No. 1</b>	
<b>Schedule of Wastewater Rate Base</b>		<b>Docket No. 20160101-WS</b>	
<b>Test Year Ended 12/31/2015</b>			
<b>Description</b>	<b>Per Commission Order</b>	<b>Staff Recommended Adjustments</b>	<b>Staff Recommended Balance</b>
1 Plant in Service	\$119,883,416	\$0	\$119,883,416
2 Land and Land Rights	775,725	0	775,725
3 Non-used and Useful Components	(2,430,359)	(476,060)	(2,906,419)
4 Accumulated Depreciation	(46,001,808)	0	(46,001,808)
5 CIAC	(42,121,095)	0	(42,121,095)
6 Amortization of CIAC	26,165,784	0	26,165,784
7 Working Capital Allowance	<u>3,030,341</u>	<u>0</u>	<u>3,030,341</u>
8 <b>Rate Base</b>	<u>\$59,302,005</u>	<u>(\$476,060)</u>	<u>\$58,825,945</u>

<b>Utilities, Inc. of Florida</b>						<b>Schedule No. 2</b>		
<b>Capital Structure- 13 Month Average</b>						<b>Docket No. 20160101-WS</b>		
<b>Test Year Ended 12/31/2015</b>								
<b>Description</b>	<b>Total Capital</b>	<b>Specific Adjustments</b>	<b>Subtotal Adjusted Capital</b>	<b>Pro rata Adjustments</b>	<b>Capital Reconciled to Rate Base</b>	<b>Ratio</b>	<b>Cost Rate</b>	<b>Weighted Cost</b>
<b>Per Order No. PSC-2017-0361-FOF-WS</b>								
1 Long-term Debt	\$180,000,000	\$0	\$180,000,000	(\$135,974,808)	\$44,025,192	39.41%	6.70%	2.64%
2 Short-term Debt	17,100,000	0	17,100,000	(12,917,607)	4,182,393	3.74%	2.32%	0.09%
3 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
4 Common Equity	191,433,000	0	191,433,000	(144,611,474)	46,821,526	41.92%	10.40%	4.36%
5 Customer Deposits	209,588	22,434	232,022	0	232,022	0.21%	2.00%	0.00%
6 Tax Credits- Zero Cost	46,232	0	46,232	0	46,232	0.04%	0.00%	0.00%
7 Deferred Income Tax	<u>7,339,011</u>	<u>9,051,646</u>	<u>16,390,657</u>	<u>0</u>	<u>16,390,657</u>	<u>14.67%</u>	0.00%	<u>0.00%</u>
8 <b>Total Capital</b>	<u>\$396,127,831</u>	<u>\$9,074,080</u>	<u>\$396,269,685</u>	<u>(\$293,503,889)</u>	<u>\$111,698,022</u>	<u>100%</u>		<u>7.09%</u>
<b>Per Staff</b>								
9 Long-term Debt	\$180,000,000	\$0	\$180,000,000	(\$136,191,619)	\$43,808,381	39.39%	6.70%	2.64%
10 Short-term Debt	17,100,000	0	17,100,000	(12,938,204)	4,161,796	3.74%	2.32%	0.09%
11 Preferred Stock	0	0	0	0	0	0.00%	0.00%	0.00%
12 Common Equity	191,433,000	0	191,433,000	(144,842,057)	46,590,943	41.89%	10.40%	4.36%
13 Customer Deposits	209,588	22,434	232,022	0	232,022	0.21%	2.00%	0.00%
14 Tax Credits- Zero Cost	46,232	0	46,232	0	46,232	0.04%	0.00%	0.00%
15 Deferred Income Tax	<u>7,339,011</u>	<u>9,043,577</u>	<u>16,382,588</u>	<u>0</u>	<u>16,382,588</u>	<u>14.73%</u>	0.00%	<u>0.00%</u>
16 <b>Total Capital</b>	<u>\$396,127,831</u>	<u>\$9,066,011</u>	<u>\$405,193,842</u>	<u>(\$293,971,879)</u>	<u>\$111,221,963</u>	<u>100%</u>		<u>7.09%</u>
						<b>Low</b>	<b>High</b>	
RETURN ON EQUITY						<u>9.40%</u>	<u>11.40%</u>	
OVERALL RATE OF RETURN						<u>6.67%</u>	<u>7.51%</u>	



<b>Utilities, Inc. of Florida</b>		<b>Schedule No. 3-A</b>	
<b>Statement of Water Operations</b>		<b>Docket No. 20160101-WS</b>	
<b>Test Year Ended 12/31/2015</b>			
<b>Description</b>	<b>Per Commission Order</b>	<b>Staff Recommended Adjustments</b>	<b>Staff Recommended Balance</b>
1 <b>Operating Revenues:</b>	<u>\$15,662,276</u>	<u>(\$3,560)</u>	<u>\$15,658,716</u>
<b>Operating Expenses</b>			
2    Operation & Maintenance	\$6,280,880	\$0	\$6,280,880
3    Depreciation	2,483,459	0	2,483,459
4    Amortization	51,142	0	51,142
5    Taxes Other Than Income	1,754,147	(160)	1,753,987
6    Income Taxes	<u>1,377,110</u>	<u>(938)</u>	<u>1,376,172</u>
7 <b>Total Operating Expense</b>	<u>\$11,946,738</u>	<u>(\$1,098)</u>	<u>\$11,945,639</u>
8 <b>Operating Income</b>	<u>\$3,715,538</u>		<u>\$3,713,007</u>
9 <b>Rate Base</b>	<u>\$52,396,017</u>		<u>\$52,396,017</u>
10 <b>Rate of Return</b>	<u>7.09%</u>		<u>7.09%</u>

<b>Utilities, Inc. of Florida</b>		<b>Schedule No. 3-B</b>	
<b>Statement of Wastewater Operations</b>		<b>Docket No. 20160101-WS</b>	
<b>Test Year Ended 12/31/2015</b>			
<b>Description</b>	<b>Per Commission Order</b>	<b>Staff Recommended Adjustments</b>	<b>Staff Recommended Balance</b>
1 <b>Operating Revenues:</b>	<u>\$18,840,298</u>	<u>(\$93,124)</u>	<u>\$18,747,174</u>
<b>Operating Expenses</b>			
2 Operation & Maintenance	\$8,034,536	\$0	\$8,034,536
3 Depreciation	2,972,392	(24,888)	2,947,504
4 Amortization	226,085	(86)	226,000
5 Taxes Other Than Income	1,840,605	(18,077)	1,822,528
6 Income Taxes	<u>1,559,772</u>	<u>(13,551)</u>	<u>1,546,221</u>
7 <b>Total Operating Expense</b>	<u>\$14,633,391</u>	<u>(\$56,602)</u>	<u>\$14,576,790</u>
8 <b>Operating Income</b>	<u>\$3,715,538</u>		<u>\$4,170,384</u>
9 <b>Rate Base</b>	<u>\$59,302,005</u>		<u>\$58,825,945</u>
10 <b>Rate of Return</b>	<u>7.09%</u>		<u>7.09%</u>

<b>Utilities Inc. of Florida</b>	<b>Schedule No. 4</b>	
<b>Test Year Ended 12/31/15</b>	<b>Docket No. 20160101-WS</b>	
<b>Wastewater Rates</b>	<b>Page 1 of 2</b>	
	<b>Utility's Existing Rates</b>	<b>Staff Recommended Rates</b>
<b><u>Residential Service (RS1)</u></b>		
All Meter Sizes	\$26.33	\$26.20
Charge per 1,000 gallons 8,000 gallon cap	\$4.21	\$4.19
<b><u>Residential Service (RS2)</u></b>		
All Meter Sizes	\$52.66	\$52.40
Charge per 1,000 gallons 16,000 gallon cap	\$4.21	\$4.19
<b><u>Residential Service (RS3)</u></b>		
Flat Rate	\$47.37	\$47.13
<b><u>Residential Service (RS4)</u></b>		
Flat Rate	\$94.74	\$94.26
<b><u>General Service (GS1)</u></b>		
Base Facility Charge by Meter Size		
5/8" x 3/4"	\$26.33	\$26.20
3/4"	\$39.50	\$39.30
1"	\$65.83	\$65.50
1-1/2"	\$131.65	\$131.00
2"	\$210.64	\$209.60
3"	\$421.28	\$419.20
4"	\$658.25	\$655.00
6"	\$1,316.50	\$1,310.00
8"	\$2,106.40	\$2,096.00
10"	\$3,817.85	\$3,799.00
Charge per 1,000 gallons	\$5.05	\$5.02

<b>Utilities Inc. of Florida</b>	<b>Schedule No. 4</b>	
<b>Test Year Ended 12/31/15</b>	<b>Docket No. 20160101-WS</b>	
<b>Wastewater Rates</b>	<b>Page 2 of 2</b>	
	<b>Utility's Existing Rates</b>	<b>Staff Recommended Rates</b>
<b><u>General Service (GS2)</u></b>		
5/8" x 3/4"	\$52.66	\$52.40
3/4"	\$79.00	\$78.60
1"	\$131.66	\$131.00
1 1/2"	\$263.30	\$262.00
2"	\$421.28	\$419.20
3"	\$842.56	\$838.40
4"	\$1,316.50	\$1,310.00
6"	\$2,633.00	\$2,620.00
8"	\$4,212.80	\$4,192.00
10"	\$7,635.70	\$7,598.00
Charge per 1,000 gallons	\$5.05	\$5.02
<b><u>General Service (GS3)</u></b>		
Flat Rate	\$47.37	\$47.13
<b><u>General Service (GS4)</u></b>		
Flat rate (905 ERCs)	\$42,869.85	\$42,652.65
<b><u>Bulk Service (BS1)</u></b>		
All Meter Sizes (58 ERCs)	\$1,527.14	\$1,519.60
Charge per 1,000 gallons	\$4.21	\$4.19
<b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison (RS1)</u></b>		
3,000 Gallons	\$38.96	\$38.77
6,000 Gallons	\$51.59	\$51.34
8,000 Gallons	\$60.01	\$59.72

# Item 4

State of Florida



# Public Service Commission

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

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

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**DATE:** July 25, 2019

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

**FROM:** Division of Engineering (Wright, Doehling, Ellis, King, Knoblauch, Wooten) *SW JD FDE m EK*  
Division of Economics (Coston, Morgan, Wu) *CS M JW qdH*  
Office of the General Counsel (DuVal, Dziechciarz) *RAI*

**RE:** Docket No. 20180186-GU – Petition for approval of demand side management goals and residential customer assisted and commercial walk-through energy audit programs, by Peoples Gas System.

**AGENDA:** 08/06/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** 08/26/19 (Petition Deemed Approved if Not Granted or Denied within 90 Days of Receipt Pursuant to Section 120.542(8), Florida Statutes)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

Sections 366.80 through 366.83, and 403.519, Florida Statutes (F.S.), are known collectively as the Florida Energy Efficiency and Conservation Act (FEECA). Originally enacted in 1980, FEECA emphasizes the utilization of efficient and cost-effective demand-side renewable energy and conservation systems. Pursuant to Section 366.82, F.S., the Florida Public Service Commission (Commission) must review the conservation goals of each utility subject to FEECA at least every five years, and must require that each utility offer energy audit programs to its residential customers. The Commission may extend the audit program requirement to some or all commercial customers. Currently, all five investor-owned electric utilities and two municipal

electric utilities are subject to FEECA. Peoples Gas System (PGS or Company) is the only natural gas utility subject to these requirements.<sup>1</sup>

In 1980, the Commission adopted rules that set statewide conservation goals; however, these rules were repealed in 1990, following the sunset provision in FEECA. In 1996, the Commission adopted Rule 25-17.009, Florida Administrative Code (F.A.C.), which establishes a methodology for assessing the cost-effectiveness of demand-side management (DSM) programs for natural gas utilities. However, Rule 25-17.009, F.A.C., does not establish a process by which goals are to be set for natural gas utilities. Since 1981, PGS has offered a variety of conservation programs which have been reviewed by the Commission pursuant to Rule 25-17.015, F.A.C., the Energy Conservation Cost Recovery (ECCR) clause. The Company's residential and commercial DSM programs were first approved by the Commission in 1990, with several modifications and additions being made since that time.<sup>2</sup>

In October 2015, the State of Florida Auditor General issued Report No. 2016-022, which found the Commission had not fully implemented FEECA requirements for natural gas utilities.<sup>3</sup> The report recommended that the Commission management either fully implement FEECA specifically as it applies to natural gas utilities or seek legislative clarification regarding whether the Commission is required to adopt energy conservation and DSM goals for natural gas utilities and whether natural gas utilities are to offer residential energy audits. Through several meetings both internally and with legislative staff, Commission management determined the best way to comply with the Auditor General's findings was to request PGS, in a manner similar to that followed by the FEECA electric utilities, to develop and file with the Commission annual conservation goals along with residential and commercial energy audit programs.

On October 15, 2018, PGS filed a petition for approval of its natural gas DSM goals for the period 2019-2028, and its residential and commercial energy audit programs. In response to staff-issued data requests, the Company provided updated numeric conservation goals.

On May 28, 2019, PGS filed a petition seeking waiver of Rule 25-17.003(3)(a) and (b), F.A.C., which requires PGS to offer residential customers Building Energy-Efficiency Rating System (BERS) Audits, Computer-Assisted Audits, and Walk-Through Audits. Specifically, PGS seeks a

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<sup>1</sup>Section 366.82, F.S., provides that a natural gas utility is subject to FEECA requirements if a utility's annual retail sales volume is equal to or greater than 100 million therms.

<sup>2</sup>Order No. 23462, issued September 11, 1990, in Docket No. 19900089-EG, *In re: Request for approval of Energy Conservation Plan by Peoples Gas System, Inc.*; Order No. PSC-06-0816-PAA-EG, issued October 4, 2006, in Docket No. 20060478-EG, *In re: Petition for approval of modifications to approved energy conservation programs, by Peoples Gas System.*; Order No. PSC-10-0113-PAA-EG, issued February 25, 2010, in Docket No. 20090122-EG, *In re: Petition for approval of modifications to approved energy conservation programs, by Associated Gas Distributors of Florida.*; Order No. PSC-10-0551-PAA-EG, issued September 2, 2010, in Docket No. 20100186-EG, *In re: Petition for approval of natural gas residential energy conservation programs, by Associated Gas Distributors of Florida.*; Order No. PSC-14-0039-PAA-EG, issued January 14, 2014, in Docket No. 20130167-EG, *In re: Petition for approval of natural gas energy conservation programs for commercial customers, by Associated Gas Distributors of Florida.*; Order No. PSC-15-0095-PAA-EG, issued February 6, 2015, in Docket No. 20140196-EG, *In re: Petition for approval of extension of conservation demonstration and development program, by Associated Gas Distributors of Florida.*

<sup>3</sup>Report No. 2016-022, issued October 2015, Public Service Commission Nuclear Power Plant Cost Recovery, Florida Energy Efficiency and Conservation Act, and Selected Administrative Activities.

Docket No. 20180186-GU

Date: July 25, 2019

waiver from the residential on-site evaluation and walk-through audit requirements reasoning the purpose of the underlying statute can be achieved by other means and strict application of the Rule would result in a substantial hardship to PGS. Pursuant to Section 120.542(6), F.S., notice of the petition seeking waiver was published in the Florida Administrative Register on June 5, 2019. No comments were received, and the time for filing comments expired on June 19, 2019.

The Commission has jurisdiction over this matter pursuant to Sections 120.542, 366.80 through 366.83, and 403.519, F.S.



## Discussion of Issues

**Issue 1:** Should the Commission grant Peoples Gas System's Petition for Waiver of Rule 25-17.003(3)(a) and (b), Florida Administrative Code?

**Recommendation:** Yes. Staff recommends that the Commission grant Peoples Gas System a temporary waiver of the on-site residential energy audit requirements of Rule 25-17.003(3)(a) and (b), F.A.C., and allow PGS to offer an electronic, online-only version of the Computer-Assisted Audit to its eligible residential customers until the Commission's next review of the Company's goals, plans, and programs. (DuVal, Dziechciarz, Wright)

### Staff Analysis:

#### Petition

PGS requested a rule waiver of Rule 25-17.003(3)(a) and (b), F.A.C. (Rule). The Rule requires PGS to offer BERS, Computer-Assisted, and Walk-Through Audits to eligible residential customers, all of which must be performed on-site at the customer's residence. PGS stated that fulfilling the on-site residential energy audit requirements would have an undue impact on the costs passed on to customers and would require PGS to dispatch Tampa-based employees, or position employees, across the Company's entire service territory.<sup>4</sup> As such, the Company has requested permission to offer only a Computer-Assisted Audit without the on-site evaluation and walk-through audit requirements of the Rule.

PGS asserted that an electronic, online-only version of the Computer-Assisted Audit is a reasonable means of achieving the purpose of the statutes implemented by Rule 25-17.003(3)(a) and (b), F.A.C., because it can provide eligible residential customers with the same type of feedback regarding energy usage and recommendations to improve energy efficiency as would be provided by an on-site residential energy audit. The Company further asserted that, if required to have employees physically present throughout its territory, it would need to employ multiple additional energy audit personnel or outsource the energy audits to third parties in order to satisfy the on-site residential energy audit requirements, creating a substantial hardship for PGS.

#### Facts

Rule 25-17.003, F.A.C., specifies the minimum requirements for performing energy audits by utilities subject to FEECA. Rule 25-17.003(3)(a) and (b), F.A.C., require those utilities to offer BERS, Computer-Assisted, and Walk-Through Audits to eligible residential customers.

Rule 25-17.003(2)(a), F.A.C., defines a BERS Audit as an energy analysis of a residence performed in compliance with Florida law pertaining to energy-efficiency ratings for buildings. Rule 25-17.003(2)(b), F.A.C., defines a Computer-Assisted Audit as an energy analysis of a residence in which a qualified auditor performs a comprehensive on-site evaluation of the residence. Rule 25-17.003(2)(i), F.A.C., defines a Walk-Through Audit as an energy analysis of a residence in which a qualified auditor walks through the residence making extensive observations as to the physical structure and components, performs simplified heat gain and heat

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<sup>4</sup> PGS provided that its service territory is non-contiguous and spans 26 counties, from Dade County to Bay County.

loss computations, and advises the customer of feasible energy conservation practices and measures.

### **Requirements of Section 120.542, F.S.**

Section 120.542(2), F.S., authorizes the Commission to grant variances or waivers from agency rules when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means and application of the rule would cause the person substantial hardship. As defined by Section 120.542(2), F.S., “substantial hardship” means a demonstrated economic, technological, legal, or other type of hardship.

### **Purpose of the Underlying Statutes**

Sections 366.80-366.83 and 403.519, F.S., are known collectively as FEECA. The purpose of FEECA is to utilize the most efficient and cost-effective demand-side renewable energy systems and conservation systems. Furthermore, FEECA requires each qualifying utility to offer, or contract to offer, energy audits to its residential customers, but provides that this requirement need not be uniform and may be based on such factors as level of usage, geographic location, or any other reasonable criterion, so long as all eligible customers are notified.

In its Petition, PGS requests a waiver of the Rule’s on-site residential energy audit requirements. Instead, PGS proposes that it can achieve the purpose of the underlying statutes by offering an electronic, online-only version of the Computer-Assisted Audit to its eligible residential customers. The Company, therefore, contends that it will offer energy audits to its residential customers that provide the same type of feedback regarding energy usage and recommendations to improve energy efficiency, as would be provided by an on-site residential energy audit.

Staff believes that the Company’s proposed electronic, online-only version of the Computer-Assisted Audit advances the Company’s ability to utilize the most efficient and cost-effective renewable energy systems and conservation systems. Further, given that the requirement to offer, or contract to offer, energy audits to residential customers need not be uniform, it appears that the Company’s proposed electronic, online-only version of the Computer-Assisted Audit is a reasonable means to achieve the purpose of FEECA, at least on a temporary basis. Therefore, staff recommends that PGS has demonstrated that the purpose of the underlying statutes will be achieved by other means.

### **Substantial Hardship**

As stated, pursuant to Section 120.542(2), F.S., the petition must demonstrate that application of the rule would create a substantial hardship. Further, Section 120.542(2), F.S., defines substantial hardship as demonstrated economic, technological, legal, or other type of hardship to the person requesting the waiver.

In the Petition, PGS asserts that strict application of the Rule would create a substantial economic hardship due to additional employment and/or travel expenses. The Company estimates that its adherence to the on-site residential energy audit requirements would lead to an average cost per audit in excess of \$500.

Given that this is the first time that PGS has been required to comply with FEECA by developing and filing residential audit programs, staff believes that the strict application of Rule 25-

17.003(3)(a) and (b), F.A.C., in the instant docket would create a substantial economic hardship for PGS, at least on a temporary basis, based on the Company's anticipated additional costs.

**Conclusion**

Section 120.542, F.S., requires companies to demonstrate that the purpose of the underlying statute will be or has been achieved by other means by the Company and that application of the rule would create a substantial hardship. Staff recommends that the Commission find that PGS has demonstrated that the purpose of the underlying statutes will be achieved by offering an electronic, online-only version of the Computer-Assisted Audit to its eligible residential customers. Staff further recommends that PGS has demonstrated that application of Rule 25-17.003(3)(a) and (b), F.A.C., will create a substantial hardship to the Company. Therefore, staff recommends that the Commission grant the Company a temporary waiver of the on-site residential energy audit requirements of Rule 25-17.003(3)(a) and (b), F.A.C., and allow PGS to offer an electronic, online-only version of the Computer-Assisted Audit to its eligible residential customers until the Commission's next review of the Company's goals, plans, and programs.

**Issue 2:** Are the Company's proposed goals based on an adequate assessment of the full technical potential of all available demand-side and supply-side conservation and efficiency measures, including demand-side renewable energy systems?

**Recommendation:** Yes. PGS has analyzed the maximum system-wide therm savings theoretically possible from implementation of DSM measures available in Florida. As such, staff recommends that the updated Technical Potential seen in Table 2-1 is an adequate assessment of the full technical potential, and serves as an acceptable basis for the Company's annual therm savings goals. (Wright, Doehling, Wu)

**Staff Analysis:** Section 366.82(3), F.S., requires the Commission, in developing conservation goals, evaluate the technical potential of all available DSM measures applicable to a utility's system. To facilitate this evaluation, PGS has provided an analysis of the maximum system-wide therm savings theoretically possible from implementation of DSM measures, regardless of cost and other barriers that may prevent installation or adoption. Staff has evaluated the development of this therm savings analysis, termed the Technical Potential, by reviewing each of its four parts: (1) the identification of the DSM measures to be evaluated; (2) the calculation of the theoretical per-site therm savings for each DSM measure; (3) the calculation of the system-wide therm savings for each DSM measure; and (4) the determination of system-wide therm savings in consideration of measure interactions.

### **DSM Measure Identification**

PGS identified the DSM measures for inclusion in the Technical Potential by first compiling a list of technologies known to the Company to be commercially available in Florida that, when applied in a residential, commercial, or industrial setting, yield reductions in the use of natural gas. The Company then compared this list against other utility, state, and federal technical potential studies and technical reference manuals to identify any missing measures. Those measures found to be missing were filtered by commercial availability in Florida before being added to the list of DSM measures evaluated in PGS' Technical Potential. Ultimately, 31 residential, 29 commercial, and 22 industrial measures addressing water heating, cooking, HVAC, laundry, and industrial process use-cases were evaluated.<sup>5</sup> Staff recommends that the methodology used to compile the list of DSM measures evaluated in PGS' Technical Potential is adequate.

### **Per-Site DSM Measure Savings**

PGS calculated theoretical per-site therm savings for each DSM measure. Similar to the methodology used by electric FEECA utilities, only the savings from new, replaced, or retrofitted measures that surpassed those savings based on minimum appliance energy efficiencies in the Florida Building Code or the associated Federal Appliance Efficiency Standards, whichever greater, were counted. Energy consumption parameters used in savings calculations were derived from a combination of state and national industry sources, current building code and appliance standards, and a review of historical DSM program activity. In response to staff-issued data requests, the Company provided updated theoretical per-site therm

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<sup>5</sup>A list of all DSM measures evaluated in the Technical Potential can be found in Appendix A of Exhibit A on pages 20-22 of PGS' petition.

savings. Staff recommends that the methodology used by PGS in the updated calculations adequately assesses the theoretical per-site therm savings of the DSM measures evaluated.

**System-wide DSM Measure Savings**

PGS calculated system-wide theoretical therm savings on a per-measure basis by applying the per-site therm savings (which were previously calculated) to modified counts of its sector-specific customer populations (applicable populations). The Company utilized the 2019 residential and small-commercial population projections, discussed in Issue 3, as the basis for both sectors’ applicable population. The basis of the applicable population for industrial DSM measures, however, was a simple count of PGS’ 62 industrial and large commercial customers. PGS then modified the baseline applicable populations for each DSM measure to account for existing measure prevalence and incompatibility with a customer’s premises, as indicated by the Company’s recent residential equipment market survey and a review of the characteristics of its commercial and industrial customer populations. Staff recommends that the methodology used by PGS to calculate system-wide theoretical therm savings on a per-measure basis is adequate.

**Consideration of Measure Interactions**

To arrive at its final determination of the Technical Potential, PGS took into account measure interactions, overlapping effects, and potential rebound effects when combining the system-wide therm savings of all evaluated DSM measures. The Company approached adjustments for measure interactions by selecting DSM measure input assumptions that would maximize the Technical Potential. Similarly, PGS addressed overlapping effects by including in the final sum only those DSM measures that resulted in the maximum Technical Potential. PGS examined the potential for rebound effects in its development of the Technical Potential, but did not find any supporting evidence. Staff recommends that PGS took adequate consideration of measure interaction, overlapping effects, and potential rebound effects in its final determination of the Technical Potential. Using the updated therm savings calculations, PGS developed the Technical Potential seen in Table 2-1.

**Table 2-1  
2019 Technical Potential**

Sector	Therm Savings
Residential	60,134,211
Commercial	150,064,380
Industrial	246,275,380
Total	456,473,972

Source: Document No. 03158-2019

**Conclusion**

PGS has analyzed the maximum system-wide therm savings theoretically possible from implementation of DSM measures available in Florida. As such, staff recommends that the updated Technical Potential seen in Table 2-1 is an adequate assessment of the full technical potential, and serves as an acceptable basis for the Company’s annual therm savings goals.

**Issue 3:** What residential and commercial annual therm savings goals should be established for the period 2019-2028?

**Recommendation:** Staff recommends that the Commission establish the annual therm savings seen in Table 3-1 as PGS' annual conservation goals for the period 2019-2028. The Company's proposed conservation goals adequately address the considerations enumerated in Section 366.82(3), F.S. (Wright, Doehling, Wooten, Wu)

**Staff Analysis:** Section 366.82(2), F.S., requires the Commission to adopt appropriate conservation goals to promote energy efficiency and the development of DSM programs. Section 366.82(3), F.S., states that, in establishing these goals, the Commission shall take into consideration: (1) the costs and benefits to customers participating in a program; (2) the costs and benefits to the general body of ratepayers; (3) the need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems; and (4) the costs imposed by state and federal regulations on the emission of greenhouse gases.

PGS has proposed annual conservation goals for the years 2019-2028 which focus on achieving overall therm usage reductions at residential and small-commercial end-use sites. The Company has based these goals on achievable therm savings from its portfolio of current Commission-approved DSM programs. The residential DSM programs were approved by the Commission in 2010,<sup>6</sup> and the commercial programs were approved by the Commission in 2014.<sup>7</sup> These programs are comprised of eight residential and ten small-commercial DSM measures, which each implement use-specific energy-saving technology at natural gas points-of-use throughout a customer's property. Because the Company's DSM programs serve as the basis for its proposed annual conservation goals, staff first reviewed these programs, taking into consideration those factors enumerated in Section 366.82(3), F.S. Staff then evaluated the development of PGS' proposed achievable therm savings by reviewing each of its three parts: (1) the projection of DSM measure participation over the years 2019-2028; (2) the calculation of achievable per-site therm savings for each DSM measure; and (3) the projection of achievable annual therm savings over the 2019-2028 period. Staff notes that PGS did not propose conservation goals, nor incorporated any DSM measures, into its DSM portfolio for large commercial or industrial customers. This is because these customers are entirely either natural gas fired cogenerators or interruptible customers and, per Order No. 23576, these two rate classes are excluded from cost recovery through the ECCR clause.<sup>8</sup>

### **Benefits and Costs to Participants and the General Body of Ratepayers**

Section 366.82(3)(a), F.S., requires the Commission take into consideration the costs and benefits to customers participating in a program. Section 366.82(3)(b), F.S., requires the Commission take into consideration the costs and benefits to the general body of ratepayers as a

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<sup>6</sup>Order No. PSC-10-0551-PAA-EG, issued September 2, 2010, in Docket No. 20100186-EG, *In re: Petition for approval of natural gas residential energy conservation programs, by Associated Gas Distributors of Florida.*

<sup>7</sup>Order No. PSC-14-0039-PAA-EG, issued January 14, 2014, in Docket No. 20130167-EG, *In re: Petition for approval of natural gas energy conservation programs for commercial customers, by Associated Gas Distributors of Florida.*

<sup>8</sup>Order No. 23576, issued October 3, 1990, in Docket No. 19900002-EG, *In re: Conservation Cost Recovery Clause.*

whole, including utility incentives and participant contributions. Per Rule 25-17.009, F.A.C., utilities seeking cost recovery for an existing, new, or modified demand side management program must file the cost effectiveness test results of the Participants Test and the Rate Impact Measure Test. The Participants Test measures the impact of a program on the participating customers. In 2010 and 2014, all PGS residential and commercial programs passed the Participants Test with scores above 1.0.<sup>9,10</sup> The Gas Rate Impact Measure (Gas RIM) Test, a modified version of the Rate Impact Measure Test specific to natural gas utilities, is an indirect measure of the program impact on customer rates that addresses utility incentives and participation. In 2010 and 2014, all PGS residential and commercial programs passed the Gas RIM with scores above 1.0.<sup>11,12</sup> Therefore, staff recommends that both Sections 366.82(3)(a) and (b), F.S., are adequately addressed by the proposed DSM goals.

### **Need for Incentives**

Section 366.82(3)(c), F.S., requires the Commission take into consideration the need for incentives to promote both customer-owned and utility-owned energy efficiency and demand-side renewable energy systems. As stated previously, the proposed DSM goals are based upon PGS' current Commission-approved DSM programs. The current residential DSM programs were approved in 2010, and the Commission found that the cash incentive allowances were cost-effective and did not impose an undue rate impact on PGS customers' monthly bills. The current commercial DSM programs were approved in 2014, when the Commission also found the incentive levels of these programs appropriate. The design of the incentives for both residential and commercial programs included consideration of free ridership and, thus, balanced incentive effectiveness with the ability of these programs to contribute to the defrayal of the costs associated with the installation of natural gas supply lines, internal piping, venting and equipment. Therefore, staff recommends that Section 366.82(3)(c), F.S., is adequately addressed by the proposed DSM goals.

### **Greenhouse Gas Emissions**

Section 366.82(3)(d), F.S., requires the Commission take into consideration the costs imposed by state and federal regulations on the emission of greenhouse gases. Currently, there are no costs imposed by state and federal regulations on the emissions of greenhouse gases. In addition, emission costs from fossil fueled power plants are more appropriately considered when reviewing electric utility DSM goals and programs. Pursuant to Section 366.82(6), F.S., the Commission has the authority to change conservation goals for a reasonable cause. Once compliance costs associated with any regulations on the emission of greenhouse gases are established, the Commission may review and, if appropriate, modify goals.

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<sup>9</sup>Order No. PSC-10-0551-PAA-EG, issued September 2, 2010, in Docket No. 20100186-EG, *In re: Petition for approval of natural gas residential energy conservation programs, by Associated Gas Distributors of Florida.*

<sup>10</sup>Order No. PSC-14-0039-PAA-EG, issued January 14, 2014, in Docket No. 20130167-EG, *In re: Petition for approval of natural gas energy conservation programs for commercial customers, by Associated Gas Distributors of Florida.*

<sup>11</sup>Order No. PSC-10-0551-PAA-EG, issued September 2, 2010, in Docket No. 20100186-EG, *In re: Petition for approval of natural gas residential energy conservation programs, by Associated Gas Distributors of Florida.*

<sup>12</sup>Order No. PSC-14-0039-PAA-EG, issued January 14, 2014, in Docket No. 20130167-EG, *In re: Petition for approval of natural gas energy conservation programs for commercial customers, by Associated Gas Distributors of Florida.*

### **Projection of DSM Measure Participation**

PGS began the process of forecasting DSM measure participation by analyzing customer growth rates. Each of the Company's 14 divisions maintains both a residential and a small-commercial customer model developed using Itron's MetrixND forecasting tool. These models primarily use population growth as inputs to forecast division-specific customer growth, with additional variables used to adjust for customer seasonality, unexpected events, and other variations. PGS combined the customer growth projections of each of its divisions to derive a total residential and small-commercial customer forecast for the years 2019-2028. Yearly growth rates were derived from the composite projections. Residential customers are projected to grow at an average rate of 2.17 percent per year over the 2019-2028 period, while over the same period, commercial customers are expected to grow at an average yearly rate of 2.48 percent. PGS states that yearly growth rates calculated in this manner have historically approximated the growth in yearly participation rates of the Company's DSM measures. Accordingly, PGS used these customer growth rates to escalate DSM measure participation through the 2019-2028 period. This method assumes that as the customer population grows, the number of customers enrolled in DSM measures will increase proportionally. After reviewing the information presented, including the major assumptions, key data sources and criteria utilized to develop and evaluate its customer forecast, staff recommends that PGS' forecasting method and the resulting customer forecast is appropriate for use in DSM goal setting in the instant docket.

### **Achievable Per-Site DSM Measure Savings**

PGS next calculated achievable per-site therm savings for each DSM measure currently found in its DSM program portfolio. Similar to the methodology used in the Technical Potential discussed in Issue 2, only the savings from measure implementation that exceeded those savings based on minimum appliance energy efficiencies in the Florida Building Code or the associated Federal Appliance Efficiency Standards, whichever greater, were counted. Energy consumption parameters used in DSM measure savings calculations were derived from a combination of state and national industry sources, responses to customer surveys, and a review of historical DSM program activity. In response to staff-issued data requests, the Company provided updated achievable per-site therm savings. Staff recommends that the methodology used by PGS in the updated calculations, as well as the incorporation of marketplace forces into the determination of achievable therm savings, result in per-site savings that adequately represent those savings likely to come from real-world implementation of the DSM measures considered.

### **Achievable Annual Therm Savings**

By combining projected yearly DSM measure participation with the updated DSM measure achievable per-site therm savings, PGS derived achievable annual therm savings over the 2019-2028 period. These savings can be seen in Table 3-1, alongside a cumulative count of projected savings, and are the Company's proposed annual conservation goals for the period 2019-2028. Staff recommends that the Commission establish the annual therm savings seen in Table 3-1 as PGS' annual conservation goals for the period 2019-2028.



**Table 3-1**  
**2019-2028 Achievable Therm Savings For All Current DSM Measures**

Year	Residential		Small-commercial		Combined	
	Yearly	Cumulative	Yearly	Cumulative	Yearly	Cumulative
2019	338,439	338,439	216,155	216,155	554,594	554,594
2020	347,108	685,548	222,062	438,217	569,170	1,123,764
2021	355,569	1,041,116	227,968	666,184	583,537	1,707,301
2022	363,728	1,404,845	233,833	900,017	597,561	2,304,862
2023	371,562	1,776,406	239,661	1,139,678	611,222	2,916,084
2024	379,045	2,155,451	245,457	1,385,135	624,502	3,540,586
2025	386,682	2,542,133	251,338	1,636,473	638,019	4,178,605
2026	394,475	2,936,608	257,304	1,893,777	651,779	4,830,385
2027	402,429	3,339,037	263,357	2,157,134	665,786	5,496,171
2028	410,546	3,749,583	269,500	2,426,634	680,046	6,176,217

Source: Document No. 03158-2019

**Other Matters**

PGS has indicated that, because these savings are based upon current Commission-approved DSM programs, the net effect of establishing these savings as DSM goals for PGS is zero additional cost to customers, excluding those costs associated with the new Residential Customer Assisted Energy Audit and the Commercial Walk-Through Energy Audit, discussed in Issue 4. The Company intends to review its DSM goals every five years, with the next review to occur in 2023, to align it with the Commission’s periodic conservation goals review as required by Section 366.82(6), F.S. Additionally, PGS will provide annual DSM reports on the achievements of incremental natural gas therm savings by March 1 of each year.<sup>13</sup> Staff intends to monitor these annual reports in an effort to refine the natural gas goal-setting process used in this proceeding.

**Conclusion**

Staff recommends that the Commission establish the annual therm savings seen in Table 3-1 as PGS’ annual conservation goals for the period 2019-2028. The Company’s proposed conservation goals adequately address the considerations enumerated in Section 366.82(3), F.S.

<sup>13</sup>This requirement corresponds to Rule 25-17.0021(5), F.A.C., that the FEECA electric utilities operate under regarding annual DSM reports.

**Issue 4:** Should the Commission approve the Company's new residential and commercial audit programs?

**Recommendation:** If the Commission approves staff's recommendation in Issue 1, then the Company's new residential and commercial audit programs should be approved and PGS should be allowed recovery of reasonable and prudent expenditures associated with these audit programs through the ECCR clause. The scope of both the Residential Customer Assisted Energy Audit and the Commercial Walk-Through Energy Audit meet the requirements established by FEECA. If the Commission does not approve staff's recommendation in Issue 1, then PGS should file revised audit programs with its proposed DSM plan. (Wright, Doehling)

**Staff Analysis:** Pursuant to Section 366.82(11), F.S., the Commission requires FEECA utilities to offer energy audits to its residential customers. The Commission may extend the audit program requirement to some or all commercial customers. PGS has proposed two new audit programs: (1) the Residential Customer Assisted Energy Audit (RA); and (2) the Commercial Walk-Through Energy Audit (CA). Staff has analyzed the scope of these audits and preliminary estimates of their administrative costs on a per-audit basis.

### **Audit Scope**

Both the RA and CA are designed to increase customer awareness of natural gas energy use on their premises, and are offered for free to all existing PGS customers of the appropriate rate class that are located within PGS' service area.<sup>14</sup> The RA is an online energy audit that combines responses to survey questions with either historical or customer-entered natural gas energy usage to provide personalized conservation recommendations. The CA is a walk-through energy audit conducted by a trained commercial energy auditor who inspects the equipment and systems utilized in a customer's facility, and recommends a tailored list of energy conservation programs aimed at increasing the customer's overall efficiency. Both audits facilitate customer participation in PGS' DSM programs. Program descriptions and standards for both audits can be found in Attachment A of this recommendation.

### **Audit Costs**

Staff performed a preliminary analysis of the administrative costs, on a per-audit basis, of both audit programs and believes them to be reasonably comparable to other utilities' audit program costs. However, staff notes that the determination of reasonable and prudent expenditures should occur within ECCR clause proceedings, and that this preliminary analysis was performed for informational purposes only. PGS has indicated that, given program approval, audit expenses and participation will be reported to the Commission through its annual FEECA DSM and ECCR filings.

### **Conclusion**

If the Commission approves staff's recommendation in Issue 1, then staff recommends the Company's new residential and commercial audit programs should be approved and PGS should be allowed recovery of reasonable and prudent expenditures associated with these audit programs through the ECCR clause. The scope of both the Residential Customer Assisted

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<sup>14</sup>The CA is not offered to commercial natural gas-fired cogeneration and interruptible customers because expenses associated with these customers do not qualify for cost recovery under the ECCR clause.

Energy Audit and the Commercial Walk-Through Energy Audit meet the requirements established by FEECA. If the Commission does not approve staff's recommendation in Issue 1, then staff recommends PGS should file revised audit programs with its proposed DSM plan.

**Issue 5:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action (PAA) files a protest within 21 days of the issuance of the PAA Order, a Consummating Order should be issued and the docket should be closed. If the Commission approves the proposed RA and CA programs, those programs should become effective on the date of the Consummating Order. If a protest is filed within 21 days of the issuance of the PAA Order, the programs should not be implemented until after the resolution of the protest. Within 90 days of the issuance of the final order, PGS should file a demand-side management plan designed to meet the Utility's approved goals. (DuVal, Dziechciarz)

**Staff Analysis:** If no person whose substantial interests are affected by the proposed agency action (PAA) files a protest within 21 days of the issuance of the PAA Order, a Consummating Order should be issued and the docket should be closed. If the Commission approves the proposed RA and CA programs, those programs should become effective on the date of the Consummating Order. If a protest is filed within 21 days of the issuance of the PAA Order, the programs should not be implemented until after the resolution of the protest. Within 90 days of the issuance of the final order, PGS should file a demand-side management plan designed to meet the Utility's approved goals.

**PEOPLES GAS SYSTEM  
TEN-YEAR DSM GOALS  
2019-2028  
FILED: OCTOBER 15, 2018  
REVISED: MARCH 14, 2019**

**Program: Residential Customer Assisted Energy Audit**

**Program Start Date:** TBD

**Program Description**

A conservation program designed to save energy by increasing residential customer awareness of natural gas energy use in personal residences. This program allows for residential customers to engage in an online energy audit. Savings are dependent on the customer implementing energy conservation measure and practice recommendations. Recommendations provided to the customer includes an estimated range of energy savings including insightful advice on how to manage their overall energy usage.

To access this free audit, customers can participate by either logging in to Peoples Gas customer portal and completing the survey utilizing their actual historical natural gas usage or can complete the energy audit without logging in and using values the customer enters. Personalized audit results are immediately displayed on the customer's computer for review and implementation. The audit recommendations are based on the customers' answers to the questions and their actual energy consumption.

**Program Participation Standards**

Program Standards are being submitted concurrently with this DSM Program Description.

**Program Savings**

Program savings from the Residential Customer Assisted Energy Audit primarily come from behavioral savings. Because the savings primarily come through behavioral type changes and action taken by a customer to install a natural gas measure would likely be captured in another of the company's DSM programs. The savings per participant are as follows:

Annual Energy: 0.000 Therms

**Program Costs**

Based on projected costs, the administrative cost per audit is estimated to be \$10. There are no rebates or incentives for this program.

**Program Monitoring and Evaluation**

Peoples Gas System will monitor, evaluate and report the results of this program through the company's annual Demand Side Management filings to the Commission.

**PEOPLES GAS SYSTEM  
TEN-YEAR DSM GOALS  
2019-2028  
FILED: OCTOBER 15, 2018**

**Program: Residential Customer Assisted Energy Audit**

**Program Participation Standards**

1. Participation is available to any existing PGS residential customer located within PGS service area.
2. This audit will be advertised to residential customers demonstrating the benefits of participating.
3. There is no payment processing with this program.
4. There are no technical specifications on equipment eligibility with this program.
5. PGS will report the expenses and participation of this program through the company's annual Demand Side Management filings to the Commission.

PEOPLES GAS SYSTEM  
TEN-YEAR DSM GOALS  
2019-2028  
FILED: OCTOBER 15, 2018  
REVISED: MARCH 14, 2019

**Program: Commercial Walk-Through Energy Audit**

**Program Start Date:** TBD

**Program Description**

A conservation program designed to reduce demand and energy consumption of commercial/industrial facilities by increasing customer awareness of the energy use in their facilities. The savings are dependent upon the customer's implementation of conservation measures and practices recommended.

The audit is conducted by a trained commercial energy auditor who will perform at a minimum the following:

1. Identify, note and recommend only those conservation measures and practices that apply to the specific commercial or industrial facility.
2. Encourage customer and organization participation in available conservation programs in which the specific commercial facility will benefit.
3. Energy usage profiling and benchmarking showing the historical energy usage and forecasted usage with no changes.
4. Identify and communicate to the customer identified no-cost, low-cost and capital cost conservation measures and practices including those that have less than a two-year payback.

Recommendations are tailored to the specific commercial facility based upon the replacement of less efficient equipment and systems or modifications to operations to enhance the customer's overall efficiency. Recommendations are primarily standardized and encourage the customer to implement measures that, if cost-effective, move the customer beyond the efficiency level typically installed in the marketplace.

**Program Participation Standards**

Program Standards are being submitted concurrently with this DSM Program Description.

**Program Savings**

Program savings from the Commercial Walk-Through Energy Audit primarily come from behavioral savings. Because the savings primarily come through behavioral type changes and action taken by a customer to install a natural gas measure would likely be captured in another of the company's DSM programs. The savings per participant are as follows:

Annual Energy: 0.0 Therms

**PEOPLES GAS SYSTEM  
TEN-YEAR DSM GOALS  
2019-2028  
FILED: OCTOBER 15, 2018  
REVISED: MARCH 14, 2019**

**Program Costs**

Based on projected costs, the administrative cost per audit is estimated to be \$180. There are no rebates or incentives for this program.

**Program Monitoring and Evaluation**

Peoples Gas System will monitor, evaluate and report the results of this program through the company's annual Demand Side Management filings to the Commission.



**PEOPLES GAS SYSTEM  
TEN-YEAR DSM GOALS  
2019-2028  
FILED: OCTOBER 15, 2018**

**Program: Commercial Walk-Through Energy Audit**

**Program Participation Standards**

1. Participation is available to any existing PGS commercial customer located within PGS service area with the exception of natural gas fired cogeneration and interruptible customers which are excluded from ECCR clause recovery.
2. This audit will be offered to PGS customers in response to a request for the service.
3. When applicable, customers are qualified for participation in other PGS conservation programs.
4. There is no payment processing with this program.
5. There are no technical specifications on equipment eligibility with this program.
6. PGS will report the expenses and participation of this program through the company's annual Demand Side Management filings to the Commission.

# Item 5

State of Florida



# Public Service Commission

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

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

**DATE:** July 25, 2019

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

**FROM:** Division of Engineering (Knoblauch, Doehling, Salvador, Graves) *EK JD LS*  
Division of Accounting and Finance (Bennett, Sowards, Norris) *2W*  
Division of Economics (Ramos, Hudson) *MR 80H ELD 9/21/19*  
Office of the General Counsel (DuVal, Weisenfeld) *ALM*

**RE:** Docket No. 20180218-SU – Application for staff-assisted rate case in Brevard County by TKCB, Inc.

**AGENDA:** 08/06/19 – Proposed Agency Action – Except for Issue Nos. 10, 11, and 12 - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Polmann

**CRITICAL DATES:** 04/10/20 (15-Month Effective Date (SARC))

**SPECIAL INSTRUCTIONS:** None

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### Case Background

TKCB, Inc. (TKCB or Utility) is a Class C utility currently providing wastewater service to 274 residential mobile homes in the Sun Lake Village Estates manufactured home community (formerly Sun Lake Estates) in Brevard County. TKCB is located in the St. Johns River Water Management District, and water service is provided by the City of Cocoa. The Utility began providing wastewater service in 1984 as the Sun Lake Estates Homeowners Association (HOA), which became TKCB in November 1986. On November 7, 2011, the Florida Public Service Commission (Commission) granted Certificate No. 562-S to TKCB to provide wastewater service.<sup>1</sup> The Utility's rates were last established in its 2012 staff-assisted rate case (SARC) by Order No. PSC-13-0126-PAA-SU.<sup>2</sup>

On November 26, 2018, TKCB filed an application for a SARC. Pursuant to Section 367.0814(2), Florida Statutes, (F.S.), the official filing date of the SARC has been determined to be January 10, 2019. Staff selected the test year ended September 30, 2018, for the instant case. According to the Utility's 2018 Annual Report, it reported total operating revenue of \$84,270 and net operating income of \$5,106.

Staff notes that the Florida Department of Environmental Protection (DEP) conducted a compliance evaluation inspection in 2018 and determined the plant and facilities to be in compliance with DEP rules and regulations pursuant to Rule 25-30.433(2), Florida Administrative Code (F.A.C.).

The Commission has jurisdiction in this case pursuant to Sections 367.011, 367.081, 367.0812, 367.0814, 367.091, and 367.121, F.S.

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<sup>1</sup>Order No. PSC-11-0522-FOF-SU, issued November 7, 2011, in Docket No. 20100442-SU, *In re: Application for certificate to provide wastewater service in Brevard County by TKCB.*

<sup>2</sup>Order No. PSC-13-0126-PAA-SU, issued March 14, 2013, in Docket No. 20120078-SU, *In re: Application for staff-assisted rate case in Brevard County by TKCB.*

## Discussion of Issues

**Issue 1:** Is the quality of service provided by TKCB, Inc. satisfactory?

**Recommendation:** Yes. The Utility is in compliance with DEP's rules and regulations and there have been no customer comments or complaints against the Utility in the previous five-year period. Therefore, staff recommends that the overall quality of service provided by the Utility be considered satisfactory. (Doehling)

**Staff Analysis:** Pursuant to Rule 25-30.433(1), F.A.C., in water and wastewater rate cases, the Commission shall determine the overall quality of service provided by a utility. For a wastewater only utility, the determination is made from an evaluation of the utility's attempt to address customer satisfaction. The Rule further states that outstanding citations, violations, and consent orders on file with the DEP and the county health department, along with any DEP and county health department officials' testimony concerning quality of service shall be considered. In addition, any customer testimony, comments, or complaints received by the Commission are also reviewed.

### The Utility's Attempt to Address Customer Satisfaction

On May 30, 2019, a customer meeting was held at the Merritt Island Public Library to receive customer comments concerning quality of service. No customers attended the meeting. Staff reviewed the Commission's complaint records related to TKCB from October 1, 2013, through July 23, 2019, and found no complaints. In addition, no complaints were received by the DEP or the Utility. The Utility is currently in compliance with DEP's rules and regulations.

### Conclusion

The Utility is in compliance with DEP's rules and regulations and there have been no customer comments or complaints against the Utility in the previous five-year period. Staff recommends that the overall quality of service provided by the Utility should be considered satisfactory.

**Issue 2:** What are the used and useful (U&U) percentages for the Utility's wastewater treatment plant (WWTP) and collection system?

**Recommendation:** Staff recommends that the WWTP and collection system be considered 100 percent U&U. There is no excessive infiltration and inflow (I&I) and no adjustment to operating expenses is necessary. (Salvador)

**Staff Analysis:** Pursuant to Rule 25-30.432, F.A.C., the U&U percentage of a WWTP is based on the plant flows, growth allowance, I&I and the plant permitted capacity. Other factors, such as whether the service area is built out and whether the plant flows have decreased due to conservation may also be considered. The DEP permitted capacity is currently at 99,000 gallons per day (gpd) based on the annual average daily flow. The collection system is composed of polyvinyl chloride pipes and there is one lift station in the service area.

### **WWTP and Collection System U&U**

The Utility's service area is plotted for 295 mobile home connections. During the test year the Utility indicated 274 lots were being served. During the analysis period of the previous SARC staff conducted a field inspection and confirmed that the service area is built out. In that same rate case the Commission found the WWTP and collection system to be 100 percent U&U. Since that time there have been no changes to either the WWTP or the collection system and there are no plans for expansion. Because the service area is built out and there are no plans for expansion, staff recommends that the WWTP and collection system should be considered 100 percent U&U.

### **Infiltration and Inflow**

Typically infiltration results from groundwater entering a wastewater collection system through broken or defective pipes and joints; whereas, inflow results from water entering a wastewater collection system through manholes or lift stations. By convention, the allowance for infiltration is 500 gpd per inch diameter pipe per mile, and an additional 10 percent of residential water billed is allowed for inflow. Rule 25-30.432, F.A.C., provides that in determining the WWTP amount of U&U, the Commission will consider I&I.

All wastewater collection systems experience I&I. The conventions noted above provide guidance for determining whether the I&I experienced at a WWTP is excessive. Staff calculates the allowable infiltration based on system parameters and allowable inflow based on water sold to customers. The sum of these amounts is the allowable I&I. Staff next calculates the estimated amount of wastewater returned from customers. The estimated return is determined by summing 80 percent of the water sold to residential customers with 90 percent of the water sold to non-residential customers. Adding the estimated return to the allowable I&I yields the maximum amount of wastewater that should be treated by the wastewater system without incurring adjustments to operating expenses. If this amount exceeds the actual amount treated, no adjustment is made. If it is less than the gallons treated, then the difference is the excessive amount of I&I.

The Utility has 3,570 feet of 4-inch, 2,300 feet of 6-inch and 6,975 feet of 8-inch collecting mains. Given these parameters and performing the necessary conversions to express the result in gallons per year (gpy), the allowance for infiltration is 2,899,261 gpy.

The Utility reported the total number of water gallons billed to all wastewater customers during the test year was 11,476,000. Thus, the allowance for inflow is 10 percent of the residential flow, or 1,147,600 gpy. Therefore, the total allowance for infiltration and inflow is 4,046,861 gpy.

Estimating the residential return at 80 percent, the total estimated return to the wastewater plant is 9,180,800 gallons. Thus, the estimated maximum amount of wastewater that the system should treat, the estimated return plus the allowable I&I, is 13,227,661 gpy. Any amount treated in excess of this amount is considered excessive I&I.

According to the Utility's daily flow reports, the Utility treated 11,757,000 gallons of wastewater during the test year. This is less than the estimated maximum amount allowable. Therefore, there is no excessive I&I and no adjustment to operating expenses is necessary.

**Conclusion**

Staff recommends that TKCB's WWTP and collection system should be considered 100 percent U&U. There is no excessive I&I and no adjustment to operating expenses is necessary.



**Issue 3:** What is the appropriate average test year rate base for TKCB, Inc.?

**Recommendation:** The appropriate average test year rate base for TKCB for ratemaking purposes is \$58,454. (Bennett, Sowards, Knoblauch)

**Staff Analysis:** The test year ended September 30, 2018, was used for the instant case. A summary of each rate base component and recommended adjustments are discussed below.

### **Utility Plant in Service (UPIS)**

The Utility recorded a test year UPIS balance of \$17,058. Based on audit staff's review of the Utility's books and records, UPIS should be decreased by \$626 to reflect the appropriate UPIS test year balances. In addition, staff decreased UPIS by \$2,910 to include an averaging adjustment. Staff's adjustments to UPIS result in a decrease of \$3,536 (\$626 + \$2,910). Therefore, staff recommends that the appropriate UPIS balance is \$13,522.

### **Land & Land Rights**

The Utility recorded a test year land balance of \$36,203. The land balance was established in Order No. PSC-13-1026-PAA-SU. In that case, staff auditors examined records from the Brevard County Property Appraiser and determined the balance represented land dedicated to the wastewater plant, percolation ponds, and utility easements as of the date the land was dedicated to utility service. Based on staff's review, no adjustment is necessary. Therefore, staff recommends that the appropriate balance is \$36,203.

### **Used & Useful**

As discussed in Issue 2, TKCB's WWTP and collection system are considered 100 percent U&U. Therefore, no U&U adjustments are necessary.

### **Accumulated Depreciation**

TKCB recorded a test year accumulated depreciation balance of \$653. Staff increased accumulated depreciation by \$326 to reflect depreciation pursuant to Rule 25-30.140, F.A.C. In addition, staff decreased accumulated depreciation by \$252 to reflect an averaging adjustment. Staff's adjustments to accumulated depreciation result in a net increase of \$74 (\$326 - \$252). Therefore, staff recommends an accumulated depreciation balance of \$727.

### **Contributions in Aid of Construction (CIAC)**

The Utility recorded a test year CIAC balance of \$0. Based on staff's review, no adjustment is necessary. Therefore, staff recommends that the appropriate balance is \$0.

### **Accumulated Amortization of CIAC**

The Utility recorded a test year accumulated amortization of CIAC balance of \$0. Based on staff's review, no adjustment is necessary. Therefore, staff recommends that the appropriate balance is \$0.

### **Working Capital Allowance**

Working capital is defined as the short-term investor-supplied funds that are necessary to meet operating expenses. Consistent with Rule 25-30.433(3), F.A.C., staff used the one-eighth of the operation and maintenance (O&M) expense formula approach for calculating the working capital

allowance. Section 367.081(9), F.S., prohibits a utility from earning a return on the unamortized balance of rate case expense. As such, staff removed the rate case expense balance of \$384 for this calculation resulting in an adjusted O&M expense balance of \$75,645 (\$76,030 - \$384). Applying this formula approach to the adjusted O&M expense balance, staff recommends a working capital allowance of \$9,456 ( $\$75,645 / 8$ ).

### **Rate Base Summary**

Based on the forgoing, staff recommends that the appropriate test year average rate base is \$58,454. Rate base is shown on Schedule No. 1-A. The related adjustments are shown on Schedule No. 1-B.

**Issue 4:** What is the appropriate return on equity and overall rate of return for TKCB, Inc.?

**Recommendation:** The appropriate return on equity (ROE) is 7.85 percent with a range of 6.85 percent to 8.85 percent. (Bennett, Sowards)

**Staff Analysis:** According to staff's audit, TKCB's test year capital structure reflected common equity of \$50,060. As discussed in Issue 7, staff is recommending the operating ratio methodology be used in this case. Although the traditional rate of return does not apply in this case due to rate base being less than 125 percent of O&M expenses, staff recommends that an ROE still be established for this Utility. The appropriate ROE for the Utility is 7.85 percent based on the Commission approved leverage formula currently in effect.<sup>3,4</sup> As such, staff recommends a ROE of 7.85 percent, with a range of 6.85 percent to 8.85 percent. The ROE and overall rate of return are shown on Schedule No. 2.

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<sup>3</sup>Order No. PSC-2019-0267-PAA-WS, issued July 1, 2019, in Docket No. 20190006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

<sup>4</sup>Staff notes the protest period for the Proposed Agency Action Order cited above expired prior to this recommendation being filed; the Consummating Order is scheduled to be released on July 26, 2019.

**Issue 5:** What are the appropriate test year revenues for TKCB, Inc.?

**Recommendation:** The appropriate test year revenues for TKCB are \$83,684. (Ramos)

**Staff Analysis:** TKCB recorded total test year revenues of \$83,015. The Utility's test year revenues consisted entirely of service revenues. Based on staff's review of the Utility's billing determinants and the service rates that were in effect during the test year, staff determined test year service revenues should be increased by \$669 to reflect annualized test year revenues of \$83,684.<sup>5</sup> The Utility has no miscellaneous service charges and thus, there are no miscellaneous revenues. Based on the above, the appropriate test year revenues for TKCB are \$83,684 (\$83,015 + \$669).

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<sup>5</sup>The Utility filed a 2018 Price Index that became effective July 1, 2018.

**Issue 6:** What is the appropriate amount of operating expense for TKCB, Inc.?

**Recommendation:** The appropriate amount of operating expense for TKCB is \$85,605. (Bennett, Sowards, Knoblauch)

**Staff Analysis:** TKCB recorded operating expense of \$73,593 for the test year ended September 30, 2018. The test year O&M expenses have been reviewed, including invoices, canceled checks, and other supporting documentation. Staff has made a few adjustments to the Utility's operating expenses as summarized below.

### **Operation & Maintenance Expense**

#### **Salaries and Wages – Employees (701)**

The Utility recorded salaries and wages – employees expense of \$3,400 in the test year. The Utility's bookkeeper is also an employee of Atlantis Investments, a related party. In the last rate case, the Commission approved a salary for this position of \$3,000 based on a yearly salary of \$30,000, and a time allocation of 10 percent for utility-related matters.<sup>6</sup>

By letter dated December 18, 2018, TKCB requested an increase in salary for this position.<sup>7</sup> Using the American Water Works Association 2018 Utility Salary Compensation Survey for Small Water and Wastewater Utilities (2018 AWWA Small Utility Survey), the Utility determined the position of Small System Bookkeeper with a salary of \$42,596 was more representative of the bookkeeper's duties. Staff reviewed the 2018 AWWA Small Utility Survey and believes the description and requested salary is reasonable for this position. As such, staff recommends a salary of \$42,596 should be used for the bookkeeper position.

Additionally, TKCB has requested that the allocation of time for utility-related matters be increased to 15 percent for the bookkeeper position. The Utility stated that, in the last rate case, the time required for work performed was based on an estimate of 10 percent and not actual time spent on utility matters. Staff believes that the calculation of time allocated to TKCB should take into consideration actual time spent historically by the bookkeeper on utility matters. As such, staff recommends that the time allocation for the bookkeeper position should be increased to 15 percent.

These adjustments result in a salaries and wages – employees expense of \$6,389 (\$42,596 x 15%), or an increase of \$2,989 (\$6,389 - \$3,400).

#### **Salaries and Wages – Officers (702)**

The Utility recorded salaries and wages – officers expense of \$8,140 in the test year. The Utility's President is also the President and owner of Atlantis Investments, a related party. In the last rate case, the Commission approved a salary for this position of \$6,311, based on a yearly salary of \$42,073 and a time allocation of 15 percent for utility-related matters. The President's salary was established using the 2008 American Water and Wastewater Association Compensation Survey.

<sup>6</sup>Order No. PSC-13-0126-PAA-SU, issued March 14, 2013, in Docket No. 20120078-SU, *In re: Application for staff-assisted rate case in Brevard County by TKCB, Inc.*

<sup>7</sup>Document No. 07665-2018, filed on December 26, 2018.

By letter dated December 18, 2018, TKCB also requested an increase in salary for this position.<sup>8</sup> Using the 2018 AWWA Small Utility Survey, the Utility determined the position of Small System General Manager with a salary of \$78,709 was more representative of the President's duties. Staff reviewed the 2018 AWWA Small Utility Survey and believes the description and requested salary is reasonable for this position. As such, staff recommends a salary of \$78,709 for the President.

Additionally, TKCB has requested that the allocation of time for utility-related matters be increased to 20 percent for the President. The Utility stated that, in the last rate case, the time required for work performed was based on an estimate of 15 percent and not actual time spent on utility matters. Staff believes that the calculation of time allocated to TKCB should take into consideration actual time spent historically by the President on utility matters. As such, staff recommends that the time allocation for the President should be increased to 20 percent.

These adjustments would result in a salaries and wages – officers expense of \$15,742 ( $\$78,709 \times 20\%$ ), or an increase of \$7,602 ( $\$15,742 - \$8,140$ ).

#### ***Sludge Removal Expense (711)***

The Utility recorded sludge removal expense of \$764 in the test year. In response to staff's data request, TKCB provided additional information that increased the sludge removal expense for the test year to \$3,200.<sup>9</sup> However, a number of the invoices provided by the Utility were related to Hurricane Irma, and do not represent normal operation. Therefore, staff requested sludge removal invoices from the Utility over the last four years, and determined the average amount of sludge removed per year to be 10,750 gallons. Using the current sludge removal rate of \$0.20 per gallon, the total expense was calculated to be \$2,150. Therefore, staff recommends sludge removal expense of \$2,150, or an increase of \$1,386.

#### ***Purchased Power (715)***

The Utility recorded purchased power expense of \$9,570 in the test year. Staff decreased this account by \$78 to remove late fees and reflect the appropriate amount of purchased power expense. As such, staff recommends a purchased power expense of \$9,492.

#### ***Chemicals Expense (718)***

The Utility recorded chemicals expense of \$502 in the test year. Staff increased this account by \$9 to reflect supporting documentation provided. As such, staff recommends a chemicals expense of \$511.

#### ***Materials and Supplies Expense (720)***

TKCB recorded materials and supplies expense of \$720 in the test year. Staff increased materials and supplies expense by \$122 to reflect actual invoices for TKCB. Therefore, staff recommends materials and supplies expense of \$842.

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<sup>8</sup>*Id.*

<sup>9</sup>Document No. 00027-2019, filed on January 2, 2019.

***Contractual Services – Billing Expense (730)***

TKCB has a contract with the City of Cocoa Utilities Department (COC) for customer billing services. The Utility's wastewater bills are based on customers' monthly water consumption with COC. TKCB recorded contractual services – billing expense of \$3,643 in the test year. Audit staff decreased this expense by \$22 to reflect the appropriate amount of contractual services for billing. Additionally, by letter dated June 20, 2019, the Utility provided documentation from COC that stated that its billing fee will increase from the test year charge of \$1.09 to \$1.14 per bill effective October 1, 2019.<sup>10</sup> Staff has reviewed the documentation provided and believes this adjustment is appropriate. Staff calculated the increase in billing expense using the number of customer bills in the test year and the \$0.05 increase in fees. This results in an increase of \$166 (3,322 customer bills x \$0.05). Staff's adjustments to contractual services – billing expense results in a net increase of \$144 (-\$22 + \$166). Therefore, staff recommends contractual services – billing expense of \$3,787.

***Contractual Services – Testing Expense (735)***

The Utility recorded contractual services – testing expense of \$3,647 in the test year. Staff decreased this account by \$13 to reflect supporting documentation provided. As such, staff recommends contractual services – testing expense of \$3,634.

***Contractual Services – Other Expense (736)***

The Utility recorded contractual services – other expense of \$20,381 in the test year. Staff removed \$1,570 for expenses booked outside of the test year or that were non-utility related expenses. Additionally, staff annualized the monthly fees for the WWTP contractor and mowing services for the test year, and removed an expense that was already booked in a separate account. Staff's adjustments to contractual services – other expense result in a net decrease of \$786 (-\$1,570 + \$100 - \$66 + \$750). Therefore, staff recommends contractual services – other expense of \$19,595.

***Rent Expense (740)***

TKCB recorded rent expense of \$12,000 in the test year. The Utility shares office space with a related party, Atlantis Investments. In response to a data request, the Utility stated the office space was owned by the related party. On April 5, 2019, TKCB provided a calculation for rent expense detailing the allocation of rent, office utilities, and supplies expense. Additionally, TKCB provided invoices for utility expenses as well as office supplies expenses.<sup>11</sup> The Utility also provided calculations to support indexing the rent expense approved in the last rate case from 2012 to 2019 to account for inflation. In total, TKCB provided documentation supporting rent expense of \$8,860. Staff has reviewed the Utility's indexing and allocation calculations, as well as invoices provided supporting expenses and believes TKCB's allocation of rent from the related party is reasonable. Therefore, staff recommends rent expense of \$8,860, or a decrease of \$3,140 (\$12,000 - \$8,860).

***Regulatory Commission Expense (765)***

TKCB recorded regulatory commission expense of \$162. This balance was associated with the previous rate case and removed from the account by audit staff, as it is currently fully amortized.

<sup>10</sup>Document No. 05026-2019, filed on June 20, 2019.

<sup>11</sup>Document No. 05195-2019, filed on June 27, 2019.

Staff has calculated a total of \$1,538 in regulatory commission expense for the current docket. This amount includes a \$1,000 filing fee and \$538 in noticing costs for the instant case. The recommended total rate case expense of \$1,538 should be amortized over four years pursuant to Section 367.081(8), F.S., as the Utility did not request a different amortization period be used. This represents an annual expense of \$384 ( $\$1,538 / 4$ ). As such, staff recommends regulatory commission expense of \$384.

#### ***Bad Debt Expense (770)***

The Utility recorded bad debt expense of \$1,818. Audit staff discovered that TKCB records its bad debt every September and determined the balance of \$1,818 represented bad debt recorded for the year 2017. Staff also determined that the current test year balance should be \$844, as recorded for the year 2018.

In its response to the audit, the Utility requested the use of a three-year average for bad debt expense, consistent with its last rate case. TKCB recorded bad debt expense of \$1,665, \$1,818, and \$844 for the years 2016, 2017, and 2018, respectively. Given the variance of this account from year-to-year, staff believes the use of a three-year average is appropriate. Staff calculated a three-year average of \$1,442, a decrease of \$376 from the test year balance. Therefore, staff recommends bad debt expense of \$1,442 ( $\$1,818 - \$376$ ).

#### ***Miscellaneous Expense (775)***

The Utility recorded miscellaneous expense of \$2,015. Staff decreased this account by \$69 to properly reflect the amount from provided invoices. As such, staff recommends miscellaneous expense of \$1,946.

#### **Operation & Maintenance Expense Summary**

Based on the above adjustments, staff recommends that O&M expense be increased by \$8,014, resulting in total O&M expense of \$76,030. Staff's recommended adjustments to O&M expense are shown on Schedule No 3-C.

#### **Depreciation Expense**

TKCB recorded depreciation expense of \$577 during the test year. Staff recalculated depreciation expense for the test year and decreased the expense by \$73. Therefore, staff recommends depreciation expense of \$504 ( $\$577 - \$73$ ).

#### **Taxes Other Than Income (TOTI)**

TKCB recorded a TOTI balance of \$5,000 during the test year. Staff increased the Regulatory Assessment Fees (RAFs) by \$30 to reflect the adjusted test year revenues. Staff increased property tax expense by \$2,633 to reflect the appropriate amount of property tax. Staff increased TOTI by \$101 to reflect the appropriate test year payroll tax. Additionally, staff increased payroll tax by \$810 to reflect the recommended increase to salaries and wages expense discussed above. This results in an increase of \$3,574 ( $\$30 + \$2,633 + \$101 + \$810$ ).

In addition, as discussed in Issue 8, revenues have been increased by \$11,044 to reflect the change in revenue required to cover expenses and allow the recommended operating margin. As a result, TOTI should be increased by \$497 to reflect RAFs of 4.5 percent on the change in



revenues. Staff's adjustments result in an increase of \$4,071 ( $\$3,574 + \$497$ ). Therefore, staff recommends TOTI of \$9,071.

**Operating Expenses Summary**

The application of staff's recommended adjustments to TKCB's test year operating expenses results in operating expenses of \$85,605. Operating expenses are shown on Schedule No. 3-A. The related adjustments are shown on Schedule Nos. 3-B and 3-C.

**Issue 7:** Should the Commission utilize the operating ratio methodology as an alternative method of calculating the wastewater revenue requirement for TKCB, Inc. and, if so, what is the appropriate margin?

**Recommendation:** Yes. The Commission should utilize the operating ratio methodology for calculating the revenue requirement for TKCB. The margin should be 12 percent of O&M expense. (Bennett, Sowards)

**Staff Analysis:** Rule 25-30.4575, F.A.C., states that the Commission will apply a margin of 12 percent when determining the revenue requirement, up to a cap of \$15,000. The operating ratio methodology will be applied when the Utility's rate base is no greater than 125 percent of O&M expenses. The use of the operating ratio methodology does not change the Utility's qualification for a staff assisted rate case under Rule 25-30.455(1), F.A.C.

The operating ratio methodology is an alternative to the traditional calculation of revenue requirements. Under this methodology, instead of applying a return on the Utility's rate base, the revenue requirement is based on the Utility's O&M expenses plus a margin of 12 percent. This methodology has been applied in cases in which the traditional calculation of the revenue requirement would not provide sufficient revenue to protect against potential variances in revenues and expenses. As discussed in Issues 3 and 6, staff has recommended a rate base of \$58,454 and O&M expenses of \$76,030. Based on staff's recommendation, TKCB's rate base is only 77 percent of its O&M expenses. Furthermore, the application of the operating ratio methodology does not change the Utility's qualification for a staff assisted rate case. As such, TKCB meets the criteria for the operating ratio methodology established in Rule 25-30.4575(2), F.A.C. Therefore, staff recommends the application of the operating ratio methodology at a margin of 12 percent of O&M expense for determining the wastewater revenue requirement.

**Issue 8:** What is the appropriate revenue requirement for TKCB, Inc.?

**Recommendation:** The appropriate revenue requirement is \$94,728 resulting in an annual increase of \$11,044 (13.20 percent). (Bennett, Sowards)

**Staff Analysis:** TKCB should be allowed an annual increase of \$11,044 (13.20 percent). The calculations are shown in Table 8-1:

**Table 8-1  
Revenue Requirement**

Adjusted O&M	\$76,030
Operating Margin (%)	x 12.00%
Operating Margin (\$15,000 Cap)	\$9,124
Adjusted O&M Expense	76,030
Depreciation Expense (Net)	504
Taxes Other Than Income	9,071
Revenue Requirement	\$94,728
Less Adjusted Test Year Revenues	83,684
Annual Increase	<u>\$11,044</u>
Percent Increase	<u>13.20%</u>

**Issue 9:** What are the appropriate wastewater rates for TKCB, Inc.?

**Recommendation:** The recommended monthly wastewater rates, as shown on Schedule No. 4, are reasonable and should be approved. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Ramos)

**Staff Analysis:** The Utility provides wastewater to approximately 274 residential mobile homes, in Sun Lake Village Estates, in Brevard County. The Utility does not have any general service customers. Additionally, the City of Cocoa performs the billing for TKCB and is also the water provider. TKCB's rate structure consists of a uniform base facility charge (BFC) for all residential meter sizes and a gallonage charge with a 6,000 gallon cap. General Service rate structure is a BFC by meter size and a gallonage charge that is 1.2 times higher than the residential gallonage charge.

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

Consistent with Commission practice, staff allocated 50 percent of the wastewater revenue to the BFC due to the capital intensive nature of wastewater plants. In addition, it is also Commission practice to set the wastewater cap at approximately 80 percent of residential water gallons sold. The wastewater gallonage cap recognizes that not all water is returned to the wastewater system. Based on staff's review of the billing analysis, 83 percent of the gallons are captured at the 6,000 gallon consumption level. For this reason, staff recommends that the gallonage cap for residential customers remain at 6,000 gallons. Staff also recommends that the general service gallonage charge be 1.2 times greater than the residential gallonage charge, which is consistent with Commission practice.

Based on the above, the recommended monthly wastewater rates, as shown on Schedule No. 4, are reasonable and should be approved. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. The approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

**Issue 10:** What is the appropriate amount by which rates should be reduced after the published effective date to reflect the removal of the amortized rate case expense as required by Section 367.081(8) F.S.?

**Recommendation:** The rates should be reduced as shown on Schedule No. 4, to remove rate case expense grossed-up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the rate case expense recovery period, pursuant to Section 367.081(8), F.S. TKCB should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense. (Ramos, Bennett, Sowards)

**Staff Analysis:** Section 367.081(8), F.S., requires that the rates be reduced immediately following the expiration of the recovery period by the amount of the rate case expense previously included in rates. The reduction will reflect the removal of revenue associated with the amortization of rate case expense and the gross-up for RAFs. The total reduction is \$403.

Staff recommends that the rates should be reduced as shown on Schedule No. 4, to remove rate case expense grossed-up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the rate case expense recovery period, pursuant to Section 367.081(8), F.S., TKCB should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass-through increase or decrease and the reduction in the rates due to the amortized rate case expense.

**Issue 11:** Should the recommended rates be approved for TKCB, Inc. on a temporary basis, subject to refund with interest, in the event of a protest filed by a party other than the Utility?

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

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

TKCB should be authorized to collect the temporary rates upon staff's approval of an appropriate security for the potential refund and the proposed customer notice. Security should be in the form of a bond or letter of credit in the amount of \$7,478. Alternatively, the Utility could establish an escrow agreement with an independent financial institution.

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

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

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

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

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

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

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

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

**Issue 12:** Should the Utility be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision?

**Recommendation:** Yes. TKCB should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. TKCB should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all applicable National Association of Regulatory Commissioners (NARUC) Uniform System of Accounts (USOA) primary accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice providing good cause should be filed within seven days prior to the deadline. Staff should be given administrative authority to grant such an extension for up to 60 days. (Bennett, Sowards)

**Staff Analysis:** TKCB should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. TKCB should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA primary accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice providing good cause should be filed within seven days prior to the deadline. Staff should be given administrative authority to grant such an extension for up to 60 days.



**Issue 13:** Should this docket be closed?

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

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

<b>TKCB, Inc.</b>		<b>SCHEDULE NO. 1-A</b>	
<b>TEST YEAR ENDED 9/30/2018</b>		<b>DOCKET NO. 20180218-SU</b>	
<b>SCHEDULE OF WASTEWATER RATE BASE</b>			
<b>DESCRIPTION</b>	<b>BALANCE PER UTILITY</b>	<b>STAFF ADJUSTMENTS TO UTIL. BAL.</b>	<b>BALANCE PER STAFF</b>
UTILITY PLANT IN SERVICE	\$17,058	(\$3,536)	\$13,522
LAND & LAND RIGHTS	36,203	0	36,203
ACCUMULATED DEPRECIATION	(653)	(74)	(727)
CIAC	0	0	0
ACCUMULATED AMORTIZATION OF CIAC	0	0	0
WORKING CAPITAL ALLOWANCE	<u>0</u>	<u>9,456</u>	<u>9,456</u>
<b>RATE BASE</b>	<b><u>\$52,608</u></b>	<b><u>\$5,846</u></b>	<b><u>\$58,454</u></b>

<b>TKCB, Inc.</b>	<b>SCHEDULE NO. 1-B</b>
<b>TEST YEAR ENDED 9/30/2018</b>	<b>DOCKET NO. 20180218-SU</b>
<b>ADJUSTMENTS TO RATE BASE</b>	
<b>UTILITY PLANT IN SERVICE</b>	
1. To reflect the appropriate amount of test year plant in service.	(\$626)
2. To reflect an averaging adjustment.	<u>(2,910)</u>
Total	<u>(\$3,536)</u>
<b>ACCUMULATED DEPRECIATION</b>	
1. To reflect test year accumulated depreciation per Rule 25-30.140, F.A.C.	(\$326)
2. To reflect an averaging adjustment.	<u>252</u>
Total	<u>(\$74)</u>
<b>WORKING CAPITAL ALLOWANCE</b>	
To reflect 1/8 of O&M expenses.	<u>\$9,456</u>

TKCB, Inc.										SCHEDULE NO. 2	
TEST YEAR ENDED 09/30/2018										DOCKET NO. 20180218-SU	
SCHEDULE OF CAPITAL STRUCTURE											
CAPITAL COMPONENT	PER UTILITY	SPECIFIC ADJUST- MENTS	BALANCE BEFORE PRO RATA ADJUSTMENTS	PRO RATA ADJUST- MENTS	BALANCE PER STAFF	PERCENT OF TOTAL	COST RATE	WEIGHTED COST			
1. LONG-TERM DEBT	\$0	\$0	\$0	\$0	\$0	0.00%	0.00%	0.00%		0.00%	
2. SHORT-TERM DEBT	0	0	0	0	0	0.00%	0.00%	0.00%		0.00%	
3. PREFERRED STOCK	0	0	0	0	0	0.00%	0.00%	0.00%		0.00%	
4. COMMON EQUITY	50,060	0	50,060	8,394	58,454	100.00%	7.85%	7.85%		7.85%	
5. CUSTOMER DEPOSITS	0	0	0	0	0	0.00%	2.00%	0.00%		0.00%	
6. DEFERRED INCOME TAXES	0	0	0	0	0	0.00%	0.00%	0.00%		0.00%	
7. TOTAL CAPITAL	<u>\$50,060</u>	<u>\$0</u>	<u>\$50,060</u>	<u>\$8,394</u>	<u>\$58,454</u>	<u>100.00%</u>				<u>7.85%</u>	
<b>RANGE OF REASONABLENESS</b>										<b>LOW</b>	<b>HIGH</b>
RETURN ON EQUITY										<u>6.85%</u>	<u>8.85%</u>
OVERALL RATE OF RETURN										<u>6.85%</u>	<u>8.85%</u>

TKCB, Inc.		SCHEDULE NO. 3-A			
TEST YEAR ENDED 9/30/2018		DOCKET NO. 20180218-SU			
SCHEDULE OF WASTEWATER OPERATING INCOME					
	TEST YEAR PER UTILITY	STAFF ADJUSTMENTS	STAFF ADJUSTED TEST YEAR	ADJUST. FOR INCREASE	REVENUE REQUIREMENT
1. OPERATING REVENUES	\$83,105	\$669	\$83,684	\$11,044 13.20%	\$94,728
OPERATING EXPENSES:					
2. OPERATION & MAINTENANCE	\$68,016	\$8,014	\$76,030	\$0	\$76,030
3. DEPRECIATION (NET)	577	(73)	504	0	504
4. TAXES OTHER THAN INCOME	5,000	3,574	8,574	497	9,071
5. TOTAL OPERATING EXPENSES	<u>\$73,593</u>	<u>\$11,515</u>	<u>\$85,108</u>	<u>\$497</u>	<u>\$85,605</u>
6. OPERATING INCOME/(LOSS)	<u>\$9,422</u>	<u>(\$10,846)</u>	<u>(\$1,424)</u>		<u>\$9,124</u>
7. RATE BASE	<u>\$52,608</u>		<u>\$58,454</u>		<u>\$58,454</u>
8. OPERATING RATIO					<u>12.00%</u>

TKCB, Inc. TEST YEAR ENDED 9/30/2018 ADJUSTMENTS TO OPERATING INCOME	Schedule No. 3-B Docket No. 20180218-SU Page 1 of 2
<b>OPERATING REVENUES</b>	
To reflect the appropriate test year services revenues.	<u>\$669</u>
<b>OPERATION AND MAINTENANCE EXPENSES</b>	
1.Salaries and Wages - Employees (701)	
To reflect pro forma increase to salaries and wages – employee expense.	<u>\$2,989</u>
2.Salaries and Wages - Officers (703)	
To reflect pro forma increase to salaries and wages – officers expense.	<u>\$7,602</u>
3.Sludge Removal Expense (711)	
To reflect appropriate amount of sludge removal expense.	<u>\$1,386</u>
4.Purchased Power (715)	
To reflect appropriate amount of purchased power expense.	<u>(\$78)</u>
5.Chemicals (718)	
To reflect appropriate amount of chemicals expense.	<u>\$9</u>
6.Materials and Supplies (720)	
To reflect appropriate amount of materials and supplies expense.	<u>\$122</u>
7.Contractual Services - Billing (730)	
a. To reflect audit adjustments to contractual services – billing expense.	(\$22)
b. To reflect pro forma increase to contractual services – billing expense.	<u>166</u>
Subtotal	<u>\$144</u>
8.Contractual Services – Testing (735)	
To reflect appropriate amount of contractual services – testing expense.	<u>(\$13)</u>
9.Contractual Services – Other (736)	
a. To reflect audit adjustments to contractual services – other.	(\$1,570)
b. To reflect appropriate salary expense of operator.	100
c. To reflect removal of materials & supplies expense.	(66)
d. To reflect pro forma increase to contractual services – other expense.	<u>750</u>
Subtotal	<u>(\$786)</u>
10.Rent Expense (740)	
To reflect the supported rent expense.	<u>(\$3,140)</u>
11.Regulatory Commission Expense (765)	
a. To reflect removal of fully amortized rate case expense.	(\$162)
b. To reflect amortization of rate case expense.	384
Subtotal	<u>\$222</u>
12.Bad Debt Expense (770)	
To reflect three-year average of bad debt expense.	<u>(\$376)</u>

<b>TKCB, Inc.</b>		<b>Schedule No. 3-B</b>
<b>TEST YEAR ENDED 9/30/2018</b>		<b>Docket No. 20180218-SU</b>
<b>ADJUSTMENTS TO OPERATING INCOME</b>		<b>Page 2 of 2</b>
13. Miscellaneous Expense (775)		
To reflect appropriate amount of miscellaneous expense.		<u>(\$69)</u>
<b>TOTAL OPERATION AND MAINTENANCE ADJUSTMENTS</b>		<b><u>\$8,014</u></b>
<b>DEPRECIATION EXPENSE - NET</b>		
To reflect the appropriate depreciation expense.		<u>(\$73)</u>
<b>TAXES OTHER THAN INCOME</b>		
1. To reflect the appropriate test year RAFs.		\$30
2. To reflect appropriate property taxes.		2,633
3. To reflect appropriate test year payroll tax.		101
4. To reflect pro forma payroll tax		810
Total		<b><u>\$3,574</u></b>

<b>TKCB, Inc.</b>	<b>SCHEDULE NO. 3-C</b>		
<b>TEST YEAR ENDED 9/30/2018</b>	<b>DOCKET NO. 20180218-SU</b>		
<b>ANALYSIS OF WASTEWATER OPERATION AND MAINTENANCE EXPENSE</b>			
	<b>TOTAL PER UTILITY</b>	<b>STAFF ADJUST- MENT</b>	<b>TOTAL PER STAFF</b>
(701) SALARIES AND WAGES - EMPLOYEES	\$3,400	\$2,989	\$6,389
(703) SALARIES AND WAGES - OFFICERS	8,140	7,602	15,742
(704) EMPLOYEE PENSIONS AND BENEFITS	0	0	0
(710) PURCHASED SEWAGE TREATMENT	0	0	0
(711) SLUDGE REMOVAL EXPENSE	764	1,386	2,150
(715) PURCHASED POWER	9,570	(78)	9,492
(716) FUEL FOR POWER PRODUCTION	0	0	0
(718) CHEMICALS	502	9	511
(720) MATERIALS AND SUPPLIES	720	122	842
(730) CONTRACTUAL SERVICES - BILLING	3,643	144	3,787
(731) CONTRACTUAL SERVICES - PROFESSIONAL	753	0	753
(733) CONTRACTUAL SERVICES - LEGAL	0	0	0
(735) CONTRACTUAL SERVICES - TESTING	3,647	(13)	3,634
(736) CONTRACTUAL SERVICES - OTHER	20,381	(786)	19,595
(740) RENTS	12,000	(3,140)	8,860
(750) TRANSPORTATION EXPENSE	0	0	0
(755) INSURANCE EXPENSE	501	0	501
(765) REGULATORY COMMISSION EXPENSE	162	222	384
(770) BAD DEBT EXPENSE	1,818	(376)	1,442
(775) MISCELLANEOUS EXPENSE	<u>2,015</u>	<u>(69)</u>	<u>1,946</u>
	<u>\$68,016</u>	<u>\$8,014</u>	<u>\$76,030</u>



<b>TKCB, Inc.</b>		<b>SCHEDULE NO. 4</b>	
<b>TEST YEAR ENDED 9/30/2018</b>		<b>DOCKET NO. 20180218-SU</b>	
<b>MONTHLY WASTEWATER RATES</b>			
	<b>UTILITY EXISTING RATES</b>	<b>STAFF RECOMMENDED RATES</b>	<b>4 YEAR RATE REDUCTION</b>
<b><u>Residential</u></b>			
Base Facility Charge - All Meter Sizes	\$13.75	\$14.42	\$0.06
Charge per 1,000 Gallons- Residential 6,000 gallon cap	\$4.13	\$5.08	\$0.02
<b><u>General Service</u></b>			
Base Facility Charge by Meter Size			
5/8" x 3/4"	\$13.75	\$14.42	\$0.06
3/4"	\$20.63	\$21.63	\$0.09
1"	\$34.38	\$36.05	\$0.15
1-1/2"	\$68.75	\$72.10	\$0.30
2"	\$110.00	\$115.36	\$0.48
3"	\$220.00	\$230.72	\$0.96
4"	\$343.75	\$360.50	\$1.50
6"	\$687.50	\$721.00	\$3.00
Charge per 1,000 Gallons - General Service	\$4.13 <sup>12</sup>	\$6.09	\$0.03
<b><u>Typical Residential 5/8" x 3/4" Meter Bill Comparison</u></b>			
3,000 Gallons	\$26.14	\$29.66	
6,000 Gallons	\$38.53	\$44.90	
10,000 Gallons	\$38.53	\$44.90	

<sup>12</sup>During TKCB's 2016 price index application, the general service gallonage charge was erroneously reflected the same as the residential gallonage charge. Consistent with Commission practice, the general service gallonage charge is 1.2 times greater than the residential gallonage charge. Staff's recommended gallonage charge corrects the error on a prospective basis.

# Item 6

State of Florida



# Public Service Commission

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

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

**DATE:** July 25, 2019

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

**FROM:** Division of Economics (Doherty) *RD NSU ESD JTH*  
Office of the General Counsel (Trierweiler) *WF TSC*

**RE:** Docket No. 20190081-EI – Petition for approval of 2019 revisions to underground residential and commercial differential tariffs, by Florida Power & Light Company.

**AGENDA:** 08/06/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 12/01/19 (8-Month Effective Date)

**SPECIAL INSTRUCTIONS:** None

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COMMISSION CLERK

## Case Background

On April 1, 2019, Florida Power & Light Company (FPL or utility) filed a petition for approval of revisions to its underground residential differential (URD) and underground commercial differential (UCD) tariffs. The URD and UCD tariffs apply to new residential and commercial developments and represent the additional costs, if any, FPL incurs to provide underground distribution service in place of overhead service. As discussed in the recommendation, based on current cost, including long term operational cost, FPL does not incur any additional costs to provide residential underground service; therefore, the proposed URD differentials are \$0. The proposed (legislative version) URD and UCD tariffs are contained in Attachments A and B to the

Docket No. 20190081-EI

Date: July 25, 2019

recommendation. FPL's current URD and UCD tariffs were approved by Order No. PSC-16-0424-TRF-EI.<sup>1</sup>

The Commission suspended FPL's proposed tariffs in Order No. PSC-2019-0211-PCO-EI.<sup>2</sup> FPL responded to staff's first data request on May 31, 2019 and filed a revised response to staff's data request No. 6 on July 2, 2019. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

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<sup>1</sup> Order No. PSC-16-0424-TRF-EI, issued October 3, 2016, in Docket No. 160071-EI, *In re: Petition for approval of 2016 revisions to underground residential and commercial differential tariffs, by Florida Power & Light Company.*

<sup>2</sup> Order No. PSC-2019-0211-PCO-EI, issued June 3, 2019, in Docket No. 20190081-EI, *In re: Petition for approval of 2019 revisions to underground residential and commercial differential tariffs, by Florida Power & Light Company.*

## Discussion of Issues

**Issue 1:** Should the Commission approve FPL's proposed URD tariff and associated charges?

**Recommendation:** Yes. The Commission should approve FPL's proposed URD tariffs and associated charges as shown in Attachment A, effective September 5, 2019. (Doherty)

**Staff Analysis:** Rule 25-6.078, Florida Administrative Code (F.A.C.), defines investor-owned utilities' (IOU) responsibilities for filing updated URD tariffs. FPL has filed the instant petition pursuant to subsection (3) of the rule, which requires IOUs to file supporting data and analyses for URD tariffs at least once every three years.

The URD tariffs provide charges for underground service in new residential subdivisions and represent the additional costs, if any, the utility incurs to provide underground service in place of overhead service. The cost of standard overhead construction is recovered through base rates from all ratepayers. In lieu of overhead construction, customers have the option of requesting underground facilities. Any additional cost is paid by the customer as contribution-in-aid-of construction (CIAC). Typically, the URD customer is the developer of a subdivision.

Traditionally, three standard model subdivision designs have been the basis upon which each IOU submits URD tariff changes for Commission approval: low density, high density, and a high density subdivision where dwelling units take service at ganged meter pedestals (groups of meters at the same physical location). Examples of this last subdivision type include mobile home and recreational vehicle parks. While actual construction may differ from the model subdivisions, the model subdivisions are designed to reflect average overhead and underground subdivisions.

Costs for underground construction have historically been higher for standard overhead construction and the additional cost is paid by the customer as a CIAC. In FPL's 2016 underground differential tariff, the cost differential was zero for ganged meters and some tiers of the low and high density subdivisions. As shown on Table 1-1, FPL's proposed URD differential charges are now \$0 for all three subdivision models. Therefore, the URD customer will not be assessed a CIAC charge for requesting underground service in a new residential subdivision. FPL explained that the decrease in the differentials, for some subdivision tiers, is primarily attributable to changes in operational costs as discussed in more detail in the section of the recommendation titled operational costs.

Table 1-1 shows the current and proposed URD differentials for the low density, high density, and ganged meter subdivisions.

**Table 1-1  
 Comparison of Differential Per Service Lateral**

<b>Types of Subdivision</b>	<b>Number of Service Laterals in Subdivision</b>	<b>Current URD Differential</b>	<b>Proposed URD Differential</b>
Low Density	Tier 1 – 200 or more	\$0	\$0
	Tier 2 – 85 – 199	\$183.35	\$0
	Tier 3 – less than 85	\$266.35	\$0
High Density	Tier 1 – 300 or more	\$0	\$0
	Tier 2 – 100-299	\$0	\$0
	Tier 3 – less than 100	\$57.97	\$0
Ganged Meter	All Tiers	\$0	\$0

Source: 2016 order and FPL's 2019 filing

The calculations of the proposed URD charges include (1) updated labor and material costs along with the associated loading factors and (2) operational costs. These costs are discussed below.

**Labor and Material Costs**

The installation costs of both underground and overhead facilities include the labor and material costs to provide primary, secondary, and service distribution lines as well as transformers. The costs of poles are specific to overhead service while the costs of trenching and backfilling are specific to underground service. The utilities are required, by Rule 25-6.078(5) F.A.C., to use current labor and material costs.

FPL explained that generally the majority of overhead and underground material and labor costs have increased since 2016. With respect to labor costs, the cost of underground labor increased at a higher rate than it increased for overhead labor. FPL stated that contractual arrangements driven by market conditions determine the labor rates for both FPL employees and contractors.

Table 1-2 provides the labor and material differential, or pre-operational, costs. As Table 1-2 shows, only the low density cost differential of \$210.53 is a positive number, indicating that underground labor/material costs are higher than overhead labor/material costs for the low density subdivision. For the high density and ganged meter subdivisions, overhead labor/material costs are higher than underground labor/material costs.

**Table 1-2  
 Labor and Material Costs (Pre-operational Costs)**

<b>Low Density</b>	<b>2016 Costs</b>	<b>2019 Costs</b>	<b>Difference</b>
Underground labor/material costs	\$2,413.84	\$2,558.39	\$144.55
Overhead labor/material costs	\$2,272.49	\$2,347.86	\$75.37
Per service lateral differential	\$141.35	\$210.53	\$69.18
<b>High Density</b>			
Underground labor/material costs	\$1,640.45	\$1,767.54	\$127.09
Overhead labor/material costs	\$1,691.48	\$1,773.71	\$82.23
Per service lateral differential	(\$51.03)	(\$6.17)	(\$44.86)
<b>Ganged Meter</b>			
Underground labor/material costs	\$1,051.82	\$1,125.49	\$73.67
Overhead labor/material costs	\$1,344.17	\$1,397.83	\$53.66
Per service lateral differential	(\$292.35)	(\$272.34)	(\$20.01)

Source: 2016 Order and FPL's 2019 filing

### **Operational Costs**

Rule 25-6.078, F.A.C., requires that the differences in net present value of operational costs between overhead and underground systems, including average historical storm restoration costs over the life of the facilities, be included in the URD charge. The non-storm operational costs represent the cost differential between maintaining and operating an underground versus an overhead system over the life of the facilities. The storm cost component represents storm restoration costs avoided when an area is undergrounded, thereby reducing the cost to restore an overhead system. The avoided storm cost is subtracted from pre-operational and non-storm operational costs, thus reducing the URD differential charge. FPL's methodology to calculate the operational costs was approved in Order No. PSC-08-0774-TRF-EI<sup>3</sup> and remains the same in the instant docket.

### **Non-storm Operational Costs**

FPL's operational costs for an overhead system are higher than the operational cost for an underground system, resulting in a negative number as shown in Column B in Table 1-3. For the low density subdivision, for example, the operational cost differential in 2016 was \$208 (indicating that underground operational costs were higher than overhead operational costs). As shown in Table 1-3, the operational cost differential for the low density subdivision is now -\$2,103. FPL explained that the primary reason for this change in operational cost is the increase in overhead operational costs as a result of FPL's increased capital investments associated with its distribution storm hardening initiatives. The utility used a 5-year average of historical operational costs (2014-2018) for its calculations in this docket.

<sup>3</sup> Order No. PSC-08-0774-TRF-EI, issued November 24, 2008, in Docket No. 070231-EI, *In re: Petition for approval of 2007 revisions to underground residential and commercial distribution tariff, by Florida Power & Light Company.*

**Storm Restoration Costs**

FPL explained that the 2016 and 2017 hurricane season significantly increased the avoided storm restoration cost impacts. Specifically, FPL stated that the utility incorporated more than \$1.5 billion in overhead storm restoration costs for hurricanes Matthew, Hermine, and Irma. Therefore, the amount representing avoided storm restoration costs increased significantly from 2016.

Table 1-3 presents the pre-operational, non-storm operational, and the avoided storm restoration cost differentials between overhead and underground systems. The proposed differential is \$0 when the calculation results in a negative number.

**Table 1-3  
 Components of the URD Charges**

Type of Subdivision	Number of Service Laterals in Subdivision	Pre-Operational Costs (A)	Non-storm Operational costs (B)	Avoided Storm costs (C)	Proposed URD Differentials (A)+(B)+(C)
Low Density	Tier 1 – 200 or more	\$210.53	(\$2,103)	(\$827)	\$0
	Tier 2 – 85 – 199		(\$2,103)	(\$331)	\$0
	Tier 3 – less than 85		(\$2,103)	(\$165)	\$0
High Density	Tier 1 – 300 or more	\$0.00	(\$1,796)	(\$827)	\$0
	Tier 2 – 100 – 299		(\$1,796)	(\$331)	\$0
	Tier 3 – less than 100		(\$1,796)	(\$165)	\$0
Ganged Meter	Tier 1 – 300 or more	\$0.00	(\$1,796)	(\$827)	\$0
	Tier 2 – 100 – 299		(\$1,796)	(\$331)	\$0
	Tier 3 – less than 100		(\$1,796)	(\$165)	\$0

Source: FPL’s 2019 Filing

**Conclusion**

Staff has reviewed FPL’s proposed URD tariffs and associated charges, its accompanying work papers, and its responses to staff’s data requests. Staff believes the proposed URD tariffs and associated charges are reasonable and recommends approval. FPL requested that the tariffs be made effective 30 days after the Commission vote. Staff recommends that the Commission approve FPL’s proposed URD tariffs and associated charges, effective September 5, 2019.



**Issue 2:** Should the Commission approve FPL's proposed UCD tariffs and associated charges?

**Recommendation:** Yes. The Commission should approve FPL's proposed UCD tariffs and associated charges as shown in Attachment B, effective September 5, 2019. (Doherty)

**Staff Analysis:** Utilities are not required to file UCD tariffs pursuant to Rule 25-6.078, F.A.C.; however, as in prior URD petitions, FPL included proposed UCD tariffs in its petition. The UCD tariffs apply to small commercial or industrial customers (applicant) that request the installation of underground electric distribution facilities for a new building. The requested underground distribution facilities consist of underground service conductors, placed in conduit, and associated equipment that is installed from overhead feeder mains (or overhead termination point) to the designed point of delivery (where the utility's wires are connected to those of the customer).

The UCD charges represent the differential costs for underground commercial facilities and their equivalent overhead design. The calculations provided by FPL in its petition employ FPL's standard engineering design criteria and are based on actual 2018 labor and material costs. Unlike the URD calculations, the UCD calculations do not include long term operational and avoided storm restoration costs. In addition, the UCD tariffs provide credits that apply if the applicant provides trenching, backfilling, or installs FPL provided conduit or a concrete pad for a pad-mounted transformer.

FPL explained that including cost-based UCD charges in its tariff provides clarity to customers and FPL's field employees regarding the costs for commercial underground distribution facilities.

Staff reviewed FPL's supporting documentation for the UCD charges and believes the charges are cost based and reasonable. FPL requested that the tariffs be made effective 30 days after the Commission vote. Staff recommends that the Commission approve FPL's proposed UCD tariffs and associated charges, effective September 5, 2019.

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

**Recommendation:** If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Trierweiler)

**Staff Analysis:** If a protest is filed within 21 days of the issuance of the order, this tariff should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

FLORIDA POWER & LIGHT COMPANY

Twenty-Six~~th~~<sup>Seventh</sup> Revised Sheet No. 6.095  
Cancels Twenty-Five~~th~~<sup>Sixth</sup> Revised Sheet No. 6.095

(Continued from Sheet No. 6.090)

10.2.8.1 Credit for TUGs

If the Applicant installs the permanent electric service entrance such that FPL's service lateral can be subsequently installed and utilized to provide that building's construction service, the Applicant shall receive a credit in the amount of ~~\$60.00~~<sup>70.12</sup> per service lateral, subject to the following requirements:

- a) TUGs must be inspected and approved by the local inspecting authority.
- b) All service laterals within the subdivision must be installed as TUGs.
- c) FPL must be able to install the service lateral, energize the service lateral, and set the meter to energize the load side of the meter can, all in a single trip. Subsequent visits other than routine maintenance or meter readings will void the credit.
- d) Thereafter, acceptance and receipt of service by the Customer shall constitute certification that the Customer has met all inspection requirements, complied with all applicable codes and rules and, subject to section 2.7 Indemnity to Company, or section 2.71 Indemnity to Company -- Governmental, FPL's General Rules and Regulations, the Customer releases, holds harmless and agrees to indemnify the Company from and against loss or liability in connection with the provision of electrical services to or through such Customer-owned electrical installations.
- e) The Applicant shall be held responsible for all electric service used until the account is established in the succeeding occupant's name.

This credit applies only when FPL installs the service - it does not apply when the applicant installs the service conduits, or the service conduits and cable.

10.2.9. Location of Distribution Facilities

Underground distribution facilities will be located, as determined by the Company, to maximize their accessibility for maintenance and operation. The Applicant shall provide accessible locations for meters when the design of a dwelling unit or its appurtenances limits perpetual accessibility for reading, testing, or making necessary repairs and adjustments.

10.2.10. Special Conditions

The costs quoted in these rules are based on conditions which permit employment of rapid construction techniques. The Applicant shall be responsible for necessary additional hand digging expenses other than what is normally provided by the Company. The Applicant is responsible for clearing, compacting, boulder and large rock removal, stump removal, paving, and addressing other special conditions. Should paving, grass, landscaping or sprinkler systems be installed prior to the construction of the underground distribution facilities, the Applicant shall pay the added costs of trenching and backfilling and be responsible for restoration of property damaged to accommodate the installation of underground facilities.

10.2.11. Point of Delivery

The point of delivery shall be determined by the Company and will normally be at or near the part of the building nearest the point at which the secondary electric supply is available to the property. When a location for a point of delivery different from that designated by the Company is requested by the Applicant, and approved by the Company, the Applicant shall pay the estimated full cost of service lateral length, including labor and materials, required in excess of that which would have been needed to reach the Company's designated point of service. The additional cost per trench foot is ~~\$7.20~~<sup>7.91</sup>. Where an existing trench is utilized, the additional cost per trench foot is ~~\$2.78~~<sup>3.00</sup>. Where the Applicant provides the trenching, installs Company provided conduit according to Company specifications and backfilling, the cost per additional trench foot is ~~\$2.02~~<sup>2.16</sup>. Any re-designation requested by the Applicant shall conform to good safety and construction practices as determined by the Company. Service laterals shall be installed, where possible, in a direct line to the point of delivery.

(Continued on Sheet No. 6.096)

Issued by: ~~S. E. Romig~~<sup>Tiffany Cohen</sup>, Director, Rates and Tariffs  
Effective: ~~October 13, 2016~~

FLORIDA POWER & LIGHT COMPANY

Thirty-Sixth Revised Sheet No. 6.100  
 Cancels Thirty-Fifth Revised Sheet No. 6.100

**SECTION 10.3 UNDERGROUND DISTRIBUTION FACILITIES FOR  
 RESIDENTIAL SUBDIVISIONS AND DEVELOPMENTS**

**10.3.1. Availability**

When requested by the Applicant, the Company will provide underground electric distribution facilities, other than for multiple occupancy buildings, in accordance with its standard practices in:

- a) Recognized new residential subdivision of five or more building lots.
- b) Tracts of land upon which five or more separate dwelling units are to be located.

For residential buildings containing five or more dwelling units, see SECTION 10.6 of these Rules.

**10.3.2. Contribution by Applicant**

a) The Applicant shall pay the Company the average differential cost for single phase residential underground distribution service based on the number of service laterals required or the number of dwelling units, as follows:

	Applicant's Contribution
1. Where density is 6.0 or more dwelling units per acre:	
1.1 Buildings that do not exceed four units, townhouses, and mobile homes – per service lateral.	
1. Subdivisions with 300 or more total service laterals	\$ 0.00
2. Subdivisions from 100 to 299 total service laterals	\$ 0.00
3. Subdivisions less than 100 total service laterals	\$ <del>7,070.00</del>
1.2 Mobile homes having Customer-owned services from meter center installed adjacent to the FPL primary trench route - per dwelling unit.	
1. Subdivisions with 300 or more total dwelling units	\$ 0.00
2. Subdivisions from 100 to 299 total dwelling units	\$ 0.00
3. Subdivisions less than 100 total dwelling units	\$ 0.00
2. Where density is 0.5 or greater, but less than 6.0 dwelling units per acre:	
Buildings that do not exceed four units, townhouses, and mobile homes – per service lateral	
1. Subdivisions with 200 or more total service laterals	\$ 0.00
2. Subdivisions from 85 to 199 total service laterals	\$ <del>483,350.00</del>
3. Subdivisions less than 85 total service laterals	\$ <del>266,350.00</del>
3. Where the density is less than 0.5 dwelling units per acre, or the Distribution System is of non-standard design, individual cost estimates will be used to determine the differential cost as specified in Paragraph 10.2.5.	

Additional charges specified in Paragraphs 10.2.10 and 10.2.11 may also apply.

b) The above costs are based upon arrangements that will permit serving the local underground distribution system within the subdivision from overhead feeder mains. If feeder mains within the subdivision are deemed necessary by the Company to provide and/or maintain adequate service and are required by the Applicant or a governmental agency to be installed underground, the Applicant shall pay the Company the average differential cost between such underground feeder mains within the subdivision and equivalent overhead feeder mains, as follows:

	Applicant's Contribution
Cost per foot of feeder trench within the subdivision (excluding switches)	\$9,0210.09
Cost per above ground padmounted switch package	<del>\$27,300.43</del> \$25,716.84

(Continued on Sheet No. 6.110)

Issued by: S. E. Ronig Tiffany Cohen, Director, Rates and Tariffs  
 Effective: October 13, 2016

FLORIDA POWER & LIGHT COMPANY

~~Thirty-Fifth~~ Revised Sheet No. 6.110  
 Cancels ~~Thirty-Fourth Fifth~~ Revised Sheet No. 6.110

(Continued from Sheet No. 6.100)

- c) Where primary laterals are needed to cross open areas such as golf courses, parks, other recreation areas and water retention areas, the Applicant shall pay the average differential costs for these facilities as follows:

Cost per foot of primary lateral trench within the subdivision

1) Single Phase - per foot	<del>\$0-710.98</del>
2) Two Phase - per foot	<del>\$3-733.02</del>
3) Three Phase - per foot	<del>\$4-384.70</del>

- d) For requests for service where underground facilities to the lot line are existing and a differential charge was previously paid for these facilities, the cost to install an underground service lateral to the meter is as follows:

Density less than 6.0 dwelling units per acre:	<del>\$348-83198.76</del>
Density 6.0 or greater dwelling units per acre:	<del>\$258-34295.96</del>

10.3.3. Contribution Adjustments

- a) Credits will be allowed to the Applicant's contribution in Section 10.3.2. where, by mutual agreement, the Applicant provides all trenching and backfilling for the Company's distribution system, excluding feeder.

	Credit to Applicant's Contribution	
	Backbone	Service
1. Where density is 6.0 or more dwelling units per acre:		
1.1 Buildings that do not exceed four units, townhouses, and mobile homes - per service lateral.	<del>\$149-16174.32</del>	<del>\$156-59183.00</del>
1.2 Mobile homes having Customer-owned services from meter center installed adjacent to the FPL primary trench route - per dwelling unit.	<del>\$123-35144.16</del>	N/A
2. Where density is 0.5 or greater, but less than 6.0 dwelling units per acre:		
Buildings that do not exceed four units, townhouses, and mobile homes - per service lateral	<del>\$247-06288.73</del>	<del>\$219-23256.20</del>

- b) Credits will be allowed to the Applicant's contribution in Section 10.3.2. where, by mutual agreement, the Applicant installs all Company-provided conduit excluding feeder per FPL instructions. This credit is:

	Credit to Applicant's Contribution	
	Backbone	Service
1. Where density is 6.0 or more dwelling units per acre:		
1.1 Buildings that do not exceed four units, townhouses, and mobile homes - per service lateral.	<del>\$62-0772.54</del>	<del>\$48-0056.09</del>

(Continued on Sheet No. 6.115)

Issued by: ~~S. E. Romig~~ Tiffany Cohen, Director, Rates and Tariffs  
 Effective: ~~October 13, 2016~~

FLORIDA POWER & LIGHT COMPANY

Twenty-~~Third~~Fourth Revised Sheet No. 6.115  
 Cancels Twenty-~~Second~~Third Revised Sheet No. 6.115

(Continued from Sheet No. 6.110)

	Credit to Applicant's Contribution	
	Backbone	Service
1.2 Mobile homes having Customer-owned services from meter center installed adjacent to the FPL primary trench route - per dwelling unit.	\$50.64	<del>59.15</del> N/A
2. Where density is .5 or greater, but less than 6.0 dwelling units per acre, per service lateral.	\$99.47	<del>116.25</del>
	<del>\$58.80</del>	<del>68.71</del>
c) Credits will be allowed to the Applicant's contribution in Section 10.3.2, where, by mutual agreement, the Applicant provides a portion of trenching and backfilling for the Company's facilities, per foot of trench -		<del>\$3.48</del>
d) Credits will be allowed to the Applicant's contribution in section 10.3.2, where, by mutual agreement, the Applicant installs a portion of Company-provided PVC conduit, per FPL instructions (per foot of conduit): 2" PVC -		<del>\$0.60</del>
e) Credit will be allowed to the Applicant's contribution in section 10.3.2., where, by mutual agreement, the Applicant installs an FPL-provided feeder splice box, per FPL instructions, per box -		<del>\$664.74</del>
f) Credit will be allowed to the Applicant's contribution in section 10.3.2., where by mutual agreement, the Applicant installs an FPL-provided primary splice box, per FPL instructions, per box -		<del>\$222.78</del>
g) Credit will be allowed to the Applicant's contribution in section 10.3.2., where, by mutual agreement, the Applicant installs an FPL-provided secondary handhole, per FPL instructions, per handhole: 17" handhole -		<del>\$21.60</del>
h) Credit will be allowed to the Applicant's contribution in section 10.3.2., where, by mutual agreement, the Applicant installs an FPL-provided concrete pad for a pad-mounted transformer or capacitor bank, per FPL instructions, per pad -		<del>\$60.00</del>
i) Credit will be allowed to the Applicant's contribution in Section 10.3.2., where, by mutual agreement, the Applicant installs a portion of Company-provided flexible HDPE conduit, per FPL instructions (per foot of conduit):		<del>\$0.12</del>
j) Credit will be allowed to the Applicant's contribution in Section 10.3.2., where, by mutual agreement, the Applicant installs an FPL-provided concrete pad and cable chamber for a pad-mounted feeder switch, per pad and cable chamber -		<del>\$565.15</del>

Issued by: ~~S. E. Romig~~ Tiffany Cohen, Director, Rates and Tariffs  
 Effective: ~~October 13, 2016~~

FLORIDA POWER & LIGHT COMPANY

~~Thirty-Fifth~~ Revised Sheet No. 6.120  
 Cancels ~~Thirty-Fourth~~ Revised Sheet No. 6.120

**SECTION 10.4 UNDERGROUND SERVICE LATERALS FROM  
 OVERHEAD ELECTRIC DISTRIBUTION SYSTEMS**

**10.4.1. New Underground Service Laterals**

When requested by the Applicant, the Company will install underground service laterals from overhead systems to newly constructed residential buildings containing less than five separate dwelling units.

**10.4.2. Contribution by Applicant**

a) The Applicant shall pay the Company the following differential cost between an overhead service and an underground service lateral, as follows:

	<u>Applicant's Contribution</u>
1. For any density:	
Buildings that do not exceed four units, townhouses, and mobile homes	
a) per service lateral (includes service riser installation)	\$683,847.56.40
b) per service lateral (from existing handhole or PM TX)	\$348,833.98.76
2. For any density, the Company will provide a riser to a handhole at the base of a pole	\$705,467.67.83

Additional charges specified in Paragraphs 10.2.10 and 10.2.11 may also apply. Underground service or secondary extensions beyond the boundaries of the property being served will be subject to additional differential costs as determined by individual cost estimates.

**10.4.3. Contribution Adjustments**

a) Credit will be allowed to the Applicant's contribution in Section 10.4.2 where, by mutual agreement, the Applicant provides trenching and backfilling for the Company's facilities. This credit is:

	<u>Credit To Applicant's Contribution</u>
1. For any density:	
Buildings that do not exceed four units, townhouses, and mobile homes	
- per foot	\$3.48    \$4.07

(Continued on Sheet No. 6.125)

Issued by: ~~S. E. Romig~~ Tiffany Cohen, Director, Rates and Tariffs  
 Effective: ~~October 13, 2016~~

FLORIDA POWER & LIGHT COMPANY

~~Twenty-First~~Second Revised Sheet No. 6.125  
Cancels ~~Twenty-First~~Twenty-First Revised Sheet No. 6.125

(Continued from Sheet No. 6.120)

b) Credit will be allowed to the Applicant's contribution in Section 10.4.2, where by mutual agreement, the Applicant installs Company-provided conduit, per FPL instructions, as follows:

1. For any density:

Buildings that do not exceed four units, townhouses, and mobile homes	
- per foot:	2" PVC <del>\$0-600.70</del>
	Larger than 2" PVC <del>\$0-840.98</del>

c) Credit will be allowed to the Applicant's contribution in Section 10.4.2, where by mutual agreement, the Applicant requests the underground service to be installed as a TUG (subject to the conditions specified in Section 10.2.8.1), per service lateral, as follows:

1. For any density:

Buildings that do not exceed four units, townhouses, and mobile homes	
-per service lateral:	<del>\$60-0070.12</del>

Issued by: ~~S. E. Romig~~Tiffany Cohen, Director, Rates and Tariffs  
Effective: ~~October 13, 2016~~



FLORIDA POWER & LIGHT COMPANY

Thirty-~~Second~~<sup>Third</sup> Revised Sheet No. 6.130  
 Cancels Thirty-~~First~~<sup>Second</sup> Revised Sheet No. 6.130

**SECTION 10.5 UNDERGROUND SERVICE LATERALS REPLACING  
 EXISTING RESIDENTIAL OVERHEAD AND UNDERGROUND SERVICES**

**10.5.1. Applicability**

When requested by the Applicant, the Company will install underground service laterals from existing systems as replacements for existing overhead and underground services to existing residential buildings containing less than five individual dwelling units.

**10.5.2. Rearrangement of Service Entrance**

The Applicant shall be responsible for any necessary rearranging of his existing electric service entrance facilities to accommodate the proposed underground service lateral in accordance with the Company's specifications.

**10.5.3. Trenching and Conduit Installation**

The Applicant shall also provide, at no cost to the Company, a suitable trench, perform the backfilling and any landscape, pavement or other similar repairs and install Company provided conduit according to Company specifications. When requested by the Applicant and approved by the Company, the Company may supply the trench and conduit and the Applicant shall pay for this work based on a specific cost estimate. Should paving, grass, landscaping or sprinkler systems need repair or replacement during construction, the Applicant shall be responsible for restoring the paving, grass, landscaping or sprinkler systems to the original condition.

**10.5.4. Contribution by Applicant**

a)	The charge per service lateral replacing an existing Company-owned overhead service for any density shall be:	<u>Applicant's Contribution</u>
1.	Where the Company provides an underground service lateral:	<u>\$654,407.99</u>
2.	Where the Company provides a riser to a handhole at the base of the pole:	<u>\$930,131.01</u>
b)	The charge per service lateral replacing an existing Company-owned underground service at Applicant's request for any density shall be:	
1.	Where the service is from an overhead system:	<u>\$643,467.62</u>
2.	Where the service is from an underground system:	<u>\$555,226.99</u>
c)	The charge per service lateral replacing an existing Customer-owned underground service from an overhead system for any density shall be:	<u>\$426,834.56</u>
d)	The charge per service lateral replacing an existing Customer-owned underground service from an underground system for any density shall be:	<u>\$91,819.38</u>

The above charges include conversion of the service lateral from the last PPL pole to the meter location. Removal of any other facilities such as poles, downguys, spans of secondary, etc. will be charged based on specific cost estimates for the requested additional work.

Issued by: ~~S. E. Romig~~<sup>Tiffany Cohen</sup>, Director, Rates and Tariffs  
 Effective: ~~October 13, 2016~~

**FLORIDA POWER & LIGHT COMPANY**

~~Fifth Revised Sheet No. 6.520~~  
~~Cancels Ninth Revised Sheet No. 6.520~~  
**Eleventh Revised Sheet No. 6.520**

(Continued from Sheet No. 6.510)

**13.2.12 Contribution by Applicant**

The Applicant shall pay the Company the average differential cost between installing overhead and underground distribution facilities based on the following:

- a) Primary lateral, riser (if from overhead termination point), pad mounted transformer and trench with cable-in-conduit not to exceed 150 feet in radials and 300 feet in loops.

	<u>Applicant's Contribution</u>	
	<u>From Overhead Termination Point</u>	<u>From Existing Underground Termination Point</u>
1) Single phase radial	\$ 0.00	\$ 0.00
2) Two phase radial	\$ 0.00	\$ 0.00
3) Three phase radial (150 KVA)	\$ 0.00	\$ 0.00
4) Three phase radial (300 KVA)	\$ 0.00	\$ 0.00
5) Single phase loop	\$ 0.00	\$ 0.00
6) Two phase loop	\$ 0.00	\$ 0.00
7) Three phase loop (150 KVA)	\$ 0.00	\$ 0.00
8) Three phase loop (300 KVA)	\$ 0.00	\$ 0.00

- b) Secondary riser and lateral, excluding handhole or junction box, with connection to Applicant's service cables no greater than 20 feet from Company riser pole.

1) Small single phase	\$ <del>553.54</del> 601.33
2) Large single phase	\$ <del>4,025.99</del> 1,085.49
3) Small three phase	\$ <del>804.92</del> 884.63
4) Large three phase	\$ <del>4,530.59</del> 1,609.40

- c) FPL service cable installed in customer provided and customer installed 2" PVC (for main line switch size limited to 60 amps for 120V, 2 wire service, or 125 amps for 120/240v, 3 wire service) where customer's meter can be at least 5 feet and no more than 100 feet from the FPL pole.

	<u>120v 60 amp 2 wire service</u>	<u>120/240v 125 amp 3 wire service</u>
1) Installed on a wood pole - accessible locations	\$ <del>474.23</del> 506.26	\$ <del>434.80</del> 463.18
2) Installed on a wood pole - inaccessible locations	\$ <del>445.29</del> 583.61	\$ <del>403.54</del> 528.23
3) Installed on a concrete pole - accessible locations	\$ <del>326.63</del> 569.74	\$ <del>487.49</del> 526.65

- d) Handholes and Padmounted Secondary Junction Box, excluding connections.

1) Handhole	
a. Small - per handhole	\$ <del>203.40</del> 232.68
b. Intermediate - per handhole	\$ <del>244.53</del> 286.94
c. Large - per handhole	\$ <del>817.30</del> 533.21

2) Pad Mounted secondary Junction Box - per box	\$ <del>2,567.29</del> 3226.71
---	--------------------------------

- 3) Pad Mounted secondary Junction Cabinet, used when electrical loads exceed the capacity of the secondary junction box (above) or when the number of the service conductors exceed the capacity of the pad mounted transformer. This charge is only applicable if the majority of the customer's service conductor diameter is less than 500 MCM.

Per cabinet (includes connecting up to 12 sets of conductor)	\$ <del>44,993.48</del> 11,704.68
Tapping service conductors (if more than 12 sets) - per set	\$ <del>79.20</del> 88.00

(Continued on Sheet No. 6.530)

Issued by: ~~S. E. Romig~~ Tiffany Cohen, Director, Rates and Tariffs  
 Effective: ~~October 13, 2016~~

FLORIDA POWER & LIGHT COMPANY

~~Tenth~~<sup>Eleventh</sup> Revised Sheet No. 6.530  
 Cancels ~~Ninth~~<sup>Tenth</sup> Revised Sheet No. 6.530

(Continued from Sheet No. 6.520)

- e) Primary splice box including splices and cable pulling set-up.
- |                           |                    |
|---------------------------|--------------------|
| 1) Single Phase - per box | \$1,349,641,109.75 |
| 2) Two Phase - per box    | \$1,859,161,660.91 |
| 3) Three Phase - per box  | \$2,070,151,867.45 |
- f) Additional installation charge for underground primary laterals including trench and cable-in-conduit which exceed the limits set in 13.2.12 a).
- |                            |             |
|----------------------------|-------------|
| 1) Single Phase - per foot | \$ 0.710.98 |
| 2) Two Phase - per foot    | \$ 2.733.02 |
| 3) Three Phase - per foot  | \$ 2.481.81 |
- g) Additional installation charge for underground primary laterals including trench and cable-in-conduit extended beyond the Company designated point of delivery to a remote point of delivery.
- |                            |               |
|----------------------------|---------------|
| 1) Single Phase - per foot | \$ 8.749.41   |
| 2) Two Phase - per foot    | \$ 43.0313.88 |
| 3) Three Phase - per foot  | \$ 45.2615.29 |
- h) The above costs are based upon arrangements that will permit serving the local underground distribution system within the commercial/industrial development from overhead feeder mains. If feeder mains within the commercial/industrial development are deemed necessary by the company to provide and/or maintain adequate service and are required by the Applicant or a governmental agency to be installed underground, the Applicant shall pay the company the average differential cost between such underground feeder mains within the commercial/industrial development and equivalent overhead feeder mains, as follows:
- |  |                          |
|--|--------------------------|
|  | Applicant's Contribution |
| Cost per foot of feeder trench within the commercial/industrial development (excluding switches) | \$ 9.0310.09             |
| Cost per <u>above ground padmounted</u> switch package   | \$27,200.4325,716.84     |
- i) The Company will provide one standby/assistance appointment at no additional charge to the Applicant adding new or additional load to assist with installation of the Applicant's conductors and conduit(s) into a padmounted transformer, pedestal or vault (not to exceed four hours in duration) during normal hours of operation. Additional appointments will be provided upon request, at the Applicant's expense.

(Continued on Sheet 6.540)

Issued by: ~~S. E. Romig~~<sup>Tiffany Cohen</sup>, Director, Rates and Tariffs  
 Effective: ~~October 13, 2016~~

FLORIDA POWER & LIGHT COMPANY

~~Sixth~~ Seventh Revised Sheet No. 6.540  
 Cancels ~~Fifth~~ Sixth Revised Sheet No. 6.540

(Continued from Sheet No. 6.530)

13.2.13 Contribution Adjustments

a) Credits will be allowed to the Applicant's contribution in Section 13.2.12. where, by mutual agreement, the Applicant provides trenching and backfilling for the Company's facilities.

Credit to the  
 Applicant's  
 Contribution

1) Credit per foot of primary trench \$ ~~3,484.07~~

2) Credit per foot of secondary trench \$ ~~2,761.23~~

b) Credits will be allowed to the Applicant's contribution in section 13.2.12. where, by mutual agreement, the Applicant installs Company-provided conduit per Company instructions.

1) Credit per foot of 2" conduit \$ ~~0.690.70~~

2) Credit per foot of larger than 2" conduit \$ ~~0.840.98~~

c) Credit will be allowed to the Applicant's contribution in Section 13.2.12. where, by mutual agreement, the Applicant installs a Company-provided handhole per Company instructions.

1) Credit per large handhole/primary splice box \$ ~~332,782.05~~

2) Credit per small handhole \$ ~~61,497.52~~

d) Credit will be allowed to the Applicant's contribution in Section 13.2.12. where, by mutual agreement, the Applicant installs a Company-provided concrete pad for a pad-mounted transformer or pad-mounted capacitor bank per Company instructions.

Credit per pad \$ ~~60,8970.12~~

e) Credit will be allowed to the Applicant's contribution in Section 13.2.12. where, by mutual agreement, the Applicant installs Company-provided concrete pad for a pad-mounted feeder switch chamber per Company instructions.

Credit per pad \$ ~~66,18660.48~~

f) Credit will be allowed to the Applicant's contribution in Section 13.2.12. where, by mutual agreement, the Applicant installs Company-provided concrete pad for a feeder splice box per Company instructions.

Credit per splice box \$ ~~664,74776.87~~

Issued by: S-E. Ronig/Tiffany Cohen, Director, Rates and Tariffs  
 Effective: October 13, 2016

# Item 7

State of Florida



# Public Service Commission

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

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

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**DATE:** July 25, 2019

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

**FROM:** Division of Economics (Higgins) *DE*  
Division of Accounting and Finance (Mouring, D. Smith, Cicchetti) *MAA*  
Division of Engineering (Doehling) *JD*  
Office of the General Counsel (Brownless) *MC ALM JSC*

**RE:** Docket No. 20190107-EI – Petition for approval of commencement date for depreciation of AMI program assets, by Tampa Electric Company.

**AGENDA:** 08/06/19 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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## Case Background

On April 23, 2019, Tampa Electric Company (TECO or Company) filed its Petition for Approval of Commencement Date for Depreciation of its AMI (Advanced Metering Infrastructure) assets (Petition). In the Petition, TECO requests Florida Public Service Commission (Commission) approval “to commence” depreciating its AMI assets on or about January 1, 2022.

Integral to the instant petition is TECO’s 2017 Amended and Restated Stipulation and Settlement Agreement (2017 Settlement), which was approved in November of that same year.<sup>1</sup> The 2017

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<sup>1</sup> Order No. PSC-2017-0456-S-EI, issued November 27, 2017, in Docket No. 20170210-EI, *In re: Petition for limited proceeding to approve 2017 amended and restated stipulation and settlement agreement, by Tampa Electric*

Docket No. 20190107-EI

Date: July 25, 2019

Settlement contains certain provisions regarding the deployment and transition from Automatic Meter Reading (AMR) technology, to AMI technology.<sup>2</sup>

Two separate staff data requests seeking additional information regarding the Petition were issued on May 7, 2019, and May 30, 2019. The Company responded to Staff's First Data Request on May 14, 2019, and Staff's Second Data Request on June 13, 2019. Additionally, the Company filed an updated response to Staff's First Data Request, No. 15, on June 17, 2019.

Staff is not currently aware of any questions or concerns from the public with respect to this matter. Also, the parties to the 2017 Settlement do not oppose the Company's requested relief in this proceeding.

The Commission has jurisdiction in this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

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*Company*, and Docket No. 20160160-EI, *In re: Petition for approval of energy transaction optimization mechanism, by Tampa Electric Company*.

<sup>2</sup> *Id.*

## Discussion of Issues

**Issue 1:** Should the Commission approve TECO's requested accounting treatment related to its AMI meters?

**Recommendation:** Yes. Staff recommends that the Commission approve TECO's requested accounting treatment related to its AMI meters. (Brownless, Higgins)

### **Staff Analysis:**

#### **Background**

On April 23, 2019, TECO filed a petition effectively requesting authorization to suspend and reverse the depreciation expense on assets comprising its AMI program and recommence the depreciation expense on those assets on January 1, 2022. TECO first began installing and recording depreciation expense for AMI meters in 2016 and is in the process of replacing all of its current AMR meters with AMI meters. TECO estimates that AMI meters will be deployed system wide by year-end 2021 along with all of the back-office functions and communication systems necessary to make the AMI meters fully functional. Once the AMI meters are fully functional, the system will be able to provide customer service tools, remote connection/disconnection of service, and information regarding an individual customer's energy usage.

TECO is currently depreciating AMI meter investment for both regulatory and federal income tax purposes from the point of purchase. The specific accounting treatment TECO is proposing is to remove current AMI meter investment from Plant in Service Account 101 and place it into Construction Work in Progress (CWIP) Account 107. Future AMI meter investment made from 2019 through 2021 would also be placed in CWIP Account 107 where such assets would not be depreciated. On January 1, 2022, the date that TECO estimates the AMI infrastructure will be fully functional, AMI meter investment would be booked to plant and depreciation expense would begin anew.

The depreciation expense associated with the 2016 through May 2019 AMI meter investment that TECO is proposing be reversed totals approximately \$460,000.<sup>3</sup> TECO states that reversing the prior AMI depreciation would be "immaterial to the presentation of its financial statements as a whole."<sup>4</sup>

The accounting method by which meters are depreciated is addressed in Rule 25-6.0142, Florida Administrative Code (F.A.C.). Rule 25-6.0142(1), F.A.C., incorporates the Uniform System of Accounts prescribed by the Code of Federal Regulations, Title 18, Chapter I, Subchapter C, Part 101, into the rule. By this incorporation, meters are given "cradle-to-grave" accounting treatment. "Cradle-To-Grave Accounting" is defined in the rule as "[a]n accounting method which treats a unit of plant as being in service from the time it is first purchased until it is finally

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<sup>3</sup> TECO's Response to Staff's Second Data Request No. 4.

<sup>4</sup> *Id.*



junked or disposed of in another manner.”<sup>5</sup> Further, meters that are in the “shop for refurbishing or in stock/inventory awaiting reinstallation [are] treated as being in service.” Applying this rule to the present situation, TECO must begin depreciating its AMI meters from the date of purchase.

IRS Reg. Sec. 1.167(a)-(11)(e)(1) treats the depreciation of plant assets differently. For purposes of depreciation for federal taxes, an asset is placed in service when it is “first placed in a condition or state of readiness and availability for a specifically assigned function.” Applying this regulation to the present situation, TECO concludes that it does not have to begin depreciating the AMI meters until the date that they are fully functional, i.e., until the back-office functions and communications systems necessary to allow the AMI meters to fully perform are in place, currently estimated to be by January 1, 2022.

For tax years 2016 and 2017, TECO depreciated both AMI and AMR meters for federal tax purposes. TECO has not yet filed its 2018 federal tax return which is due between October 1 and 15, 2019. TECO intends to claim zero tax depreciation for AMI for 2018 and to true-up for the cumulative tax depreciation it took for years prior to 2018, thus aligning the federal tax treatment with the treatment requested here.

The depreciation of AMR meters is also addressed in Section 8 of TECO’s 2017 Settlement approved by Order No. PSC-2017-0456-S-EI.<sup>6</sup> Section 8(b) states as follows:

(b) Notwithstanding the non-deferral language in Paragraph 4, unless the company proposes a special capital recovery schedule and the Commission approves it, if coal-fired generating units or other assets are retired or planned for retirement of a magnitude that would ordinarily or otherwise require a special capital recovery schedule, such assets will continue to be depreciated using their then existing depreciation rates and special capital recovery issues will be addressed in conjunction with the company’s next depreciation study. *If the company installs Automated Meter Infrastructure (“AMI”) meters and retires Automated Meter Reading (“AMR”) meters during the Term, such assets will continue to be depreciated using their then existing depreciation rates and special capital recovery issues will be addressed in conjunction with the company’s next depreciation study.*

[Emphasis added.]

TECO takes the position that Section 8(b) requires it to continue depreciating its AMR meters even if replaced by AMI meters. TECO also takes the position that Section 8(b) does not address the depreciation treatment of AMI at all. TECO acknowledges that the language of Section 8(b) can reasonably be read to mean that both AMI and AMR meters will be depreciated concurrently during the term of the 2017 Settlement.<sup>7</sup> However, TECO argues that the signatories to the 2017

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<sup>5</sup> Rule 25-6.0142(2)(d), F.A.C.

<sup>6</sup> Order No. PSC-2017-0456-S-EI.

<sup>7</sup> The 2017 Settlement term is from November 2017 through December 31, 2021.

Agreement did not intend that result. TECO states that the use of the term “assets” in Section 8(b) “refers to the AMR meters that would be replaced by AMI meters resulting in an unrecovered net book value amount.”<sup>8</sup> TECO also states that the use of the term “rates” was a “scrivener’s error” and should have been “rate” to “reflect the fact that there is only one approved rate for meters in Account 370 - Meters.”<sup>9</sup>

TECO’s response to Staff’s First Data Request No. 22 in the 2017 Settlement docket indicates that, at the time that the 2017 Settlement was signed, the Company did intend to depreciate both its AMI and AMR meters concurrently at an annual rate of 7.2 percent from 2017 through 2021 (the 2017 Settlement term). [Attachment A]

The Office of Public Counsel (OPC) agrees that TECO’s request “does not violate the terms of the 2017 Agreement and does not object to the relief requested in the Petition.”<sup>10</sup> The Florida Industrial Power Users Group (FIPUG) and the Florida Retail Federation (FRF) “do not object to the relief requested in the Petition.”<sup>11</sup> The West Central Florida Hospital Utility Association (HUA) does not have a position on the Petition.<sup>12</sup> Likewise, the Federal Executive Agencies (FEA) do not have a position on the Petition.<sup>13</sup>

The reasons given by TECO for approval of the requested AMI accounting treatment are as follows:

- Every signatory to the 2017 Settlement either supports the proposed treatment of AMI depreciation or does not object to it. [Staff First Data Request No. 15, revised on June 17, 2019]
- The change in depreciation treatment of AMI meters will match IRS Sec. 1.167(a)-(11)(e)(1)’s treatment since they are not currently providing their “specifically designed function.” [Petition at 7; Staff Second Data Request No. 1]
- Allowing depreciation of AMI meters when all AMI installations and back-office system integration are complete, estimated to be January 2022, prevents any intergenerational inequities. [Petition at ¶ 14]
- The continued depreciation of AMR meters will decrease the undepreciated net book value of those assets which will in turn reduce, or may eliminate, the amount of a capital recovery schedule for those assets in TECO’s next depreciation study filed with its next base rate case.

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<sup>8</sup> TECO’s response to Staff’s First Data Request No. 6.

<sup>9</sup> *Id.*

<sup>10</sup> TECO’s response to Staff’s First Data Request No. 15, as revised on June 17, 2019.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Document No. 05189-2019.

- Per Section 9 of the 2017 Settlement, as implemented by Order No. PSC- 2019-0234-AS-EI, <sup>14</sup> due to the passage of the Tax Cuts and Jobs Act of 2017 (TCJA) TECO is required to make a one-time bill credit of \$11,500,000 in January of 2020.
- The passage of the TCJA in December of 2017 also resulted in the loss of bonus depreciation on additions to utility plant which has a negative impact on accumulated deferred income taxes in the Company’s capital structure. This negative impact will increase in the future as less income tax is deferred. [Staff’s First Data Request No. 5; Staff’s Second Data Request at No. 6]
- As of the March 2019 Earnings Surveillance Report, TECO’s rate of return (ROR) is 6.14 percent and its return on equity (ROE) is 10.18 percent. TECO’s current return on equity earnings range is 9.25 percent to 11.25 percent with a mid-point of 10.25 percent. [Staff’s Second Data Request No. 6] The proposed accounting treatment for AMI would result in approximately a \$233,000 higher net operating income and 1 basis point increase in return on equity in the March 2019 Earnings Surveillance Report. [Staff’s Data Request No. 7] TECO projects that by 2021, if this petition is not approved, AMI depreciation expense will have a 19.2 basis points negative impact on ROE. [Staff Data Request No. 7]

## **Analysis**

The first issue to address in determining whether TECO’s petition should be granted is to determine the procedural nature of TECO’s request to delay depreciation of the AMI assets. In short, is this: 1) a *de facto* request for a waiver of Rule 25-6.0142(3), F.A.C., or 2) an addition to, or clarification of, the 2017 Settlement?

A request for waiver of a rule is controlled by Section 120.542, F.S., and Chapter 28-104, F.A.C., which require that the petition for waiver be so named and filed with both the agency and the Joint Administrative Procedures Committee (JAPC). Further, the request must state: 1) the rule or portion of the rule for which waiver is requested; 2) the statute the rule is implementing; 3) the type of action requested; 4) the “specific facts that demonstrate a substantial hardship or violation of principles of fairness that would justify a waiver or variance for the petitioner”; 5) the “reason why the variance or the waiver requested would serve the purposes of the underlying statute”; and 6) whether the waiver is temporary or permanent. TECO’s petition does not meet these requirements. While some of the facts plead by TECO could demonstrate why the variance would serve the purposes of the underlying statutes,<sup>15</sup> there is no argument developed on this point. Additionally, TECO has not filed its petition with JAPC nor asked the Commission to follow the procedures set forth in Section 120.542(6), F.S. Thus, in its present form, the petition does not contain the required information for processing it as a rule waiver even if the procedural filing requirements had been followed or could now be initiated.

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<sup>14</sup> Order No. PSC-2019-0234-AS-EI, issued June 14, 2019, 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, Tampa Electric Company.*

<sup>15</sup> Sections 350.115, 366.041, and 366.06(1), F.S.

At the most basic level, TECO's request seeks to supplement Section 8(b) of the 2017 Settlement by addressing the depreciation treatment of AMI meters both during and at the end of the settlement term thereby allowing AMI meters to be treated differently than they otherwise would be under Rule 25-6.0142, F.A.C. For this reason, staff recommends that TECO's request be treated as an addition to, or clarification of, Section 8(b) of the 2017 Settlement.

The standard for determining whether TECO's request to supplement the 2017 Settlement should be granted is whether the requested accounting treatment is in the public interest when the 2017 Settlement is taken as whole. This is the same standard the Commission applied when initially determining whether the 2017 Settlement should be approved.<sup>16</sup>

Upon review of TECO's response to Staff's First Data Request No. 22 in the 2017 Settlement docket, staff is of the opinion that TECO and the other signatories to the 2017 Settlement intended to depreciate both the AMR and AMI meters during the 2017 Settlement term. This treatment is consistent with Rule 25-6.0142, F.A.C., and the plain language of Section 8(b). It appears that the parties to the 2017 Settlement were concerned about leaving as small an amount as possible of undepreciated AMR expense at the end of the settlement term. This goal is reasonable given that TECO was receiving bonus depreciation under federal tax provisions at that time. The loss of bonus depreciation is a significant change in circumstances. Further, staff agrees that TECO's proposal to reverse all depreciation entries associated with AMI meters will have a very small impact on its financial statements.

Additionally, the Commission's approval of the 2017 Settlement was based, in part, on the fact that the parties negotiated a "stay out" provision of four years during which time base rates would not change, for reasons other than those provided for in the 2017 Settlement, unless TECO earned above or below its authorized range of 9.25 to 11.25 percent.<sup>17</sup> The passage of the TCJA, which took place after the execution of the 2017 Settlement, has had an unexpected negative financial impact on TECO by eliminating bonus depreciation and thereby effectively decreasing the amount of TECO's zero cost capital. If no change is made to the depreciation treatment of AMI meters, the greater level of depreciation expense will further depress TECO's ability to earn within its authorized rate of return range at current base rates.

OPC does not consider TECO's proposal to violate the terms of the 2017 Settlement nor does any other signatory to the 2017 Settlement oppose TECO's request. It is clear that TECO's proposed treatment of the AMI meters will have the effect of decreasing pressure on its ability to earn within its authorized range and increase the likelihood that TECO can maintain its current base rates until December 31, 2021. Given these factors, it is staff's recommendation that the 2017 Settlement, using TECO's proposed treatment of the AMI meters, when taken as a whole, continues to be in the public interest.

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<sup>16</sup> Order No. PSC-2017-0456-S-EI.

<sup>17</sup> 2017 Settlement at Section 1; Order No. PSC-2017-0456-S-EI at 3, 5.

***Conclusion***

Staff recommends that the Commission approve TECO's requested accounting treatment related to its AMI meters because TECO's proposed treatment of AMI meter depreciation expense, when evaluated in light of the whole 2017 Settlement, continues to be in the public interest.

**Issue 2:** Should TECO continue recording depreciation expense on existing AMR meters during the term of the 2017 Settlement?

**Recommendation:** Yes. The continued depreciation of existing AMR meters is consistent with the 2017 Settlement. (Brownless, Higgins)

**Staff Analysis:** It is staff's opinion that the terms of Section 8(b) of the Company's 2017 Settlement, approved by Order No. PSC-2017-0456-S-EI, require TECO to continue recording depreciation of its AMR assets if replaced by AMI assets during the term of the settlement. As such, this issue has already been addressed and ruled upon.<sup>18</sup> Further, if AMR assets are still in use or in-service as defined by Rule 25-6.0142(2)(d), F.A.C., after the 2017 Settlement period, those assets should continue to be depreciated at the then Commission-approved rate.

### **Conclusion**

Staff recommends the Company continue to follow the terms of the 2017 Settlement, specifically Section 8(b), as it relates to the bookkeeping of AMR meters during the settlement period.

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<sup>18</sup> Order No. PSC-2017-0456-S-EI.

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

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

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

**TAMPA ELECTRIC COMPANY  
DOCKET NO. 20170210-EI  
DOCKET NO. 20160160-EI  
STAFF'S FIRST DATA REQUEST  
REQUEST NO. 22  
PAGE 1 OF 4  
FILED: OCTOBER 16, 2017**

22. Please refer to Paragraph 8(b).
- a. Please provide all the information and company's plan, known at this stage, regarding the expected retirements of the coal-fired generating assets or other assets of the magnitude that would ordinarily or otherwise require a capital recovery schedule.
  - b. When does the company expect to begin the retirement of its AMR meters, and how many years does TECO expect it will require to complete the AMR- to- AMI meter replacement?
  - c. What is the expected unrecovered net investment amount, in dollars, associated with the AMR meter retirement each year during the term of the 2017 Amended and Restated Stipulation and Settlement Agreement?
  - d. What will be the estimated percentage of the total investment booked to depreciation Account 37000 – Meters that is expected to be affected by the AMR to AMI meter replacement each year for the period of 2017 - 2021?
  - e. In reference to Rule 25-6.0436(7)(a), F.A.C., and the following excerpt of the Commission's previous order regarding the timely establishment of capital recovery schedules cited below<sup>1</sup>, please explain how the approach of deferring the establishment of the capital recovery schedules described in Paragraph 8(b) would benefit TECO's customers.

Ratepayers should pay their fair share of costs associated with plant which they are receiving service. Unrecovered amounts associated with non-existent plan do not benefit ratepayers. [...] recovery of the identified unrecovered costs associated with planned near-term retirements over a period that matches the remaining period the related assets will provide service ensures intergenerational equity.

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<sup>1</sup> Order No. PSC-10-0153-FOF-EI, issued March 17, 2010, in Docket Nos. 080677-EI and 090130-EI, *In re: Petition for increase in rates by Florida Power & Light Company, and 2009 depreciation and dismantlement study by Florida Power & Light Company*, pages 21-23.



**TAMPA ELECTRIC COMPANY  
DOCKET NO. 20170210-EI  
DOCKET NO. 20160160-EI  
STAFF'S FIRST DATA REQUEST  
REQUEST NO. 22  
PAGE 2 OF 4  
FILED: OCTOBER 16, 2017**

- A. a. The company has four coal-fired generating assets located at Big Bend Station and one IGCC generating unit at its Polk Power station. The existing retirement dates of the Big Bend coal units are 2035 for Unit 1, 2038 for Unit 2, 2041 for Unit 3, and 2049 for Unit 4. The company has been evaluating the remaining life cycle costs of its coal-fired units compared to other options, but has not completed its analysis. A firm decision on when, or if, early retirement of any of those units would take place has not been made.
- b. The company anticipates beginning retirement of its AMR meters in December of 2018. Additionally, the company expects to complete the removal of AMR and replacement to AMI meters in two years.
- c. The net book value of the AMR meters is expected to be approximately \$39 million at the time of removal commencement. The annual depreciation expense expected over the settlement term is approximately \$5 million per year.
- d. Please see attached.

Please note that the asset balances for September 2017 are based on the actual plant records and can be uniquely identified by retirement units. The breakout by type for depreciation expense, reserve and net book value are based on an allocation since the depreciation and reserve amounts for group depreciated assets are not maintained below the depreciation group level.

The AMI Pilot Program for Meters began in 2016, therefore the 2017 reserve balance will include the ending reserve amount from December 2016 in addition to the 2017 depreciation expense.

The 2018 – 2021 plant amounts for AMI are based on estimates at this point in time and are subject to change.

- e. Paragraph 8(b) is a Negotiated Term intended to specify that AMR and coal-fired generation assets, if retired, would remain in plant in service and rate base and would continue to be depreciated at their present depreciation rates as if there were no early retirements until the next depreciation study filed in advance of the next rate case.

**TAMPA ELECTRIC COMPANY  
DOCKET NO. 20170210-EI  
DOCKET NO. 20160160-EI  
STAFF'S FIRST DATA REQUEST  
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PAGE 3 OF 4  
FILED: OCTOBER 16, 2017**

Absent the Commission's approval of the 2017 Agreement, or in the absence of a settlement agreement, the company would seek an accelerated depreciation schedule when the assets were retired and removed from rate base. The accelerated depreciation would result in an increase to depreciation expense, which could contribute to a need for a base rate increase. Pursuant to the 2017 Agreement, the company agrees not to seek rate relief to be effective during the Term, which would include the incremental depreciation amounts in accelerated recovery schedules, which would benefit customers.

TAMPA ELECTRIC COMPANY  
 DOCKET NO. 20170210-EI  
 DOCKET NO. 20160160-EI  
 STAFF'S FIRST DATA REQUEST  
 FILED: OCTOBER 16, 2017

		Plant Balance				
		Sep 2017	2018	2019	2020	2021
37000						
	Other	13,138,130	13,138,130	13,138,130	13,138,130	13,138,130
	AMR	69,655,204	69,655,204	69,655,204	69,655,204	69,655,204
	AMI	1,361,336	10,480,687	91,546,687	176,333,687	181,133,687
	<b>Total</b>	<b>84,154,670</b>	<b>93,274,021</b>	<b>174,340,021</b>	<b>259,127,021</b>	<b>263,927,021</b>
	%AMR Assets	83%	75%	40%	27%	26%
	%AMI Assets	2%	11%	53%	68%	69%

		Annual Depr Expense					Depr Rate
		Sep 2017	2018	2019	2020	2021	
37000							
	Other	709,810	945,945	945,945	945,945	945,945	7.20%
	AMR	3,763,244	5,015,175	5,015,175	5,015,175	5,015,175	7.20%
	AMI	50,413	754,609	6,591,361	12,696,025	13,041,625	
	<b>Total</b>	<b>4,523,467</b>	<b>6,715,729</b>	<b>12,552,481</b>	<b>18,657,145</b>	<b>19,002,745</b>	

		Reserve Balance				
		Sep 2017	2018	2019	2020	2021
37000						
	Other	5,698,630	6,644,576	7,590,521	8,536,466	9,482,412
	AMR	26,180,991	31,196,165	36,211,340	41,226,515	46,241,689
	AMI	58,693	813,303	7,404,664	20,100,690	33,142,315
	<b>Total</b>	<b>31,938,314</b>	<b>38,654,044</b>	<b>51,206,525</b>	<b>69,863,671</b>	<b>88,866,416</b>

		Net Book Value				
		Sep 2017	2018	2019	2020	2021
37000						
	Other	7,439,499	6,493,554	5,547,609	4,601,663	3,655,718
	AMR	43,474,214	38,459,039	33,443,864	28,428,689	23,413,515
	AMI	1,302,643	9,667,384	84,142,023	156,232,997	147,991,372
	<b>Total</b>	<b>52,216,356</b>	<b>54,619,977</b>	<b>123,133,496</b>	<b>189,263,350</b>	<b>175,060,605</b>

# Item 8

State of Florida



# Public Service Commission

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

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

**DATE:** July 25, 2019

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

**FROM:** Division of Economics (Draper, Guffey) *EDJ*  
Office of the General Counsel (Crawford) *SKG*

**RE:** Docket No. 20190138-EC – Petition by Peace River Electric Cooperative, Inc. to establish temporary tariffs for customers previously served by Duke Energy Florida, LLC.

**AGENDA:** 08/06/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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COMMISSION CLERK

## Case Background

On January 28, 2019, the Commission approved an amended territorial agreement (agreement) between Peace River Electric Cooperative (PRECO or utility) and Duke Energy Florida, LLC (DEF) in Hardee, Highlands, Polk, and Osceola Counties.<sup>1</sup> Through the agreement, PRECO and DEF (the petitioners) revised the service boundaries to serve customers more reliably and economically. Under the agreement, approximately 2,750 customers in Hardee County and a small area in southern Polk County will be transferred from DEF to PRECO. The petitioners stated that transferring customers from DEF to PRECO will eliminate duplication of services, create operational efficiencies for both utilities, and ensure customers continue to receive safe

<sup>1</sup> Order No. PSC-2019-0048-PAA-EU, issued January 28, 2019, in Docket No. 20180159-EU, *In re: Joint Petition for approval of amendment to territorial agreement in Hardee, Highlands, Polk, and Osceola Counties, by Peace River Electric Cooperative and Duke Energy Florida, LLC.*

and reliable service.<sup>2</sup> PRECO notified its customers that the transfer of customers from DEF to PRECO is scheduled to begin on August 1, 2019.

On June 26, 2019, PRECO filed in Docket No. 20190000-OT, the Commission's undocketed matters, tariffs applicable to the customers that were previously served by DEF.<sup>3</sup> The tariffs were designed to allow the transferred customers to be billed by PRECO the current DEF rates, if beneficial to the customer, for a period up to five years. Based on discussions with staff, PRECO filed revised tariffs on July 12, 2019, that included a three-year transition period (instead of five years as originally proposed by PRECO). On July 23, 2019, the PRECO board of directors approved the proposed tariffs contingent on final approval by the Commission.

The Commission's jurisdiction over rural electric cooperatives can be found in Section 366.04(2), Florida Statutes (F.S.). The Commission does not have jurisdiction over the total revenues of a rural electric cooperative; however, the Commission has jurisdiction over territorial agreements and rate structure. Rule 25-9.051(7), Florida Administrative Code (F.A.C.), defines rate structure as the classification system used in justifying different rates between various customer classes.

The Commission's Administrative Procedures Manual (APM) provides guidance for administrative approval by staff for filings made by rural electric cooperatives. The APM states that certain filings cannot be administratively approved by staff. Specifically, APM 2.07.C.5.a(5) provides that a filing by a rural electric cooperative that contains new pricing concepts shall be brought before the Commission. Typically, in territorial agreements, transferred customers start paying the rates and charges of the utility they are being transferred to with their first bill under their new provider. Staff believes that PRECO's proposal to allow the transferred customers to stay on the DEF rates for a transition period constitutes a new pricing concept. Therefore, staff opened the instant docket.

This recommendation addresses PRECO's proposed temporary tariffs as filed on July 12, 2019, and the tariffs are shown in Attachment A to the recommendation. The Commission has jurisdiction pursuant to Section 366.04(2), F.S.

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<sup>2</sup> *Id.* at page 3

<sup>3</sup> Docket No. 20190000-OT, Document No. 05171-2019.

## Discussion of Issues

**Issue 1:** Should the Commission approve PRECO's request to establish temporary tariffs for customers previously served by DEF?

**Recommendation:** Yes, PRECO's temporary tariffs as shown in Attachment A to the recommendation should be approved. The proposed temporary tariffs are designed to help transition customers and are not unduly discriminatory under Rule 29-9.053(1)(d), F.A.C. At the end of the 3-year transition period (August 1, 2022) PRECO should withdraw the temporary tariffs. (Draper, Guffey)

**Staff Analysis:** The temporary tariffs are applicable to the residential and commercial customers previously served by DEF and that were transferred from DEF to PRECO pursuant to the agreement approved in Order No. PSC-2019-0048-PAA-EU. The tariffs are available for three years (August 1, 2019 through August 1, 2022). Pursuant to the temporary tariffs, the transferred customers will have the option to stay on the DEF rate, or switch to the applicable PRECO rates at any time after the transfer, if it is advantageous for them to do so. However, the customer cannot switch back to the DEF rate after electing the PRECO rate. PRECO states that based on billing data on the acquired customers, PRECO will work with the new customers to determine if they are better off on the DEF or the PRECO rates. After the three-year period, all transferred customers will take service under the PRECO rates. PRECO does not intend to adjust the rates contained in the temporary tariffs to reflect changes in DEF's rates.

PRECO explained that it will start transferring customers on or around August 1, 2019 and continue until the process is complete in early 2020. Based on current active customer counts, PRECO expects to transfer 2,745 customers (2,353 residential and 392 commercial customers). As of July 2019, the residential 1,000 kilowatt-hour (kWh) bill for a PRECO customer is \$124.06 and \$125.36 for a DEF customer (calculations do not include Gross Receipts Taxes).

While the difference between PRECO and DEF customers for the residential 1,000 kWh bill is less than one percent, depending on usage, residential customers would see varying bill impacts as a result of the difference in rate design between PRECO and DEF. Specifically, DEF's residential customer charge is \$9.66, while PRECO's residential customer charge is \$26.50. The customer charge is a fixed monthly charge and does not vary based on usage. On the other hand, PRECO's energy charge, which is billed based on kWh usage, is lower than DEF's energy charge. Therefore, residential customers that use approximately less than 900 kWhs per month would experience lower bills under the current DEF rates; residential customers that use more than approximately 900 kWhs per month would experience lower bills under the current PRECO rates.

Regarding the commercial customers being transferred from DEF to PRECO, the utility explained that Duke's commercial rate schedules differ with respect to applicability. For example, DEF offers a General Service Time of Use rate, while PRECO does not. PRECO explained that once it has billing information on the transferred commercial customers, the utility will be able to determine which commercial PRECO rate schedule the customer would qualify for and whether it would be advantageous for the customer to choose a PRECO rate or remain on the temporary tariff that contains the DEF rates.

To support the temporary tariffs, PRECO explained that the utility is committed to make the transfer for the acquired customers as easy as possible. PRECO further states that the temporary, or transitional rates, are of limited duration and are not unduly discriminatory under Rule 29-9.053(1)(d), F.A.C.

Staff recognizes PRECO's desire to help customers transition from DEF to PRECO and to reduce any rate shock. However, PRECO should be cautioned if it enters into another territorial agreement where it seeks to offer temporary rates, the proposed territorial agreement should address the utility's plans to offer temporary rates for any transferred customers.

The petition for the territorial agreement, in accordance with Rule 25-6.0440(1)(d), F.A.C., stated that the impacted customers were notified by mail of the transfer and provided a description of the differences in rates between DEF and PRECO.<sup>4</sup> Additionally, PRECO stated it held an open house in Wauchula on August 14, 2018, for customers affected by the proposed transfers. However, none of the information included in the petition for approval of the territorial agreement indicated that the transferred customers would have the option to continue being billed the DEF rates for a transition period. Staff is also not aware of a prior Commission-approved territorial agreement that provides for transferred customers to remain on another utility's rates.

### **Conclusion**

Based on the information provided by PRECO, staff believes that the proposed temporary tariffs are designed to help transition customers and are not unduly discriminatory under Rule 29-9.053(1)(d), F.A.C; therefore, staff recommends approval. At the end of the 3-year period (August 1, 2022) PRECO should withdraw the temporary tariffs.

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<sup>4</sup> Exhibit F of the petition filed in Docket No. 20180159-EU.



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

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

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



VOLUME II

FIRST REVISED SHEET NO. 7.00  
CANCELLED ORIGINAL SHEET NO. 7.00

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GS-DGE	General Service – Renewable Distributed Generation Energy	9.10 – 9.11
GS-DGD	General Service – Renewable Distributed Generation Demand	9.20 – 9.21
I-S	Irrigation Service	9.30
GSD-S	General Service – Demand	9.60 – 9.61
GSD-TOU	General Service – Demand – Time-Of-Use	9.70 – 9.71
GSD-PM	General Service – Demand – Primary Metered	9.80 – 9.81
GSD-ITV	General Service – Demand – Industrial Transmission Voltage	9.90 – 9.91
GSD-INT	General Service – Demand – Time-of-Use Industrial Interruptible Service	10.00 – 10.01
<u>GS1-DEF</u>	<u>General Service - Duke Territory</u>	<u>10.10</u>
<u>GST1-DEF</u>	<u>General Service Time-Of-Use - Duke Territory</u>	<u>10.20-10.21</u>
<u>GSD1-DEF</u>	<u>General Service Demand - Duke Territory</u>	<u>10.30</u>
<u>GSDT1-DEF</u>	<u>General Service Demand Time-Of-Use - Duke Territory</u>	<u>10.40-10.41</u>
<del>L-SP</del>	<del>Lighting Service Private Area Lighting</del>	<del>11.00 – 11.02</del>
<del>L-S</del>	<del>Reserved for Future Use Decorative Lighting</del>	<del>11.10 – 11.11</del>
NM	Net Metering Service	13.00 – 13.01
--	Cost of Power Adjustment Clause	15.00
--	Tax Adjustment Clause	16.00

Issued By: Randall W. Shaw, General Manager/CEO

Effective: April 1, 2019



Peace River Electric  
Cooperative, Inc.  
A Touchstone Energy Cooperative

VOLUME II

ORIGINAL SHEET NO. 8.50

**RESIDENTIAL SERVICE – DUKE TERRITORY  
RS-DEF**

**AVAILABILITY**

Available to customers located in Hardee, Highlands, Osceola, and Polk counties in territory previously served by Duke Energy Florida, LLC (DEF). Communities include but are not limited to Bowling Green, Zolfo Springs, Fort Meade, and Frostproof.

**APPLICABILITY**

Applicable to customers previously served by DEF on Rate Schedule RS-1 that were transferred to the Cooperative pursuant to PSC Order No. PSC-2019-0048-PAA-EU approving the territorial agreement between DEF and the Cooperative effective February 22, 2019.

**CHARACTER OF SERVICE**

Single or three phase (where available), 60 hertz, at available secondary voltages.

**LIMITATIONS OF SERVICE**

Standby or resale service not permitted hereunder.

**RATE**

Facilities Use Charge	\$ 9.66	per month
Energy Charge:		
0 – 1,000 kWh	\$ 0.11570	per kWh
Above 1,000 kWh	\$ 0.14196	per kWh

**MINIMUM CHARGE**

The Minimum Charge shall be the Facilities Use Charge plus applicable taxes.

**CONDITIONS OF SERVICE**

1. This rate schedule will be available to the affected customers under the applicability clause of this rate for a period of three (3) years from August 1, 2019.
2. The affected customer may choose to switch to an available PRECO rate at any time after the transfer. The customer cannot switch back to this rate after electing a PRECO rate.
3. Affected customers whose account is final billed for any reason will not be eligible to be reconnected on this rate.
4. The customers under this rate will be subject to all Service Rules and Regulations of the Cooperative.
5. The customers under this rate will be subject to Miscellaneous Charges and Fees on sheet 4.10 of the filed rate tariff of the Cooperative.

**BILLING ADJUSTMENTS**

The above rates shall be increased or decreased subject to the provisions of the Tax Adjustment Clause (Sheet 16.00).

**TERM OF PAYMENT**

The above rates are net. Bills are due upon receipt and payable within twenty-one (21) days of billing date.

Issued By: Randall W. Shaw, General Manager/CEO



Peace River Electric  
Cooperative, Inc.  
A Touchstone Energy Cooperative

VOLUME II

ORIGINAL SHEET NO. 8.60

**RESIDENTIAL SEASONAL SERVICE – DUKE TERRITORY  
RSS-DEF**

**AVAILABILITY**

Available to customers located in Hardee, Highlands, Osceola, and Polk counties in territory previously served by Duke Energy Florida, LLC (DEF). Communities include but are not limited to Bowling Green, Zolfo Springs, Fort Meade, and Frostproof.

**APPLICABILITY**

Applicable to customers previously served by DEF on Rate Schedule RS-1 and rider RSS-1 that were transferred to the Cooperative pursuant to PSC Order No. PSC-2019-0048-PAA-EU approving the territorial agreement between DEF and the Cooperative effective February 22, 2019.

**CHARACTER OF SERVICE**

Single or three phase (where available), 60 hertz, at available secondary voltages.

**LIMITATIONS OF SERVICE**

Standby or resale service not permitted hereunder.

**RATE**

Facilities Use Charge	\$ 9.66	per month (Standard)
Facilities Use Charge	\$ 5.05	per month (Seasonal)
Energy Charge:		
0 – 1,000 kWh	\$ 0.11570	per kWh
Above 1,000 kWh	\$ 0.14196	per kWh

**MINIMUM CHARGE**

The Minimum Charge shall be the Facilities Use Charge plus applicable taxes.

**SEASONAL BILLING PERIODS**

The billing months of March through October.

**SPECIAL PROVISIONS**

1. To qualify for service under this rate, the customer's premise must be occupied each year during a portion of the billing months of November through February and must not be occupied at least three months during the billing months of March through October.
2. The maximum allowable consumption for a seasonal billing period is 210 kWh. However, if the seasonal billing period exceeds 30 days, the maximum allowable consumption is increased by seven (7) kWh per day.
3. If kWh usage during the seasonal billing period is less than or equal to the maximum allowable consumption for the billing period, the seasonal customer charge will apply. For non-seasonal billing months and those seasonal billing months that exceed the allowed maximum allowable consumption, the standard customer charge will apply.

"Continued to Sheet No. 8.61"

Issued By: Randall W. Shaw, General Manager/CEO



Peace River Electric  
Cooperative, Inc.  
A Touchstone Energy Cooperative

VOLUME II

ORIGINAL SHEET NO. 8.61

"Continued from Sheet No. 8.60"

**CONDITIONS OF SERVICE**

1. This rate schedule will be available to the affected customers under the applicability clause of this rate for a period of three (3) years from August 1, 2019.
2. The affected customer may choose to switch to an available PRECO rate at any time after the transfer. The customer cannot switch back to this rate after electing a PRECO rate.
3. Affected customers whose account is final billed for any reason will not be eligible to be reconnected on this rate.
4. The customers under this rate will be subject to all Service Rules and Regulations of the Cooperative.
5. The customers under this rate will be subject to Miscellaneous Charges and Fees on sheet 4.10 of the filed rate tariff of the Cooperative.

**BILLING ADJUSTMENTS**

The above rates shall be increased or decreased subject to the provisions of the Tax Adjustment Clause (Sheet 16.00).

**TERM OF PAYMENT**

The above rates are net. Bills are due upon receipt and payable within twenty-one (21) days of billing date.

Issued By: Randall W. Shaw, General Manager/CEO



VOLUME II

ORIGINAL SHEET NO. 10.10

**GENERAL SERVICE NON-DEMAND – DUKE TERRITORY  
GS1-DEF**

**AVAILABILITY**

Available to customers located in Hardee, Highlands, Osceola, and Polk counties in territory previously served by Duke Energy Florida, LLC (DEF). Communities include but are not limited to Bowling Green, Zolfo Springs, Fort Meade, and Frostproof.

**APPLICABILITY**

Applicable to customers previously served by DEF on Rate Schedule GS-1 that were transferred to the Cooperative pursuant to PSC Order No. PSC-2019-0048-PAA-EU approving the territorial agreement between DEF and the Cooperative effective February 22, 2019.

**CHARACTER OF SERVICE**

Single or three phase (where available), 60 hertz, at available secondary voltages.

**LIMITATIONS OF SERVICE**

Standby or resale service not permitted hereunder.

**RATE**

Facilities Use Charge	\$12.78	per month
Energy Charge:	\$ 0.12288	per kWh

**MINIMUM CHARGE**

The Minimum Charge shall be the Facilities Use Charge plus applicable taxes.

**CONDITIONS OF SERVICE**

1. This rate schedule will be available to the affected customers under the applicability clause of this rate for a period of three (3) years from August 1, 2019.
2. The affected customer may choose to switch to an available PRECO rate at any time after the transfer. The customer cannot switch back to this rate after electing a PRECO rate.
3. Affected customers whose account is final billed for any reason will not be eligible to be reconnected on this rate.
4. The customers under this rate will be subject to all Service Rules and Regulations of the Cooperative.
5. The customers under this rate will be subject to Miscellaneous Charges and Fees on sheet 4.10 of the filed rate tariff of the Cooperative.

**BILLING ADJUSTMENTS**

The above rates shall be increased or decreased subject to the provisions of the Tax Adjustment Clause (Sheet 16.00).

**TERM OF PAYMENT**

The above rates are net. Bills are due upon receipt and payable within twenty-one (21) days of billing date.

Issued By: Randall W. Shaw, General Manager/CEO



VOLUME II

ORIGINAL SHEET NO. 10.20

**GENERAL SERVICE NON-DEMAND TOU – DUKE TERRITORY  
GST1-DEF**

**AVAILABILITY**

Available to customers located in Hardee, Highlands, Osceola, and Polk counties in territory previously served by Duke Energy Florida, LLC (DEF). Communities include but are not limited to Bowling Green, Zolfo Springs, Fort Meade, and Frostproof.

**APPLICABILITY**

Applicable to customers previously served by DEF on Rate Schedule GST-1 that were transferred to the Cooperative pursuant to PSC Order No. PSC-2019-0048-PAA-EU approving the territorial agreement between DEF and the Cooperative effective February 22, 2019.

**CHARACTER OF SERVICE**

Single or three phase (where available), 60 hertz, at available secondary voltages.

**LIMITATIONS OF SERVICE**

Standby or resale service not permitted hereunder.

**RATE**

Facilities Use Charge	\$20.97	per month
On-Peak Energy Charge:	\$ 0.25139	per kWh
Off-Peak Energy Charge:	\$ 0.06392	per kWh

**MINIMUM CHARGE**

The minimum monthly charge shall be the facilities use charge. Where special equipment to serve the customer is required, the Cooperative may require a specified minimum charge.

**DETERMINATION OF PERIODS**

1. On-Peak Periods
  - a. For calendar months of November through March,  
Monday through Friday\*: 6:00 a.m. to 10:00 a.m. and  
6:00 p.m. to 10:00 p.m.
  - b. For calendar months of April through October,  
Monday through Friday\*: 12:00 Noon to 9:00 p.m.

\* The following general holidays shall be excluded from the On-Peak Periods: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas. In the event the holiday occurs on a Saturday or Sunday, the adjacent weekday shall be excluded from the On-Peak Periods.

2. Off-Peak Periods – The designated Off-Peak Periods shall be all periods other than the designated On-Peak Periods set forth in (1) above.

"Continued to Sheet No. 10.21"

Issued By: Randall W. Shaw, General Manager/CEO



Peace River Electric  
Cooperative, Inc.  
A Touchstone Energy Cooperative

VOLUME II

ORIGINAL SHEET NO. 10.21

"Continued from Sheet No. 10.20"

**CONDITIONS OF SERVICE**

1. This rate schedule will be available to the affected customers under the applicability clause of this rate for a period of three (3) years from August 1, 2019.
2. The affected customer may choose to switch to an available PRECO rate at any time after the transfer. The customer cannot switch back to this rate after electing a PRECO rate.
3. Affected customers whose account is final billed for any reason will not be eligible to be reconnected on this rate.
4. The customers under this rate will be subject to all Service Rules and Regulations of the Cooperative.
5. The customers under this rate will be subject to Miscellaneous Charges and Fees on sheet 4.10 of the filed rate tariff of the Cooperative.

**BILLING ADJUSTMENTS**

The above rates shall be increased or decreased subject to the provisions of the Tax Adjustment Clause (Sheet 16.00).

**TERM OF PAYMENT**

The above rates are net. Bills are due upon receipt and payable within twenty-one (21) days of billing date.

Issued By: Randall W. Shaw, General Manager/CEO





VOLUME II

ORIGINAL SHEET NO. 10.30

**GENERAL SERVICE DEMAND – DUKE TERRITORY  
GSD1-DEF**

**AVAILABILITY**

Available to customers located in Hardee, Highlands, Osceola, and Polk counties in territory previously served by Duke Energy Florida, LLC (DEF). Communities include but are not limited to Bowling Green, Zolfo Springs, Fort Meade, and Frostproof.

**APPLICABILITY**

Applicable to customers previously served by DEF on Rate Schedule GSD-1 that were transferred to the Cooperative pursuant to PSC Order No. PSC-2019-0048-PAA-EU approving the territorial agreement between DEF and the Cooperative effective February 22, 2019.

**CHARACTER OF SERVICE**

Single or three phase (where available), 60 hertz, at available secondary voltages.

**LIMITATIONS OF SERVICE**

Standby or resale service not permitted hereunder.

**RATE**

Facilities Use Charge	\$12.78	per month
Demand Charge:	\$10.70	per kW of Billing Demand
Energy Charge:	\$ 0.069940	per kWh

**MINIMUM CHARGE**

The minimum charge shall be the Facilities Use Charge.

**DETERMINATION OF BILLING DEMAND**

The Billing Demand shall be the highest integrated 15-minute kW measurement during the current billing period.

**CONDITIONS OF SERVICE**

1. This rate schedule will be available to the affected customers under the applicability clause of this rate for a period of three (3) years from August 1, 2019.
2. The affected customer may choose to switch to an available PRECO rate at any time after the transfer. The customer cannot switch back to this rate after electing a PRECO rate.
3. Affected customers whose account is final billed for any reason will not be eligible to be reconnected on this rate.
4. The customers under this rate will be subject to all Service Rules and Regulations of the Cooperative.
5. The customers under this rate will be subject to Miscellaneous Charges and Fees on sheet 4.10 of the filed rate tariff of the Cooperative.

**BILLING ADJUSTMENTS**

The above rates shall be increased or decreased subject to the provisions of the Tax Adjustment Clause (Sheet 16.00).

**TERM OF PAYMENT**

The above rates are net. Bills are due upon receipt and payable within twenty-one (21) days of billing date.

Issued By: Randall W. Shaw, General Manager/CEO



VOLUME II

ORIGINAL SHEET NO. 10.40

**GENERAL SERVICE DEMAND TIME OF USE – DUKE TERRITORY  
GSDT1-DEF**

**AVAILABILITY**

Available to customers located in Hardee, Highlands, Osceola, and Polk counties in territory previously served by Duke Energy Florida, LLC (DEF). Communities include but are not limited to Bowling Green, Zolfo Springs, Fort Meade, and Frostproof.

**APPLICABILITY**

Applicable to customers previously served by DEF on Rate Schedule GSDT-1 that were transferred to the Cooperative pursuant to PSC Order No. PSC-2019-0048-PAA-EU approving the territorial agreement between DEF and the Cooperative effective February 22, 2019.

**CHARACTER OF SERVICE**

Single or three phase (where available), 60 hertz, at available secondary voltages.

**LIMITATIONS OF SERVICE**

Standby or resale service not permitted hereunder.

**RATE**

Facilities Use Charge	\$ 20.97	per month
Demand Charge:		
Billing Demand	\$ 6.15	per kW of Billing Demand
On-Peak Demand	\$ 4.49	per kW of On-Peak Demand
Energy Charge:		
On-Peak Energy	\$ 0.11148	per kWh
Off-Peak Energy	\$ 0.04848	per kWh
Fixed Charge Rate	\$ Per Agreement	

**MINIMUM CHARGE**

The minimum monthly charge shall be the facilities use charge. Where special equipment to serve the customer is required, the Cooperative may require a specified minimum charge.

**DETERMINATION OF PERIODS**

1. On-Peak Periods
  - a. For calendar months of November through March,  
Monday through Friday\*: 6:00 a.m. to 10:00 a.m. and  
6:00 p.m. to 10:00 p.m.
  - b. For calendar months of April through October,  
Monday through Friday\*: 12:00 Noon to 9:00 p.m.

\* The following general holidays shall be excluded from the On-Peak Periods: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas. In the event the holiday occurs on a Saturday or Sunday, the adjacent weekday shall be excluded from the On-Peak Periods.

"Continued to Sheet No. 10.41"

Issued By: Randall W. Shaw, General Manager/CEO



VOLUME II

ORIGINAL SHEET NO. 10.41

"Continued from Sheet No. 10.40"

2. Off-Peak Periods – The designated Off-Peak Periods shall be all periods other than the designated On-Peak Periods set forth in (1) above.

**DETERMINATION OF BILLING DEMANDS:**

1. The billing demands shall be the following:
  - a. The Base Demand shall be the maximum 15-minute kW demand established during the current billing period.
  - b. The On-Peak Demand shall be the maximum 15-minute kW demand established during designated On-Peak Periods during the current billing period.

**CONDITIONS OF SERVICE**

1. This rate schedule will be available to the affected customers under the applicability clause of this rate for a period of three (3) years from August 1, 2019.
2. The affected customer may choose to switch to an available PRECO rate at any time after the transfer. The customer cannot switch back to this rate after electing a PRECO rate.
3. Affected customers whose account is final billed for any reason will not be eligible to be reconnected on this rate.
4. The customers under this rate will be subject to all Service Rules and Regulations of the Cooperative.
5. The customers under this rate will be subject to Miscellaneous Charges and Fees on sheet 4.10 of the filed rate tariff of the Cooperative.

**BILLING ADJUSTMENTS**

The above rates shall be increased or decreased subject to the provisions of the Tax Adjustment Clause (Sheet 16.00).

**TERM OF PAYMENT**

The above rates are net. Bills are due upon receipt and payable within twenty-one (21) days of billing date.

Issued By: Randall W. Shaw, General Manager/CEO

# Item 9

State of Florida



# Public Service Commission

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

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

**DATE:** July 25, 2019

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

**FROM:** Division of Economics (Guffey, Coston) *SKG WJE*  
Office of the General Counsel (Simmons) *JSC*

*EDD RGN*

**RE:** Docket No. 20190127-GU – Petition for approval of transportation service agreement with Florida Public Utilities Company by Peninsula Pipeline Company, Inc.

**AGENDA:** 08/06/19 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Place before Docket No. 20190128-GU.

RECEIVED-FPSC  
2019 JUL 24 PM 9:58  
COMMISSION CLERK

## Case Background

On June 10, 2019, Peninsula Pipeline Company, Inc. (Peninsula) filed a petition seeking approval of a firm transportation service agreement (Agreement) between Peninsula and Florida Public Utilities Company (FPUC), collectively the parties. Peninsula operates as a natural gas transmission company as defined by Section 368.103(4), Florida Statutes (F.S.).<sup>1</sup> FPUC is a local distribution company (LDC) subject to regulatory jurisdiction of the Commission pursuant to Chapter 366, F.S.

<sup>1</sup> Order No. PSC-06-0023-DS-GP, issued January 9, 2006, in Docket No. 050584-GP, *In re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S., et seq.*

By Order No. PSC-07-1012-TRF-GP,<sup>2</sup> Peninsula received approval of an intrastate gas pipeline tariff that allows it to construct and operate intrastate pipeline facilities and to actively pursue agreements with natural gas customers. Peninsula provides transportation service only; it does not engage in the sale of natural gas. Pursuant to Order No. PSC-07-1012-TRF-GP, Peninsula is allowed to enter into certain gas transmission agreements without prior Commission approval.<sup>3</sup> However, Peninsula is requesting Commission approval of this proposed Agreement as it does not fit any of the criteria enumerated in the tariff for which Commission approval would not be required.<sup>4</sup> The parties are subsidiaries of Chesapeake Utility Corporation (Chesapeake), and agreements between affiliated companies must be approved by the Commission pursuant to Section 368.105, F.S., and Order No. PSC-07-1012-TRF-GP.

Pursuant to the proposed Agreement (Attachment A to the recommendation), Peninsula will construct and operate natural gas pipelines in western Palm Beach County. During its evaluation of the petition, staff issued two data requests to the parties for which responses were received on July 2 and July 15, 2019. The Commission has jurisdiction over this matter pursuant to Sections 366.05(1), 366.06, and 368.105, F.S.

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<sup>2</sup> Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, in Docket No. 070570-GP, *In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline Company, Inc.*

<sup>3</sup> Peninsula Pipeline Company, Inc., *Intrastate Pipeline Tariff*, Original Vol. 1, Original Sheet No. 11, Section 3.

<sup>4</sup> Peninsula Pipeline Company, Inc., *Intrastate Pipeline Tariff*, Original Vol. 1, Original Sheet No. 12, Section 4.

## Discussion of Issues

**Issue 1:** Should the Commission approve the proposed Agreement between Peninsula and FPUC dated May 17, 2019?

**Recommendation:** Yes, the Commission should approve the proposed Agreement between Peninsula and FPUC dated May 17, 2019. (Guffey)

**Staff Analysis:** FPUC provides natural gas service to residential, commercial, and industrial customers in Palm Beach County and receives deliveries of natural gas to serve these customers from the Florida Gas Transmission (FGT) interstate pipeline. The petition explains that the proposed Agreement has been necessitated by a request for service by FPUC to enable FPUC to provide service to existing and future customers in this area, specifically the Florida Research Park and four new residential developments that plan on utilizing natural gas. The four residential developments are in various stages of development. The parties project that the new developments will serve approximately 10,000 residential, commercial, and industrial customers. In addition, the parties explained, the proposed pipeline interconnections will enhance FPUC's ability to provide industrial customers in the area with higher natural gas pressure.

To address the increase in customers and demand, the parties entered into the proposed Agreement. The proposed Agreement specifies an initial term of 20 years and thereafter shall be extended for additional 10-year increments, unless either party gives no less than 180 days written notification of termination. Pursuant to the proposed Agreement, Peninsula will undertake the three new projects described below and shown in Attachment B to the recommendation.

First, Peninsula would construct an interconnection with the Florida Southeast Connection, LLC, (FSC)<sup>5</sup> along State Road 710 near the Florida Research Park in Palm Beach County. The FSC is a wholly owned subsidiary of NextEra Energy, Inc., and owns and operates natural gas pipelines in central Florida. The FSC pipeline connects to the interstate Sabal Trail Pipeline and became operational in June 2017. Peninsula would then construct 4,000 feet of 6 inch steel pipeline to a new custody transfer point with FPUC's distribution system to serve, among other things, the Florida Research Park.

Second, Peninsula would construct an interconnection with the FSC near the Florida Turnpike. From this interconnection point, Peninsula would build 30,000 feet of 8 inch steel pipeline, 300 feet of 4 inch steel pipeline, and 1,000 feet of 2 inch steel pipeline to two new custody transfer points with FPUC's distribution system to serve the Avenir and Ancient Tree residential developments.

Finally, Peninsula would construct an interconnection with Florida City Gas.<sup>6</sup> From this interconnection, Peninsula would construct approximately 18,000 feet of 12 inch steel pipeline to a new custody transfer point with FPUC's distribution system to serve the Arden residential

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<sup>5</sup> Follow up email response of July 15, 2019 from FPUC clarified that the Florida Southeast Connector referenced on page 5 of the petition should be Florida Southeast Connection.

<sup>6</sup> This arrangement is referred to as an LDC to LDC interconnection and allows FPUC to receive natural gas deliveries to serve its customers through a pipeline owned by Florida City Gas.

development. Peninsula would also construct approximately 32,000 feet of 8 inch steel pipeline and 6,000 feet of 6 inch polyethylene pipeline to serve the West Lake residential development.

In response to staff's first data request, the parties state that FPUC did not issue a Request for Proposals (RFP) to obtain bids from other entities to construct the pipeline. However, Peninsula did engage in a conversation with the FSC regarding the possibility of FSC building the pipeline in south Florida. According to Peninsula, FSC declined to bid on the pipeline construction portion of the project citing laterals of this size and operational specifications are not something they are interested in pursuing.

The parties assert that the negotiated monthly reservation charge in the proposed Agreement is consistent with a market rate since they are within the ranges of rates set forth in similar agreements as required by Section 368.105(3)(b), F.S. FPUC is proposing to recover its payments to Peninsula through the Purchased Gas Adjustment (PGA) and the swing service rider<sup>7</sup> mechanisms, consistent with other gas transmission pipeline costs incurred by FPUC. The swing service rider allows FPUC to recover intrastate capacity costs from their transportation customers and is a cents per therm charge that is included in a monthly gas bill of transportation customers. FPUC provided information showing that the impact on the PGA will be minor (\$0.01823 per therm for 2019). While FPUC will incur costs associated with this service expansion, any new load will help spread the costs over a larger customer base.

The benefit of Peninsula, as opposed to FPUC, constructing the new pipeline is primarily that Peninsula's construction and ownership of the pipeline will avoid FPUC undertaking the costs and risks for the three projects, which in turn protects FPUC's ratepayers. Peninsula stated that engineering and permitting is currently underway with construction projected to be completed by January 2020. Approval of this petition would also allow FPUC to transport gas via the FSC interstate pipeline and Florida City Gas pipeline, in addition to the FGT pipeline.

### **Conclusion**

Based on the petition and the parties' responses to staff's data requests, staff believes that the proposed Agreement is cost effective, reasonable, meets the requirements of Section 368.105, F.S., and benefits FPUC's customers. Staff therefore recommends approval of the proposed Agreement between the parties dated May 17, 2019.

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<sup>7</sup> Order No. PSC-2018-0557-TRF-GU, issued November 20, 2018, in Docket No. 20180158-GU, *In re: Joint petition for approval of swing service rider, by Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade, and Florida Division of Chesapeake Utilities Corporation.*



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

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

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

**Petition for Approval of Transportation Service Agreement for Palm Beach County with Florida Public Utilities Company ("PB Expansion") by Peninsula Pipeline Company, Inc.**

## ATTACHMENT A

### Transportation Service Agreement

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT entered into this 17<sup>th</sup> day of May, 2019, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company"), and Florida Public Utilities Company, a corporation of the State of Florida (herein called "Shipper")(jointly herein "Parties").

WITNESSETH

WHEREAS, Shipper desires to obtain Firm Transportation Service ("FTS") from Company; and

WHEREAS, Company desires to provide Firm Transportation Service to Shipper in accordance with the terms hereof.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, Company and Shipper do covenant and agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Unless otherwise defined in this Agreement, all definitions for terms used herein have the same meaning as provided in Company's tariff.

**ARTICLE II**  
**QUANTITY & UNAUTHORIZED USE**

2.1 The Maximum Daily Transportation Quantity ("MDTQ") and the Maximum Hourly Transportation Percentage ("MHTP") shall be set forth on Exhibit A attached hereto. The applicable MDTQ shall be the largest daily quantity of Gas, expressed in Dekatherms, which Company is obligated to transport on a firm basis and make available for delivery for the account of Shipper under this FTS Agreement on any one Gas Day.

2.2 If, on any Day, Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, the applicable rate for such unauthorized use of transportation quantities shall be as set forth on Exhibit A of this Agreement ("Unauthorized Use Rate").

**ARTICLE III**  
**FIRM TRANSPORTATION SERVICE RESERVATION CHARGE**

3.1 The Monthly Reservation Charge for Firm Transportation Service provided under this Agreement shall be as set forth on Exhibit A of this Agreement and shall be charged to Shipper beginning with the month in which Company issues notice of the in-service date of the Pipeline to Shipper and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

3.2 The parties agree to execute and file with the Commission a petition for approval of this Agreement within thirty (30) days of execution by both parties.

3.3 If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should increase or decrease any present tax or levy any additional or eliminate any existing tax impacting amounts billed and paid for service provided by Company under this Agreement, such change take effect for purposes of billing and payment under this Agreement effective as of the effective date of such modification to tax or levy.

**ARTICLE IV**  
**TERM AND TERMINATION**

4.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution ("Execution Date") by both parties and shall continue in full force and effect for an initial period of twenty (20) years from the in-service date ("Initial Term"). Thereafter, the Agreement shall be extended for additional 10-year increments ("Renewed Term"), unless either party gives written notice of termination to the other party, not less than, one hundred eighty (180) days prior to the expiration of the Initial Period or any Renewed Term (jointly "Current Term"). This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the parties' respective rights under applicable law.

4.2 No less than 60-days before expiration of the Current Term, either party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewal Term. Neither Party is obligated to, but may, agree to any mutually-acceptable modification to the Agreement for the subsequent Renewal Term. In the event the parties reach agreement for a modification to the Agreement for the subsequent Renewal Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing prior to the expiration of the then-current term.

4.3 Any portion of this Agreement necessary to resolve monthly balancing and operational controls under this Agreement, pursuant to the Rules and Regulations of Company's tariff, shall survive the other parts of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.4 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness, otherwise violates the Rules and Regulations of Company's tariff, or defaults on this Agreement, Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's tariff.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

**ARTICLE V**  
**COMPANY'S TARIFF PROVISIONS**

5.1 Company's tariff approved by the Commission, including any amendments thereto approved by the Commission during the term of this Agreement, is hereby incorporated into this Agreement and made a part hereof for all purposes. In the event of any conflict between Company's tariff and the specific provisions of this Agreement, the latter shall prevail, in the absence of a Commission Order to the contrary.

**ARTICLE VI**  
**REGULATORY AUTHORIZATIONS AND APPROVALS**

6.1 Company's obligation to provide service is conditioned upon receipt and acceptance of any necessary regulatory authorization to provide Firm Transportation Service for Shipper in accordance with the Rules and Regulations of Company's tariff.

**ARTICLE VII**  
**DELIVERY POINT(S) AND POINT(S) OF DELIVERY**

7.1 The Delivery Point(s) for all Gas delivered for the account of Shipper into Company's pipeline system under this Agreement, shall be as set forth on Exhibit A attached hereto.

7.2 The Point(s) of Delivery shall be as set forth on Exhibit A attached hereto.

7.3 Shipper shall cause Transporter to deliver to Company at the Delivery Point(s) on the Transporter's system, the quantities of Gas to be transported by Company hereunder. Company shall have no obligation for transportation of Shipper's Gas prior to receipt of such Gas from the Transporter at the Delivery Point(s), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The Company shall deliver such quantities of Gas received from the Transporter at the Delivery Point(s) for Shipper's account to Company's Point(s) of Delivery identified on Exhibit A.

**ARTICLE VIII**  
**SCHEDULING AND BALANCING**

8.1 Shipper shall be responsible for nominating quantities of Gas to be delivered by the Transporter to the Delivery Point(s) and delivered by Company to the Point(s) of Delivery. Shipper shall promptly provide notice to Company of all such nominations. Imbalances between quantities (i) scheduled at the Delivery Point(s) and the Point(s) of Delivery, and (ii) actually delivered by the Transporter and/or Company hereunder, shall be resolved in accordance with the applicable provisions of Company's tariff, as such provisions, and any amendments to such provisions, are approved by the Commission.

8.2 The parties hereto recognize the desirability of maintaining a uniform rate of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

Therefore, Company agrees to receive from the Transporter for Shipper's account at the Delivery Point(s) and deliver to the Point(s) of Delivery up to the MDTQ as described in Exhibit A, subject to any restrictions imposed by the Transporter and to the provisions of Article IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's pipeline system at a daily rate of flow not to exceed the applicable MDTQ for the Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's tariff provisions.

ARTICLE IX  
MISCELLANEOUS PROVISIONS

9.1 Notices and Other Communications. Any notice, request, demand, statement or payment provided for in this Agreement, unless otherwise specified, shall be sent to the parties hereto at the following addresses:

Company: Peninsula Pipeline Company, Inc.  
450 South Charles Richard Beall Boulevard  
DeBary, Florida 32713  
Attention: Manager, Energy Logistics

Shipper: Florida Public Utilities Company  
1750 South 14th Street, Suite 200  
Fernandina Beach, Florida 32034  
Attention: Director, Regulatory Affairs

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

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

9.4 Amendments. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to Section 9.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 9.1 of this Agreement. Further, the parties expressly acknowledge that the limitations on amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments that are or may be necessary to comply with the

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT entered into this 17<sup>th</sup> day of May, 2019, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company"), and Florida Public Utilities Company, a corporation of the State of Florida (herein called "Shipper")(jointly herein "Parties").

WITNESSETH

WHEREAS, Shipper desires to obtain Firm Transportation Service ("FTS") from Company; and

WHEREAS, Company desires to provide Firm Transportation Service to Shipper in accordance with the terms hereof.

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, Company and Shipper do covenant and agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Unless otherwise defined in this Agreement, all definitions for terms used herein have the same meaning as provided in Company's tariff.

**ARTICLE II**  
**QUANTITY & UNAUTHORIZED USE**

2.1 The Maximum Daily Transportation Quantity ("MDTQ") and the Maximum Hourly Transportation Percentage ("MHTP") shall be set forth on Exhibit A attached hereto. The applicable MDTQ shall be the largest daily quantity of Gas, expressed in Dekatherms, which Company is obligated to transport on a firm basis and make available for delivery for the account of Shipper under this FTS Agreement on any one Gas Day.

2.2 If, on any Day, Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, the applicable rate for such unauthorized use of transportation quantities shall be as set forth on Exhibit A of this Agreement ("Unauthorized Use Rate").

**ARTICLE III**  
**FIRM TRANSPORTATION SERVICE RESERVATION CHARGE**

3.1 The Monthly Reservation Charge for Firm Transportation Service provided under this Agreement shall be as set forth on Exhibit A of this Agreement and shall be charged to Shipper beginning with the month in which Company issues notice of the in-service date of the Pipeline to Shipper and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

3.2 The parties agree to execute and file with the Commission a petition for approval of this Agreement within thirty (30) days of execution by both parties.

3.3 If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should increase or decrease any present tax or levy any additional or eliminate any existing tax impacting amounts billed and paid for service provided by Company under this Agreement, such change take effect for purposes of billing and payment under this Agreement effective as of the effective date of such modification to tax or levy.

**ARTICLE IV**  
**TERM AND TERMINATION**

4.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution ("Execution Date") by both parties and shall continue in full force and effect for an initial period of twenty (20) years from the in-service date ("Initial Term"). Thereafter, the Agreement shall be extended for additional 10-year increments ("Renewed Term"), unless either party gives written notice of termination to the other party, not less than, one hundred eighty (180) days prior to the expiration of the Initial Period or any Renewed Term (jointly "Current Term"). This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the parties' respective rights under applicable law.

4.2 No less than 60-days before expiration of the Current Term, either party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewal Term. Neither Party is obligated to, but may, agree to any mutually-acceptable modification to the Agreement for the subsequent Renewal Term. In the event the parties reach agreement for a modification to the Agreement for the subsequent Renewal Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing prior to the expiration of the then-current term.

4.3 Any portion of this Agreement necessary to resolve monthly balancing and operational controls under this Agreement, pursuant to the Rules and Regulations of Company's tariff, shall survive the other parts of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.4 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness, otherwise violates the Rules and Regulations of Company's tariff, or defaults on this Agreement, Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's tariff.



PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

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5.1 Company's tariff approved by the Commission, including any amendments thereto approved by the Commission during the term of this Agreement, is hereby incorporated into this Agreement and made a part hereof for all purposes. In the event of any conflict between Company's tariff and the specific provisions of this Agreement, the latter shall prevail, in the absence of a Commission Order to the contrary.

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7.2 The Point(s) of Delivery shall be as set forth on Exhibit A attached hereto.

7.3 Shipper shall cause Transporter to deliver to Company at the Delivery Point(s) on the Transporter's system, the quantities of Gas to be transported by Company hereunder. Company shall have no obligation for transportation of Shipper's Gas prior to receipt of such Gas from the Transporter at the Delivery Point(s), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The Company shall deliver such quantities of Gas received from the Transporter at the Delivery Point(s) for Shipper's account to Company's Point(s) of Delivery identified on Exhibit A.

**ARTICLE VIII**  
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8.2 The parties hereto recognize the desirability of maintaining a uniform rate of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

Therefore, Company agrees to receive from the Transporter for Shipper's account at the Delivery Point(s) and deliver to the Point(s) of Delivery up to the MDTQ as described in Exhibit A, subject to any restrictions imposed by the Transporter and to the provisions of Article IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's pipeline system at a daily rate of flow not to exceed the applicable MDTQ for the Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's tariff provisions.

ARTICLE IX  
MISCELLANEOUS PROVISIONS

9.1 Notices and Other Communications. Any notice, request, demand, statement or payment provided for in this Agreement, unless otherwise specified, shall be sent to the parties hereto at the following addresses:

Company: Peninsula Pipeline Company, Inc.  
450 South Charles Richard Beall Boulevard  
DeBary, Florida 32713  
Attention: Manager, Energy Logistics

Shipper: Florida Public Utilities Company  
1750 South 14th Street, Suite 200  
Fernandina Beach, Florida 32034  
Attention: Director, Regulatory Affairs

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

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

9.4 Amendments. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to Section 9.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 9.1 of this Agreement. Further, the parties expressly acknowledge that the limitations on amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments that are or may be necessary to comply with the

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

requirements of, or are otherwise approved by, the Commission or its successor agency or authority.

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

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

9.7 Attorneys' Fees and Costs. In the event of any litigation between the parties arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all costs incurred and reasonable attorneys' fees, including attorneys' fees in all investigations, trials, bankruptcies and appeals.

9.8 Independent Parties. Company and Shipper shall perform hereunder as independent parties. Neither Company nor Shipper is in any way or for any purpose, by virtue of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

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

9.10 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of Gas hereunder. Company and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. Company and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement. Each party shall proceed with diligence to file any necessary applications with any governmental authorities for any

PENINSULA PIPELINE COMPANY, INC.  
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authorizations necessary to carry out its obligations under this Agreement. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any applicable law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either party from contesting the validity of any such law, order, directive, rule, or regulation, nor shall anything in this Agreement be construed to require either party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the Commission, over this Agreement or any part thereof. In the event of such contestation, and unless otherwise prohibited from doing so under this Section 9.10, Company shall continue to transport and Shipper shall continue to take Gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule, or regulation shall prevent either party from performing hereunder, then neither party shall have any obligation to the other during the period that performance under the Agreement is precluded. If, however, any Governmental Authority's modification to this Agreement or any other order issued, action taken, interpretation rendered, or rule implemented, will have a material adverse effect on the rights and obligations of the parties, including, but not limited to, the relative economic position of, and risks to, the parties as reflected in this Agreement, then the parties shall use reasonable efforts to agree upon replacement terms that are consistent with the relevant order or directive, and that maintain the relative economic position of, and risks to, the parties as reflected in this Agreement as of the date first set forth above. As used herein, "Governmental Authority" shall mean any United States federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

(i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this agreement, issues an order, ruling, decision or regulation (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, or safety and integrity compliance, including any new or revised enforceable regulatory classification of the pipeline facility, as applicable, which is not reasonably foreseeable as of the Execution Date and which results in a materially adverse effect on either Party's rights and benefits under this Agreement, each Party shall use commercially reasonable efforts and shall cooperate with the other Party to pursue all necessary permits, approvals and authorizations, if any, of such applicable Governmental Authority, and to amend the terms and conditions of this Agreement, in each case as may be reasonably required in order that provision of transportation service under this Agreement shall continue; provided that neither Party shall be required to take any action pursuant to this Section which is reasonably likely to have a materially adverse effect on such Party's rights and benefits under this Agreement.

(ii) In the event of the issuance of any enforceable and unappealable compliance obligations related to operation, maintenance, location, or

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

safety and integrity compliance of the pipeline facility, which are not reasonably foreseeable as of the Execution Date, has a substantial and materially adverse impact on the Company, and such economic impact cannot be substantially mitigated by the Company, Company and Shipper shall meet and negotiate in good faith to determine if appropriate alterations to this Agreement or other arrangements can be agreed to that will address the operational or economic issues caused by such limits or obligations.

(iii) If the Parties are unable or unwilling to reach agreement pursuant to this Section 9.10, Company shall have the right to terminate this Agreement, without any further obligations to Shipper, upon one hundred twenty (120) days prior written notice to Shipper.

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


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

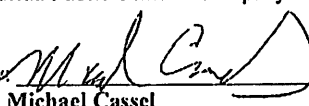
PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives effective as of the date first written above.

COMPANY  
Peninsula Pipeline Company, Inc.

SHIPPER  
Florida Public Utilities Company

By:   
\_\_\_\_\_  
Kelvin Webber  
Title: President

By:   
\_\_\_\_\_  
Michael Cassel  
Title: Assistant Vice President

(To be attested by the corporate secretary if not signed by an officer of the company)

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

EXHIBIT A

TO

FIRM TRANSPORTATION SERVICE AGREEMENT

BETWEEN

PENINSULA PIPELINE COMPANY, INC.

AND

FLORIDA PUBLIC UTILITIES COMPANY

DATED

May 17<sup>th</sup>, 2019

<u>Description of Delivery Point(s)</u>	<u>Description of Point(s) of Delivery</u>	<u>MDTQ, in Dekatherms, excluding Fuel Retention</u>
See Below	See Below	██████ Dt/Day

Total MDTQ (Dekatherms): ████████ Dt/Day

MHTP: 6%

Monthly Reservation Charge: \$ ████████

The Company shall provide written notification to Shipper that the Palm Beach County Pipeline has been completed and establish an in-service date. The Parties recognize that the Palm Beach County Pipeline may be completed in segments with each segment placed into service as completed. In such event, the Company may provide written notification of the in-service date of each segment, whereupon the Company may begin to charge Shipper a pro rata portion of the Monthly Reservation Charge associated with the in-service segment.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

Description of Transporter Delivery Point(s)

1. Interconnection with Florida City Gas gate station in the vicinity of the intersection of Seminole Pratt Whitney Road and State Road 80 in Palm Beach County, Florida.
2. Interconnection with PPC gate station in the vicinity of the intersection of State Road 710 and North Lake Boulevard in Palm Beach County, Florida.
3. Interconnection with PPC gate station in the vicinity of the intersection of State Road 710 and State Road 706 in Palm Beach County, Florida.

Description of Point(s) of Delivery: Interconnection with Shipper and Company at one or more of the following points:

1. Arden residential housing development in Palm Beach County, Florida.
2. West Lake residential housing development in Palm Beach County, Florida.
3. Ancient Tree residential housing development in Palm Beach County, Florida.
4. Avenir residential housing development in Palm Beach County, Florida.
5. Florida Research Park commercial and Industrial development in Palm Beach County, Florida.




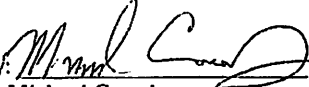
PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives effective as of the date first written above.

COMPANY  
Peninsula Pipeline Company, Inc.

SHIPPER  
Florida Public Utilities Company

By:   
\_\_\_\_\_  
Kevin Webber  
Title: President

By:   
\_\_\_\_\_  
Michael Cassel  
Title: Assistant Vice President

(To be attested by the corporate secretary if not signed by an officer of the company)

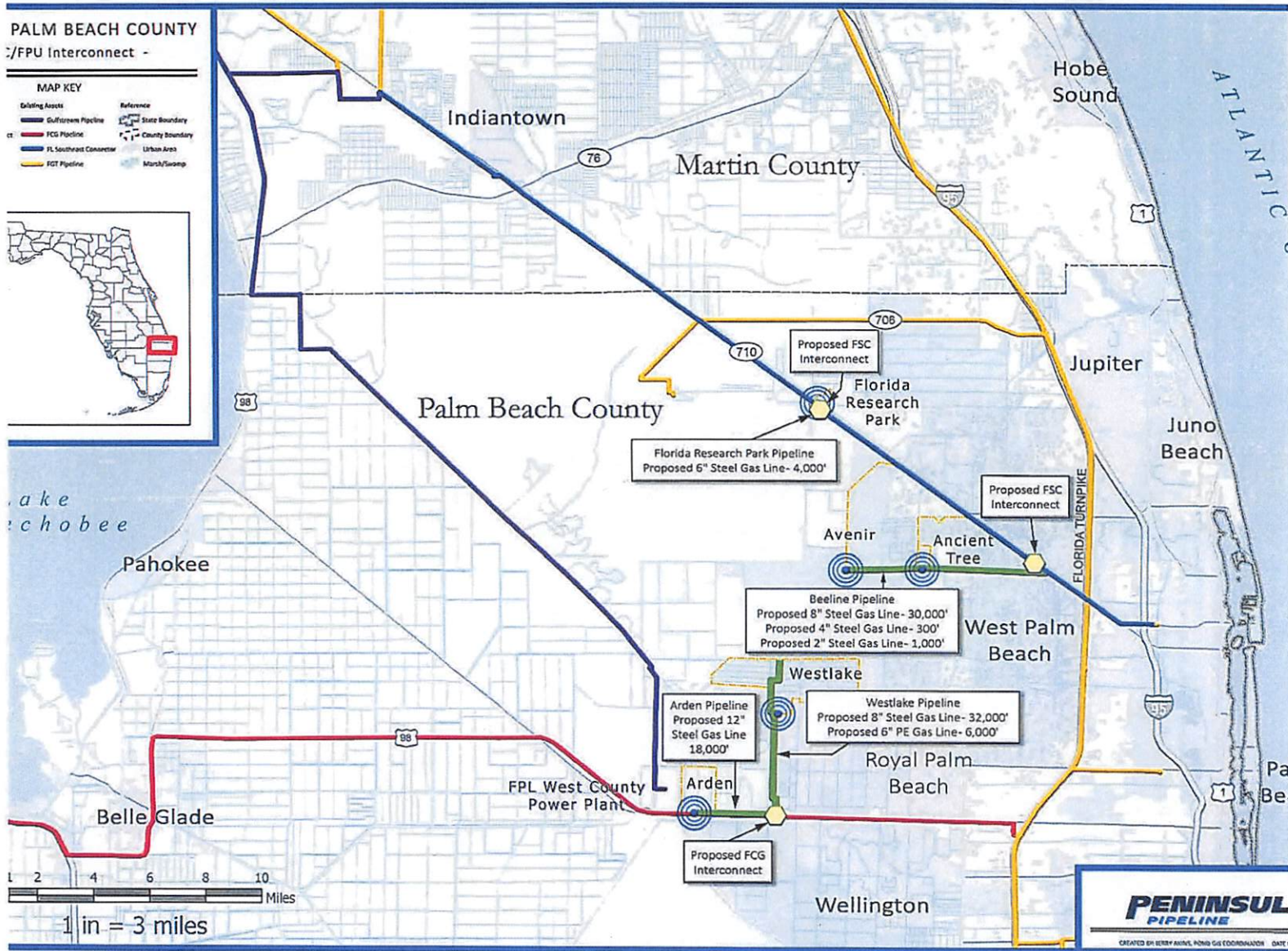
Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Petition for Approval of Transportation Service Agreement for Palm Beach County with Florida Public Utilities Company ("PB Expansion") by Peninsula Pipeline Company, Inc.**

## ATTACHMENT B

### Palm Beach Expansion Map



# Item 10

State of Florida



# Public Service Commission

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

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

**DATE:** July 25, 2019

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

**FROM:** Division of Economics (Guffey, Coston) *SKG WSC*  
Office of the General Counsel (Simmons) *KS JSC*

*ELJ*  
*POW*

**RE:** Docket No. 20190128-GU – Petition for approval of transportation service agreement with Florida Division of Chesapeake Utilities Corporation by Peninsula Pipeline Company, Inc.

**AGENDA:** 08/06/19 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Place after Docket No. 20190127-GU.

RECEIVED-FPSC  
2019 JUL 24 PM 9:58  
COMMISSION CLERK

## Case Background

On June 10, 2019, Peninsula Pipeline Company, Inc. (Peninsula) filed a petition seeking approval of a firm transportation service agreement (Agreement) between Peninsula and the Florida Division of Chesapeake Utilities Corporation, d/b/a Central Florida Gas (CFG), collectively the parties. Peninsula operates as a natural gas transmission company as defined by Section 368.103(4), Florida Statutes (F.S.).<sup>1</sup> CFG is a local distribution company (LDC) subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, F.S.

<sup>1</sup> Order No. PSC-06-0023-DS-GP, issued January 9, 2006, in Docket No. 050584-GP, *In re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S., et seq.*

By Order No. PSC-07-1012-TRF-GP,<sup>2</sup> Peninsula received approval of an intrastate gas pipeline tariff that allows it to construct and operate intrastate pipeline facilities and to actively pursue agreements with natural gas customers. Peninsula provides transportation service only; it does not engage in the sale of natural gas. Pursuant to Order No. PSC-07-1012-TRF-GP, Peninsula is allowed to enter into certain gas transmission agreements without prior Commission approval.<sup>3</sup> However, Peninsula is requesting Commission approval of this proposed Agreement as it does not fit any of the criteria enumerated in the tariff for which Commission approval would not be required.<sup>4</sup> The parties are subsidiaries of Chesapeake Utility Corporation (Chesapeake), and agreements between affiliated companies must be approved by the Commission pursuant to Section 368.105, F.S., and Order No. PSC-07-1012-TRF-GP.

Pursuant to the proposed Agreement (Attachment A to the recommendation), Peninsula will acquire, construct, and operate a natural gas pipeline, and construct a new interconnection in Polk County. During its evaluation of the petition, staff issued two data requests to the parties for which responses were received on July 2 and July 15, 2019. The Commission has jurisdiction over this matter pursuant to Sections 366.05(1), 366.06, and 368.105, F.S.

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<sup>2</sup> Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, in Docket No. 070570-GP, *In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline company, Inc.*

<sup>3</sup> Peninsula Pipeline Company, Inc., *Intrastate Pipeline Tariff*, Original Vol. 1, Original Sheet No. 11, Section 3.

<sup>4</sup> Peninsula Pipeline Company, Inc., *Intrastate Pipeline Tariff*, Original Vol. 1, Original Sheet No. 12, Section 4.



### Discussion of Issues

**Issue 1:** Should the Commission approve the proposed Agreement between Peninsula and CFG dated May 17, 2019?

**Recommendation:** Yes, the Commission should approve the proposed Agreement between Peninsula and CFG dated May 17, 2019. (Guffey)

**Staff Analysis:** CFG provides natural gas service to residential, commercial, and industrial customers in Polk County, and receives deliveries of natural gas to serve these customers over interstate transmission pipelines owned by Gulfstream and Florida Gas Transmission (FGT). In addition, CFG uses a connection with Peoples Gas System (which is referred to as an LDC to LDC interconnection) and a section of intrastate pipeline in Haines City owned by Peninsula.

The parties have entered into the proposed Agreement to allow CFG to meet increased demand in the Polk County area. The proposed Agreement specifies an initial term of 20 years and thereafter shall be extended for additional 10-year increments, unless either party gives no less than 180 days of written notification of termination. The proposed Agreement has the added benefit of providing CFG with an additional source of gas (via the Gulfstream interstate pipeline) and enhancing an existing interconnection with the FGT pipeline. The specific projects are discussed below and shown in Attachment B to the recommendation.

First, Peninsula would acquire 1,200 feet of existing 12 inch steel pipeline from Calpine. The Calpine pipeline is shown as the short blue line on Attachment B and already connects to the existing Gulfstream Gate Station (south of Calpine). The Calpine pipeline would also connect with a new interconnection Peninsula would construct directly to the south of Derby Avenue and to the east of Calpine pipeline. This interconnection would give CFG a secondary source of natural gas from Gulfstream.

Second, Peninsula would acquire from CFG 13,000 feet of 10 inch steel pipeline that runs from CFG's Lake Blue Gate Station north to the newly proposed interconnection south of Derby Avenue. This is shown as the red line on Attachment B. Peninsula would increase the pressure on this pipeline resulting in the pipeline operating as a transmission pipeline (and not a distribution pipeline). CFG explained that Peninsula, as a transmission pipeline operator, would be more suited to provide the on-going operations and maintenance and meet the Pipeline and Hazardous Materials Safety Administration's compliance and safety requirements. Peninsula would increase the pressure on the 10 inch steel pipeline by installing a regulator at the existing Lake Blue Gate Station.

Finally, from the new interconnection south of Derby Avenue, Peninsula would construct 800 feet of 6 inch polyethylene pipeline to the north where it would interconnect with CFG's distribution system in the vicinity of Derby Avenue in Polk County. The polyethylene pipeline is shown as the short green line on Attachment B.

In response to staff's first data request, the parties stated that CFG did not issue a Request for Proposals (RFP) from other entities to construct the pipeline. Peninsula, however, engaged in discussions with FGT about extending its existing pipeline in Polk County. CFG stated that FGT

declined to bid on the pipeline construction portion of the project citing that constructing and operating laterals such as those proposed in this petition are not a focus of FGT's expansion activities.

The parties assert that the negotiated monthly reservation charge contained in the proposed Agreement is consistent with a market rate since they are within the ranges of rates set forth in similar agreements as required by Section 368.105(3)(b), F.S. CFG is proposing to recover its payments to Peninsula through its swing service rider<sup>5</sup> mechanism consistent with other gas transmission pipeline costs incurred by CFG. The swing service rider allows CFG to recover intrastate capacity costs from their transportation customers and is a cents per therm charge that is included in the monthly gas bill of transportation customers.<sup>6</sup> While CFG will incur costs associated with this service expansion, any new load will help spread the costs over a larger customer base.

The benefit of Peninsula, as opposed to CFG, constructing the new pipeline is primarily that Peninsula's construction and ownership of the pipeline will avoid CFG undertaking the costs and risks for the three projects, which in turn protects CFG's ratepayers. Peninsula anticipates the pipeline construction to be completed by September 2019.

### **Conclusion**

Based on the petition and the parties' responses to staff's data requests, staff believes that the proposed Agreement is cost effective, reasonable, meets the requirements of Section 368.105, F.S., and benefits CFG's customers. Staff therefore recommends approval of the proposed Agreement between the parties dated May 17, 2019.

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<sup>5</sup> Order No. PSC-2018-0557-TRF-GU, issued November 20, 2018, in Docket No. 20180158-GU, *In re: Joint petition for approval of swing service rider, by Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade, and Florida Division of Chesapeake Utilities Corporation.*

<sup>6</sup> CFG does not purchase gas for its customers.



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

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

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

**Petition for Approval of Transportation Service Agreement for Polk County with the  
Florida Division of Chesapeake Utilities Corporation by Peninsula Pipeline Company, Inc.**

ATTACHMENT A

Transportation Service Agreement

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

**THIS AGREEMENT** entered into this 17<sup>th</sup> day of May, 2019, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company"), and the Florida Division of Chesapeake Utilities Corporation, a corporation of the State of Florida (herein called "Shipper")(jointly herein "Parties").

**WITNESSETH**

**WHEREAS**, Shipper desires to obtain Firm Transportation Service ("FTS") from Company; and

**WHEREAS**, Company desires to provide Firm Transportation Service to Shipper in accordance with the terms hereof.

**NOW THEREFORE**, in consideration of the premises and of the mutual covenants and agreements herein contained, the sufficiency of which is hereby acknowledged, Company and Shipper do covenant and agree as follows:

**ARTICLE I**  
**DEFINITIONS**

Unless otherwise defined in this Agreement, all definitions for terms used herein have the same meaning as provided in Company's tariff.

**ARTICLE II**  
**QUANTITY & UNAUTHORIZED USE**

2.1 The Maximum Daily Transportation Quantity ("MDTQ") and the Maximum Hourly Transportation Percentage ("MHTP") shall be set forth on Exhibit A attached hereto. The applicable MDTQ shall be the largest daily quantity of Gas, expressed in Dekatherms, which Company is obligated to transport on a firm basis and make available for delivery for the account of Shipper under this FTS Agreement on any one Gas Day.

2.2 If, on any Day, Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, the applicable rate for such unauthorized use of transportation quantities shall be as set forth on Exhibit A of this Agreement ("Unauthorized Use Rate").

**ARTICLE III**  
**FIRM TRANSPORTATION SERVICE RESERVATION CHARGE**

3.1 The Monthly Reservation Charge for Firm Transportation Service provided under this Agreement shall be as set forth on Exhibit A of this Agreement and shall be charged to Shipper beginning with the month in which Company issues notice of the in-service date of the Pipeline to Shipper and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

PENINSULA PIPELINE COMPANY, INC.  
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3.2 The parties agree to execute and file with the Commission a petition for approval of this Agreement within thirty (30) days of execution by both parties.

3.3 If, during the term of this Agreement, the Federal Government, or any State, municipality or subdivision of such Government, should increase or decrease any present tax or levy any additional or eliminate any existing tax, relating to the service provided by Company under this Agreement, such change shall be implemented immediately upon the effective date of such change.

ARTICLE IV  
TERM AND TERMINATION

4.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall be effective upon its date of execution ("Execution Date") by both parties and shall continue in full force and effect for an initial period of twenty (20) years from the in-service date ("Initial Term"). Thereafter, the Agreement shall be extended for additional 10-year increments ("Renewed Term"), unless either party gives written notice of termination to the other party, not less than, one hundred eighty (180) days prior to the expiration of the Initial Period or any Renewed Term (jointly "Current Term"). This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the parties' respective rights under applicable law.

4.2 No less than 60-days before expiration of the Current Term, either party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewal Term. Neither Party is obligated to, but may, agree to any mutually acceptable modification to the Agreement for the subsequent Renewal Term. In the event the parties reach agreement for a modification to the Agreement for the subsequent Renewal Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing prior to the expiration of the then-current term.

4.3 Any portion of this Agreement necessary to resolve monthly balancing and operational controls under this Agreement, pursuant to the Rules and Regulations of Company's tariff, shall survive the other parts of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.4 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness, otherwise violates the Rules and Regulations of Company's tariff, or defaults on this Agreement, Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's tariff.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

**ARTICLE V**  
**COMPANY'S TARIFF PROVISIONS**

5.1 Company's tariff approved by the Commission, including any amendments thereto approved by the Commission during the term of this Agreement, is hereby incorporated into this Agreement and made a part hereof for all purposes. In the event of any conflict between Company's tariff and the specific provisions of this Agreement, the latter shall prevail, in the absence of a Commission Order to the contrary.

**ARTICLE VI**  
**REGULATORY AUTHORIZATIONS AND APPROVALS**

6.1 Company's obligation to provide service is conditioned upon receipt and acceptance of any necessary regulatory authorization to provide Firm Transportation Service for Shipper in accordance with the Rules and Regulations of Company's tariff.

**ARTICLE VII**  
**DELIVERY POINT(S) AND POINT(S) OF DELIVERY**

7.1 The Delivery Point(s) for all Gas delivered for the account of Shipper into Company's pipeline system under this Agreement, shall be as set forth on Exhibit A attached hereto.

7.2 The Point(s) of Delivery shall be as set forth on Exhibit A attached hereto.

7.3 Shipper shall cause Transporter to deliver to Company at the Delivery Point(s) on the Transporter's system, the quantities of Gas to be transported by Company hereunder. Company shall have no obligation for transportation of Shipper's Gas prior to receipt of such Gas from the Transporter at the Delivery Point(s), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The Company shall deliver such quantities of Gas received from the Transporter at the Delivery Point(s) for Shipper's account to Company's Point(s) of Delivery identified on Exhibit A.

**ARTICLE VIII**  
**SCHEDULING AND BALANCING**

8.1 Shipper shall be responsible for nominating quantities of Gas to be delivered by the Transporter to the Delivery Point(s) and delivered by Company to the Point(s) of Delivery. Shipper shall promptly provide notice to Company of all such nominations. Imbalances between quantities (i) scheduled at the Delivery Point(s) and the Point(s) of Delivery, and (ii) actually delivered by the Transporter and/or Company hereunder, shall be resolved in accordance with the applicable provisions of Company's tariff, as such provisions, and any amendments to such provisions, are approved by the Commission.

8.2 The parties hereto recognize the desirability of maintaining a uniform rate of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month.

PENINSULA PIPELINE COMPANY, INC.  
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Therefore, Company agrees to receive from the Transporter for Shipper's account at the Delivery Point(s) and deliver to the Point(s) of Delivery up to the MDTQ as described in Exhibit A, subject to any restrictions imposed by the Transporter and to the provisions of Article IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's pipeline system at a daily rate of flow not to exceed the applicable MDTQ for the Gas Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's tariff provisions.

ARTICLE IX  
MISCELLANEOUS PROVISIONS

9.1 Notices and Other Communications. Any notice, request, demand, statement, or payment provided for in this Agreement, unless otherwise specified, shall be sent to the parties hereto at the following addresses:

Company: Peninsula Pipeline Company, Inc.  
450 South Charles Richard Beall Boulevard  
DeBary, Florida 32713  
Attention: Manager, Energy Logistics

Shipper: The Florida Division of Chesapeake Utilities Corporation  
1750 South 14th Street, Suite 200  
Fernandina Beach, Florida 32034  
Attention: Director, Regulatory Affairs

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

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

9.4 Amendments. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to Section 9.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 9.1 of this Agreement. Further, the parties expressly acknowledge that the limitations on

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments that are or may be necessary to comply with the requirements of, or are otherwise approved by, the Commission or its successor agency or authority.

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

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

9.7 Attorneys' Fees and Costs. In the event of any litigation between the parties arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all costs incurred and reasonable attorneys' fees, including attorneys' fees in all investigations, trials, bankruptcies, and appeals.

9.8 Independent Parties. Company and Shipper shall perform hereunder as independent parties. Neither Company nor Shipper is in any way or for any purpose, by virtue of this Agreement or otherwise, a partner, joint venture, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

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

9.10 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of Gas hereunder. Company and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. Company and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

connection with the performance of this Agreement. Each party shall proceed with diligence to file any necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any applicable law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either party from contesting the validity of any such law, order, directive, rule, or regulation, nor shall anything in this Agreement be construed to require either party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the Commission, over this Agreement or any part thereof. In the event of such contestation, and unless otherwise prohibited from doing so under this Section 9.10, Company shall continue to transport and Shipper shall continue to take Gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule, or regulation shall prevent either party from performing hereunder, then neither party shall have any obligation to the other during the period that performance under the Agreement is precluded. If, however, any Governmental Authority's modification to this Agreement or any other order issued, action taken, interpretation rendered, or rule implemented, will have a material adverse effect on the rights and obligations of the parties, including, but not limited to, the relative economic position of, and risks to, the parties as reflected in this Agreement, then the parties shall use reasonable efforts to agree upon replacement terms that are consistent with the relevant order or directive, and that maintain the relative economic position of, and risks to, the parties as reflected in this Agreement as of the date first set forth above. As used herein, "Governmental Authority" shall mean any United States federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

(i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this agreement, issues an order, ruling, decision or regulation (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, or safety and integrity compliance, including any new or revised enforceable regulatory classification of the pipeline facility, as applicable, which is not reasonably foreseeable as of the Execution Date and which results in a materially adverse effect on either Party's rights and benefits under this Agreement, each Party shall use commercially reasonable efforts and shall cooperate with the other Party to pursue all necessary permits, approvals and authorizations, if any, of such applicable Governmental Authority, and to amend the terms and conditions of this Agreement, in each case as may be reasonably required in order that provision of transportation service under this Agreement shall continue; provided that neither Party shall be required to take any action pursuant to this Section which is reasonably likely to have a materially adverse effect on such Party's rights and benefits under this Agreement.



PENINSULA PIPELINE COMPANY, INC.  
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(ii) In the event of the issuance of any enforceable and unappealable compliance obligations related to operation, maintenance, location, or safety and integrity compliance of the pipeline facility, which are not reasonably foreseeable as of the Execution Date, has a substantial and materially adverse impact on the Company, and such economic impact cannot be substantially mitigated by the Company, Company and Shipper shall meet and negotiate in good faith to determine if appropriate alterations to this Agreement or other arrangements can be agreed to that will address the operational or economic issues caused by such limits or obligations.

(iii) If the Parties are unable or unwilling to reach agreement pursuant to this Section 9.10, Company shall have the right to terminate this Agreement, without any further obligations to Shipper, upon one hundred twenty (120) days prior written notice to Shipper.

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


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

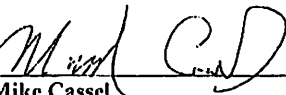
PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives effective as of the date first written above.

COMPANY  
Peninsula Pipeline Company, Inc.

SHIPPER  
The Florida Division of Chesapeake  
Utilities Corporation

By:   
\_\_\_\_\_  
Kevin Webber  
Title: President

By:   
\_\_\_\_\_  
Mike Cassel  
Title: Assistant Vice President

(To be attested by the corporate secretary if not signed by an officer of the company)

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

EXHIBIT A

TO

FIRM TRANSPORTATION SERVICE AGREEMENT

BETWEEN

PENINSULA PIPELINE COMPANY, INC.

AND

THE FLORIDA DIVISION OF CHESAPEAKE UTILITIES CORPORATION

DATED

May 17, 2019

<u>Description of Transporter Delivery Point(s)</u>	<u>Description of Point(s) of Delivery</u>	<u>MDTQ, in Dekatherms, excluding Fuel Retention</u>
See below	See below	██████ Dt/Day

Total MDTQ (Dekatherms): ████████ Dt/Day

MHTP: 6%

Monthly Reservation Charge: ████████

The Company shall provide written notification to Shipper that the Auburndale Pipeline has been completed and establish an in-service date. The Parties recognize that the Northwest Florida Pipeline may be completed in segments with each segment placed into service as completed. In such event, the Company may provide written notification of the in-service date of each segment, whereupon the Company may begin to charge Shipper a pro rata portion of the Monthly Reservation Charge associated with the in-service segment.

PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

Description of Transporter Delivery Point(s)

- 1) Interconnection with Gulfstream Natural Gas Pipeline Calpine Auburndale gate station in Polk County, Florida.
- 2) One or more points - Interconnection(s) to be determined ("TBD") – Near the interconnection with Florida Gas Transmission Pipeline in Polk County, FL

Description of Point(s) of Delivery:


- 1) One or more points - Location(s) to be determined ("TBD") – The interconnection of PPC and the Shipper facilities at or near the intersection of Chambers Road and West Derby Avenue in Auburndale, Florida.
- 2) One of more points - Location(s) to be determined ("TBD") - at or near the intersection of West Derby Avenue and McKean Street in Auburndale, Florida.

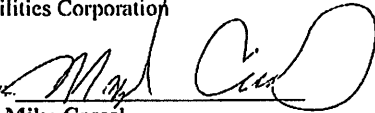
PENINSULA PIPELINE COMPANY, INC.  
FIRM TRANSPORTATION SERVICE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives effective as of the date first written above.

COMPANY  
Peninsula Pipeline Company, Inc.

SHIPPER  
The Florida Division of Chesapeake  
Utilities Corporation

By:   
\_\_\_\_\_  
Kevin Webber  
Title: President

By:   
\_\_\_\_\_  
Mike Cassel  
Title: Assistant Vice President

(To be attested by the corporate secretary if not signed by an officer of the company)

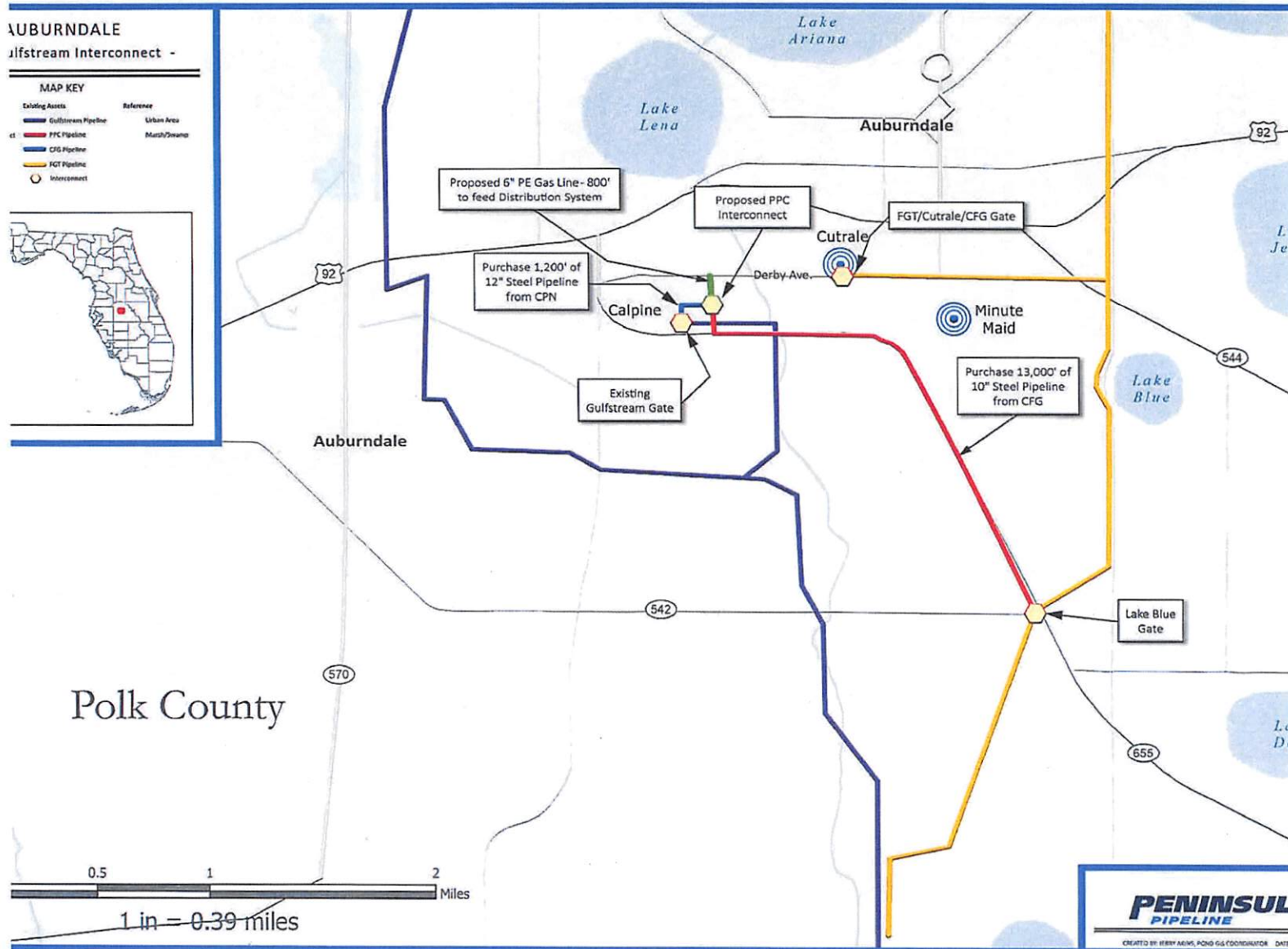
Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attested By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Petition for Approval of Transportation Service Agreement for Polk County with the  
Florida Division of Chesapeake Utilities Corporation by Peninsula Pipeline Company, Inc.**

**ATTACHMENT B**

**Auburndale Project Map**



# Item 11



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-**

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**DATE:** July 25, 2019

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

**FROM:** Division of Economics (Sibley, Hudson) *MS SH ED*  
Division of Accounting and Finance (Brown, Wilson) *AKW ALM*  
Division of Engineering (King, Lewis) *CKL TB*  
Office of the General Counsel (DuVal) *MS TB*

**RE:** Docket No. 20170147-WS – Application for staff-assisted rate case in Levy County by FIMC Hideaway, Inc.

**AGENDA:** 08/06/19 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** August 6, 2019 (Pursuant to Order No. PSC-2019-0074-PAA-WS)

**SPECIAL INSTRUCTIONS:** None

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### Case Background

FIMC Hideaway, Inc. (FIMC or Utility) is a Class C utility that was granted water and wastewater certificates in 1984 to serve the Hideaway development when Levy County transferred jurisdiction to the Florida Public Service Commission (Commission) in 1983.<sup>1</sup> The Hideaway systems were transferred to Florida Investors Mortgage Corporation Hideaway, Inc. in 1992 following its foreclosure on the Utility.<sup>2</sup> Subsequently, the Commission approved a transfer

<sup>1</sup>Order No. 13497, issued July 10, 1984, in Docket No. 19830552-WS, *In re: Application of Hideaway Service, Inc. for a certificate to operate a water and sewer utility in Levy County.*

<sup>2</sup>Order No. 25584, issued January 8, 1992, in Docket No. 19910672-WS, *In re: Application for transfer of Certificates Nos. 426-W and 362-S from Hideaway Service, Inc. to FIMC Hideaway, Inc. in Levy County.*

of majority organizational control in 2005.<sup>3</sup> In 2009, the Commission approved the transfer of the Springside water and wastewater systems from Par Utilities, Inc. to FIMC.<sup>4</sup> The Hideaway and Springside water and wastewater systems were interconnected in April 2013.

On June 22, 2017, FIMC filed an application for a staff-assisted rate case. Pursuant to Order No. PSC-2018-0389-PAA-WS, the Commission approved rates and charges for FIMC. Order No. PSC-2018-0389-PAA-WS additionally ordered:

[T]he overall quality of service provided by FIMC Hideaway, Inc. shall be considered marginal until the utility can sufficiently demonstrate that it meets the Department of Environmental Protection's [DEP] secondary water standards. The [U]tility shall file the results of its next primary and secondary water standards tests with this Commission in this docket by November 1, 2018. If the results are unfavorable, our staff will bring this item to this Commission by March 1, 2019, for further action.

By email, on October 8, 2018, FIMC provided Commission staff with the results of its 2018 DEP primary and secondary water tests. The test results indicated that the water service provided by the Utility continued to exceed certain DEP secondary standards for sulfates and total dissolved solids.

Pursuant to Order No. PSC-2019-0074-PAA-WS, issued February 25, 2019, the Commission directed FIMC to create an estimate of costs and benefits of a plausible solution to reduce sulfates and total dissolved solids to a level that is within DEP standards. That Order additionally stated:

We further direct FIMC to meet with its customers within 60-90 days of the issuance of this Order. The Utility shall provide the Office of Public Counsel and our staff with notification of the customer meeting date. In its meeting with customers, the Utility shall discuss the estimated costs and benefits of and time necessary for implementing a plausible solution to reduce sulfates and total dissolved solids to a level that is within acceptable DEP standards. The Utility shall report the results of the customer meeting to us within 30 days after the meeting is held. This item shall be brought back before us by the August 6, 2019 Commission Conference.

This recommendation addresses the Utility's actions, as directed by Order No. PSC-2019-0074-PAA-WS. The Commission has jurisdiction pursuant to Sections 367.011, 367.081, 367.0812, 367.0814, and 367.091, Florida Statutes (F.S.).

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<sup>3</sup>Order No. PSC-05-0298-PAA-WS, issued March 18, 2005, in Docket No. 20040152-WS, *In re: Application for transfer of majority organizational control of FIMC Hideaway, Inc. in Levy County from Florida Investors Mortgage Corporation, a Florida corporation, to Robert and Janet McBride.*

<sup>4</sup>Order No. PSC-09-0279-PAA-WS, issued April 29, 2009, in Docket No. 20080268-WS, *In re: Joint Application for transfer of the Springside water and wastewater systems from Par Utilities, Inc. in Levy County to FIMC Hideaway, Inc.; amendment of Certificates 426-W and 362-S held by FIMC Hideaway, Inc.; and amendment of Certificate 428-W and cancellation of Certificate 366-S held by Par Utilities, Inc.*

### Discussion of Issues

**Issue 1:** Has FIMC Hideaway, Inc., complied with the requirements of Order No. PSC-2019-0074-PAA-WS?

**Recommendation:** Yes. FIMC, with the assistance of the Florida Rural Water Association (FRWA), has complied with the requirements of Order No. PSC-2019-0074-PAA-WS. Furthermore, based on the results of the customer meeting, staff recommends no additional action at this time with respect to FIMC's water quality. (Lewis)

**Staff Analysis:** The Commission's directives in Order No. PSC-2019-0074-PAA-WS, are consistent with the requirements found in Section 367.0812(2), F.S., which states:

- (2)(a) In determining the quality of water service, the commission shall consider a finding by the Department of Environmental Protection as to whether the utility has failed to provide water service that meets the secondary water quality standards of the department.
- (b) The utility shall create an estimate of the costs and benefits of a plausible solution to each issue identified by the commission.
- (c) The utility shall meet with its customers within a time prescribed by the commission to discuss the estimated costs and benefits of and time necessary for implementing a plausible solution for each quality of water service issue identified, and the utility shall report the results of such meetings to the commission.
- (d) The utility shall inform the commission, if:
  - 1. The customers and the utility agree on a solution for each quality of water service issue identified, of each agreed-on solution and the cost of each solution; or
  - 2. The customers and the utility prefer a different solution to at least one of the quality of water service issues identified, of the preferred solutions by each and the cost of each solution.

By email communication dated April 18, 2019, the Utility provided staff a copy of its customer meeting notice and indicated that it provided the notice to its customers by email on April 10, 2019, and by hand delivery between April 14, 2019, and April 17, 2019. The notice stated, in part, that the goal of the meeting was to discuss viable options to enhance the water quality that are amenable to the customers.

The FRWA assisted FIMC by identifying plausible solutions for the Utility's water service issues and developing cost and benefit estimates for each solution. On April 24, 2019, the FRWA provided a draft presentation, which included a summary of the plausible solutions, to staff. The FRWA's draft presentation was also shared with the Office of Public Counsel (OPC).

The plausible solutions, including estimated monetary costs, identified by the FRWA are summarized below.

1. Connect to another water system such as Fowlers Bluff (\$25,000 per connection or \$121 per month per connection)
2. Find another source, surface water or ground water supply (\$24,050 per connection or \$116 per month per connection)
3. Install additional treatment on the existing water (\$10,000 per connection or \$48 per month per connection)
4. Accept current water quality, but do something for your own home (\$125 to \$3,000 per connection)

The customer meeting was held on May 1, 2019, at the same location that the customer meeting for the staff assisted rate case was held. Approximately 35 customers attended the meeting as well as representatives from Commission staff and the OPC. At the meeting, the FRWA presented the plausible solutions and estimated costs and benefits. On May 28, 2019, the FRWA provided staff with a summary of the customer meeting. The FRWA's summary states the following:

During that meeting, options and costs for improving water quality were presented. We described and discuss[ed] in detail the water quality issues, possible solutions, costs, benefits, etc. We received customer input. We asked if the customers and the [U]tility agreed on a solution or preferred a different solution...[b]y a show of hands customers were in favor of option 4 and not in favor of options 1 through 3.<sup>5</sup>

As previously stated, option 4 involved the customers accepting the current water quality and doing something at their home. Attachment A, which is appended to this recommendation, includes a copy of the FRWA's summary and presentation.

At the conclusion of the meeting, Commission staff provided contact information to the customers to allow further input if desired. Copies of the FRWA's presentation were also provided for attendees to take to any customers that were not able to participate at the meeting. As of the date of the filing of this recommendation, Commission staff has not been contacted by a customer of FIMC regarding the Utility's water quality.

### **Summary**

Staff recommends that FIMC, with the assistance of the FRWA, has complied with the requirements of Order No. PSC-2019-0074-PAA-WS. Furthermore, based on the results of the customer meeting, staff recommends no additional action at this time with respect to FIMC's water quality.

---

<sup>5</sup>The FRWA's summary contains a scrivener's error stating that the customer meeting occurred on April 24, 2019.

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

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

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

## FLORIDA RURAL WATER ASSOCIATION

2970 Wellington Circle • Tallahassee, FL 32309-7813  
(850) 668-2746

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EMAIL  
[frwa@frwa.net](mailto:frwa@frwa.net)

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May 28, 2019

Mr. Robert Graves  
Public Utilities Supervisor  
Division of Engineering  
Florida Public Service Commission  
Phone: (850) 413-7009  
Email: [rgraves@psc.state.fl.us](mailto:rgraves@psc.state.fl.us)

Re: Public Meeting to Discuss Water Quality Options and Costs  
FIMC Hideaway Inc., Levy County, PWS: 2381409  
11496 NW 112th Place, Chiefland FL 3264

Dear Mr. Graves;

On April 24, 2019 a public meeting was held for customers of the FIMC Hideaway water system. During that meeting options and costs for improving water quality were presented. We described and discuss in detail the water quality issues, possible solutions, costs, benefits, etc. We received customer input. We asked if the customers and the utility agreed on a solution or preferred a different solution. Please see the attached presentation.

The options included:

1. Connecting to another water system such as Fowlers Bluff (\$25,000 per connection or \$121 per month per connection).<sup>1</sup>
2. Find another source, surface water or ground water supply (\$24,050 per connection or \$116 per month per connection).
3. Install additional treatment on the existing water (\$10,000 per connection or \$48 per month per connection)
4. Accept current water quality, but do something for your own home (\$125 to \$3,000 per connection).

By a show of hands customers were in favor of option 4 and not in favor of options 1 through 3.

Please feel free to contact Gary Williams or me if you have any further questions.

Sincerely,

Sterling L. Carroll, P.E.  
FRWA State Engineer

Copy: Mr. Robert McBride, FIMC Hideaway Inc., [jandrmcbride@cox.net](mailto:jandrmcbride@cox.net)  
Gary Williams, Fred Handy, FRWA

<sup>1</sup> Assumes 20-year loan at 1.5% with the DWSRF.

## Options & Costs for Improving Water Quality

# FIMC Hideaway MHP

11496 NW 112th Place, Chiefland, FL 32626



Sterling L. Carroll, P.E., M.P.A.  
FRWA State Engineer  
Florida Rural Water Assn

1

## Public Meeting Required by the Florida Public Services Commission

- Describe & discuss the water quality issues, possible solutions, costs, benefits, etc.
- Receive customer input...
  - Do customers & utility agree on a solution & cost?
  - Prefer a different solution & cost?
- Report back to the PSC

2

1

### What is the issue?

- Describe & discuss the water quality issues, possible solutions, costs, benefits, etc.
- Receive customer input...
  - Do customers & utility agree on a solution & cost?
  - Prefer a different solution & cost?
- Report back to the PSC

3

### What are Primary or Secondary Drinking Water Standards?

*Established by US Congress & EPA the for protection of public health*

#### Primary Standards (Health)

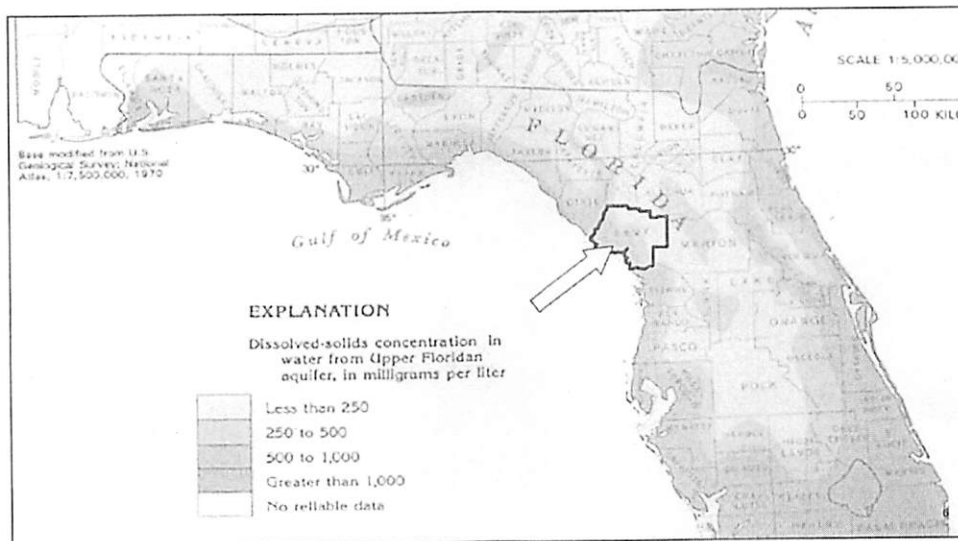
- Lead & Copper
- Arsenic
- Pesticides
- Radiological
- etc.

#### Secondary Standards (Aesthetics / Nuisances)

- Hardness (TDS)
- Taste
- Odor
- Color
- Sulfates

4





## What are the WQ issues at FIMC Hideaway?

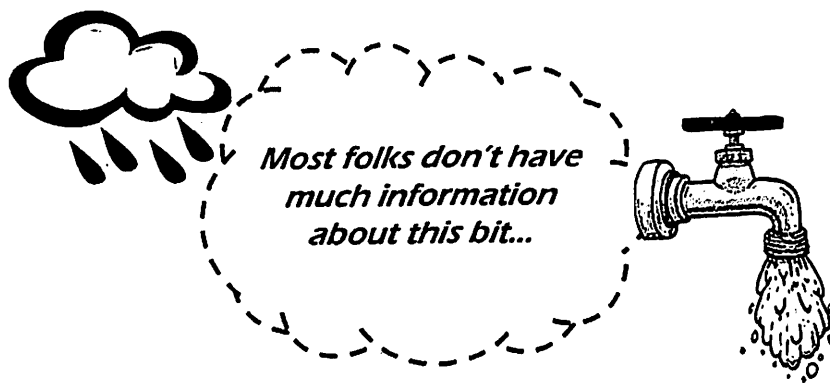
### Secondary Standard (Aesthetic)

Parameter	FIMC Hideaway	FDEP Standard <sup>1</sup>
• Sulfates (SO <sub>3</sub> )	426 mg/L <sup>2</sup>	250 mg/L
• Total Dissolved Solids (TDS) <sup>3</sup>	992 mg/L	500 mg/L

1. *mg/L = milligrams per liter or parts per million  
One part per million is roughly equivalent to 1 minute over 2 years*
2. *The FDEP Standard or Maximum Containment Level (MCL)*
3. *Total Dissolved Solids (TDS) indicates hard water. It is a measure of all minerals / solids dissolved in the water: calcium, sodium, etc.*

7

## How does drinking water get into our homes?



8

4

## **Info about FIMC Hideaway MHP**

- 180 service connections
- 275 population
- 150 gpm Permitted Capacity
- 16 gpm average usage
- 42 gpm max. day usage (28% capacity)
- (2) Wells @ 158 gpm
- Chlorination
- 3,900 gal hydropneumatic tank

9

## **What are the options?**

1. Connect to another water system,
  - Springside at Manatee or
  - Fowlers Bluff
2. Find another source, surface water or ground water supply,
3. Install additional treatment on the existing water, or
4. Accept current water quality, but do something for your own home.

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### **1.a. Springside at Manatee?**

- 55 gpm Permitted Capacity
- 17.5 gpm average usage
- 51 gpm max. day usage (92% capacity)
- 4 gpm remaining capacity – not enough
- Plant would need to be expanded
  - same treatment / water quality / no improvement
  - \$225,000 or \$1,250 per connection
- Water Main Interconnect ~ 0.75 miles
  - \$180,000 or \$1,000 per connection

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### **1.b. Fowlers Bluff?**

- 60 gpm Permitted Capacity
- 21 gpm average usage
- 44 gpm max. day usage (74% capacity)
- 16 gpm remaining capacity – not enough
- Reverse Osmosis Plant would need to be expanded
  - \$950,000 or \$5,280 per connection
- Water Main Interconnect ~ 13.6 miles
  - \$2,950,000 or \$16,000 per connection

12

## **2. Find another source, surface water or ground water supply?**

- New Reverse Osmosis Plant @ 50 gpm
  - Procure land & permits to construct a well field outside area of gypsum deposits
  - RO waste standards required for the backwash discharge
  - \$1,750,000 or \$10,000 per connection
- Water Main ~ 10+ miles
  - \$2,250,000 or \$12,500 per connection

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## **3. Install additional treatment on the existing water?**

- New Reverse Osmosis Plant @ 50 gpm
  - RO waste standards required for the backwash discharge
  - \$1,750,000 or \$10,000 per connection
- Water Main ~ 0 miles

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#### **4. Accept Current Water Quality, but do something for your own home?**

- Does the cost for better water quality outweigh the benefits?
- The PSC and FDEP have not had water quality complaints.
  - Seems to indicate community acceptance of status quo
- Are there other options? Yes, certainly!
  - **Point of Entry Devices**
    - Treats most or all water entering the home or building.
    - Water softener is a common example.
  - **Point of Use Devices**
    - Installed at a single tap or outlet and treat only that water
    - Under the sink or faucet filters are examples.

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#### **Removing Sulfates & Total Dissolved Solids**

##### **Three Options:**

1. **Reverse Osmosis (RO)** pushes water through a plastic surface similar to cellophane known as a "semipermeable membrane." Can most sulfate and all TDS in drinking water.
2. **Distillation** - water is boiled, the steam is cooled and condenses in a separate container. The dissolved substances, such as sulfate & TDS, remain in the boiling pot.
3. **Ion Exchange** is the most known method of eliminating big quantities of sulfate from water, but is not generally used for individual household water treatment and does not remove hardness (TDS).

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## Reverse Osmosis (RO) Treatment Systems



*Purchase at plumbing / hardware stores or on-line. Self install or use plumber.*

- Eliminates: 93% to 99 % of Sulfate
- ~ 99% TDS
- Produces 3 to 50 gpd (gallons per day)
- Cost: \$125 to \$350
- **Comments:**
  - 1 gallon of drinking water 4 to 10 gallons are wasted
  - No power used
  - Wasted water is sent to septic tank
  - Higher water bills

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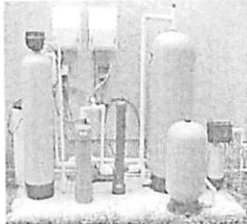
## Distillation Treatment Systems



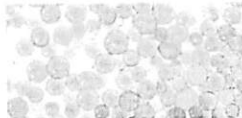
- Eliminates: ~100% of Sulfate & TDS
- Produces 1 gallon in 4 hours
- Cost: \$150 to \$2,000
- **Comments:**
  - Easy to install
  - Low flows only
  - Little water wasted
  - Substantial amount of energy used
  - Distillation tank needs periodic cleaning

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## Ion Exchange Treatment Systems



Installation by a specialist



Special Sulfate Resin Used

- Not the same as *Water Softeners!!!*
- Water softeners do not remove sulfate, and sulfate removal systems do not remove hardness (TDS)
- Special sulfate removing resins are more expensive
- Cost: \$250 (DIY) to \$3,000+ (installer)
- **Comments:**
  - Adds sodium to drinking water (bad for heart & blood pressure)
  - No power used
  - Wasted water is sent to septic tank

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## Options & Costs for Improving Water Quality

# FIMC Hideaway MHP

11496 NW 112th Place, Chiefland, FL 32626



Sterling L. Carroll, P.E., M.P.A.  
FRWA State Engineer  
Florida Rural Water Assn

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# Item 12

State of Florida



# Public Service Commission

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

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

**DATE:** July 25, 2019

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

**FROM:** Division of Economics (Sibley, Hudson) *SHH MS EJD QTH*  
Office of the General Counsel (Simmons) *KS JSC*

**RE:** Docket No. 20190133-WS – Application for approval of an 8" general service meter rate by Pluris Wedgefield, LLC.

**AGENDA:** 08/06/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 08/16/19 (60-Day Suspension Date)

**SPECIAL INSTRUCTIONS:** None

RECEIVED-FPSC  
 2019 JUL 24 PM 10:39  
 COMMISSION CLERK

## Case Background

Pluris Wedgefield, LLC (Pluris or utility) is a Class A utility providing water service to 1,811 customers and wastewater service to 1,667 customers in Orange County. Water and wastewater rates were last established for this utility in 2017.<sup>1</sup> According to the utility’s 2018 Annual Report, operating revenues were \$1,507,075 for water and \$982,652 for wastewater and operating expenses were \$1,454,960 for water and \$970,507 for wastewater.

On June 18, 2019, the utility applied for approval of an eight inch turbine general service meter rate in Orange County for both its water and wastewater systems. Pluris has added a general service customer that receives services through an eight inch turbine meter. The utility’s existing water and wastewater general service tariff sheets only provide base facility charges (BFCs) for meters sizes up to six inches. This recommendation addresses the utility’s request to include in

<sup>1</sup>Order No. PSC-2018-0311-PAA-WS, issued June 13, 2018, in Docket No. 20170166-WS, *In re: Application for limited proceeding rate increase in Orange County by Pluris Wedgefield, Inc.*

Docket No. 20190133-WS

Date: July 25, 2019

its water and wastewater tariffs a BFC for an eight inch turbine meter. The proposed tariffs are shown in Attachment A of the recommendation. The Commission has jurisdiction pursuant to Sections 367.081 and 367.091, Florida Statutes (F.S.).

## Discussion of Issues

**Issue 1:** Should the utility's proposed tariffs containing the eight inch turbine general service meter be approved?

**Recommendation:** Yes. The utility's proposed tariffs as shown in Attachment A containing the eight inch turbine general service meter should be approved as filed because it is consistent with Rule 25-30.437(6), Florida Administrative Code (F.A.C.). The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. (Sibley)

**Staff Analysis:** As stated in the case background, Pluris has added a general service customer that receives services through an eight inch turbine meter. The utility's existing water and wastewater general service tariff sheets only provide BFCs for meter sizes up to six inches.

The utility's proposed water BFC of \$2,509.20 and wastewater BFC of \$2,784.60 for the eight inch turbine meter is calculated by using the utility's existing BFC for the 5/8" x 3/4" meter size of \$27.88 for water and \$30.94 for wastewater (Attachment A). This is done using the BFC as the foundation and applying the American Water Works Association meter equivalent factor as the usage characteristics onto the foundation (5/8" x 3/4" meter BFC times 90). This is consistent with Rule 25-30.437(6), F.A.C., which states that the rates are first established with the 5/8" x 3/4" meter as the foundation and for meter sizes larger than 5/8", the base facility charge shall be based on the usage characteristics. The utility anticipates serving the one water only customer, which provides additional revenues of approximately \$35,000. This represents an approximate revenue increase of 2.3 percent for water and will not have a material effect on the utility's overall rate of return.

It is incumbent on public utilities to charge only those rates filed with and approved by the Commission pursuant to Section 367.081, F.S. Staff notes that the rate is the appropriate amount for the eight inch meter size. However, the utility should be cautioned to charge only those rates reflected in its Commission-approved tariffs.

Based on the above, the utility's proposed tariffs containing the eight inch turbine general service meter should be approved as filed because it is consistent with Rule 25-30.437(6), F.A.C. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C.

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

**Recommendation:** Yes. If Issue 1 is approved, the tariff sheets should become effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. If a protest is filed within 21 days of the issuance of the Order, the tariff should remain in effect with the revenues held subject to refund pending resolution of the protest and the docket should remain open. If no timely protest is filed, the docket should be closed upon the issuance of a Consummating Order. (Simmons)

**Staff Analysis:** If Issue 1 is approved, the tariff sheets should become effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with the revenues held subject to refund pending resolution of the protest and the docket should remain open. If no timely protest is filed, the docket should be closed upon the issuance of a Consummating Order.

PLURIS WEDGEFIELD, LLC  
WATER TARIFF

FOURTH REVISED SHEET NO. 12.0  
CANCELS THIRD REVISED SHEET NO. 12.0

GENERAL SERVICE

RATE SCHEDULE (GS)

- AVAILABILITY - Available throughout the area served by the Company.  
APPLICABILITY - To any customer which no other schedule applies.  
LIMITATIONS - Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.

RATES -

<u>Meter Size</u>	<u>Base Facility Charges</u>
5/8" x 3/4"	\$ 27.88
3/4"	\$ 41.82
1"	\$ 69.70
1 1/2"	\$ 139.40
2"	\$ 223.04
3"	\$ 446.08
4"	\$ 697.00
6"	\$ 1,394.00
8"	\$ 2,509.20
Charge per 1,000 gallons	\$ 9.92

- TERMS OF PAYMENT - Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer separate and apart from any other bill, service may then be discontinued.

EFFECTIVE DATE - For services rendered on and after June \_\_, 2019

TYPE OF FILING - 2019 Tariff Filing

Maurice W. Gallarda  
ISSUING OFFICER  
Manager  
TITLE

PLURIS WEDGEFIELD, LLC  
WASTEWATER TARIFF

FOURTH REVISED SHEET NO. 12.0  
CANCELS THIRD REVISED SHEET NO. 12.0

GENERAL SERVICE

RATE SCHEDULE (GS)

- AVAILABILITY - Available throughout the area served by the Company.
- APPLICABILITY - For wastewater service to all Customers for which no other schedule applies.
- LIMITATIONS - Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.

RATES :-

<u>Meter Sizes</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 30.94
3/4"	\$ 46.41
1"	\$ 77.35
1 1/2"	\$ 154.70
2"	\$ 247.52
3"	\$ 495.04
4"	\$ 773.50
6"	\$ 1,547.00
8"	\$ 2,784.60
Charge per 1,000 gallons	\$ 5.42

**TERMS OF PAYMENT** – Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer separate and apart from any other bill, service may then be discontinued.

**EFFECTIVE DATE** – For services rendered on and after June \_\_, 2019

**TYPE OF FILING** – 2019 Tariff Filing

Maurice W. Gallarda  
ISSUING OFFICER  
Manager  
TITLE

# Item 13



State of Florida



## Public Service Commission

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

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

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**DATE:** July 25, 2019

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

**FROM:** Division of Accounting and Finance (Cicchetti) *MC ALM*  
Office of the General Counsel (Brownless) *MB JC*

**RE:** Docket No. 20180013-PU – Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel

**AGENDA:** 08/06/19 – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** Clark, Brown, Graham

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

The Tax Cuts and Jobs Act of 2017 (TCJA) was signed into law on December 22, 2017 and became effective for the taxable year beginning January 1, 2018. On January 9, 2018, the Office of Public Counsel (OPC) filed a “Petition to Establish Generic Docket to Investigate and Adjust Rates for 2018 Tax Savings.” On February 6, 2018, in Order No. PSC-2018-0104-PCO-PU,<sup>1</sup> the Florida Public Service Commission (Commission) established jurisdiction over utilities’ tax savings if such a date was not contained in an applicable settlement agreement. Subsequently, the Commission opened separate dockets to address the tax savings for electric and natural gas utilities. At this time, all electric and natural gas utilities tax savings dockets have been resolved. The instant docket remains open to address tax savings associated with water and wastewater utilities (WAW).

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<sup>1</sup>Order No. PSC-2018-0104-PCO-PU, issued February 6, 2018 in Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.*

Docket No. 20180013-PU

Date: July 25, 2019

For WAW utilities that have income taxes included in their revenue requirement, the 2018 annual reports are necessary to determine each utility's earned return and if a utility earned in excess of its allowed return. As of July 25, 2019, 13 of 15 WAW utilities that have income taxes included in their revenue requirement have filed their 2018 annual reports. This recommendation addresses the tax savings for the 13 WAW utilities that have income taxes included in their revenue requirement and have filed 2018 annual reports.

The Commission has jurisdiction in this case pursuant to Sections 366.04, 366.041, 366.06, and 366.07, Florida Statutes.

## Discussion of Issues

**Issue 1:** What is the appropriate disposition of the tax impacts resulting from the passage of the TCJA for WAW utilities that have income taxes included in their revenue requirement?

**Recommendation:** Of the 13 WAW utilities that have income taxes included in their revenue requirement and have filed their 2018 annual report, none are earning above their allowed rate of return range. No adjustments to base rates are necessary regarding the tax impacts resulting from the passage of the TCJA for these WAW utilities. (Cicchetti)

### **Staff Analysis:**

The 15 WAW utilities that have income taxes included in their revenue requirement are:

- East Central Florida Services
- Forest Utilities
- Gold Coast Utility Corporation
- Indiantown Company
- Marion Utilities
- NHC Utilities
- Ni Florida
- North Beach Utilities
- Peoples Water Service Company
- Pine Island Cove HOA
- Placid Lakes
- Pluris Wedgefield
- St. James Island
- Utilities Inc. of Florida
- Wildwood Water Company

Of the 15, all have filed their 2018 annual report except Gold Coast Utility Corporation and St. James Island. All utilities that have filed their 2018 annual report have reported either negative returns or returns below their rate of return ceilings. Attachment A shows all the utilities' Net Operating Income, Rate Base, Achieved Rate of Return, and Approved Rate of Return Cap.

It is staff's opinion that it is reasonable for the Commission to consider the earnings position of the utility when deciding if base rates should be reduced for changes in tax rates. Reducing base rates would result in cash flow reductions for the utilities, put downward pressure on earnings, and would accelerate the need for a rate case sooner versus later. Consequently, staff recommends that no adjustments to base rates are necessary regarding the tax impacts resulting from the passage of the TCJA for WAW utilities that have income taxes included in their

revenue requirement. Such treatment is consistent with the Commission's decisions in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU, and 20180054-GU.<sup>2</sup>

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<sup>2</sup>Order No. PSC-2019-0076-FOF-GU, issued February 25, 2019, in Docket No. 20180051-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Gas*; Order No. PSC-2019-0077-FOF-GU, issued February 25, 2019, in Docket No. 20180052-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Indiantown Division*; Order No. PSC-2019-0079-FOF-GU, issued February 25, 2019, in Docket No. 20180053-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Fort Meade Division*; Order No. PSC-2019-0078-FOF-GU, issued February 25, 2019, in Docket No. 20180054-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for the Florida Division of Chesapeake Utilities Corporation*.

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

**Recommendation:** Yes. Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, the decision should become final and effective upon issuance of the Consummating Order and this docket should be closed and separate dockets opened to address the tax impacts associated with the passage of the TCJA for Gold Coast Utility Corporation and St. James Island. (Brownless)

**Staff Analysis:** Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, the decision should become final and effective upon issuance of the Consummating Order and this docket should be closed and separate dockets opened to address the tax impacts associated with the passage of the TCJA for Gold Coast Utility Corporation and St. James Island.

Gold Coast Utility Corporation and St. James Island have not yet filed their 2018 annual reports. Consequently, the tax impacts associated with the TCJA cannot be evaluated for these two utilities. Both of these utilities are facing unique circumstances that will be addressed in dockets of their own. Also, closing this docket will resolve this tax issue for financial reporting purposes for the 13 utilities identified in Issue 1 that have filed their 2018 annual reports. Staff recommends the instant docket be closed and individual dockets be opened to address this tax issue for Gold Coast Utility Corporation and St. James Island.

**Table 1-1  
 Tax Cuts and Jobs Act WAW Analysis**

	<b>Company</b>	<b>Net Operating Income</b>	<b>Rate Base</b>	<b>Achieved ROR</b>	<b>Approved ROR Cap</b>
1	East Central Florida Services	\$ (114,909)	\$ 258,447	-44.46%	8.12%
2	Forest Utilities	\$ 49,819	\$ 2,523,171	1.97%	4.94%
3	Gold Coast Utility Corporation				5.91%
4	Indiantown Company	\$ (56,565)	\$ 486,821	-11.62%	4.21%
5	Marion Utilities	\$ (68,168)	\$ 1,232,286	-5.53%	8.19%
6	NHC Utilities	\$ (18,724)	\$ 71,054	-26.35%	8.74%
7	Ni Florida	\$ 258,149	\$ 4,254,955	6.07%	8.00%
8	North Beach Utilities	\$ 97,188	\$ 1,280,162	7.59%	7.69%
9	Peoples Water Service Company	\$ 259,716	\$ 3,599,525	7.22%	8.05%
10	Pine Island Cove HOA	\$ (70,504)	\$ 42,979	-164.04%	8.12%
11	Placid Lakes	\$ (12,020)	\$ 546,969	-2.20%	6.80%
12	Pluris Wedgefield	\$ 64,259	\$ 6,336,871	1.01%	9.85%
13	St. James Island				8.74%
14	Utilities, Inc. of Florida	\$ 6,555,469	\$ 114,572,234	5.72%	7.54%
15	Wildwood Water Company	\$ (33,893)	\$ 89,021	-38.07%	8.18%

Source: 2018 Annual Reports

# Item 14

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-**

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**DATE:** July 26, 2019

**TO:** Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

**FROM:** Suzanne S. Brownless, Special Counsel, Office of the General Counsel *SSB*

**RE:** Docket No. 20170086-SU - Investigation into the billing practices of K W Resort Utilities Corp. in Monroe County

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The Staff Recommendation filed earlier today for the August 6 Agenda Conference contained a factual error on page 5 which mistated the Office of Public Counsel's position on the penalty imposed on K W Resort Utilities Corporation (KWRU). The sentence is corrected as follows: "OPC also agrees to withdraw its protest of the PAA Order and take no position regarding further refunds to Safe Harbor or Sunset ~~and to take no position on the imposition of a penalty.~~"

APPROVED: \_\_\_\_\_

DATE: \_\_\_\_\_

*[Handwritten Signature]*  
7/26/19



REVISED  
07/26/19

State of Florida



## Public Service Commission

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

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

---

**DATE:** July 26, 2019

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

**FROM:** Division of Economics (Ramos, Hudson) *MR SH HUDSON*  
Division of Accounting and Finance (Fletcher, Norris, Sowards) *AM*  
Office of Auditing and Performance Analysis (Deamer)  
Office of the General Counsel (Brownless, Schrader) *AM*

**RE:** Docket No. 20170086-SU – Investigation into the billing practices of K W Resort Utilities Corp. in Monroe County.

**AGENDA:** 08/06/19 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** Brown, Polmann, Fay

**PREHEARING OFFICER:** Brown

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

This docket was opened to investigate the billing practices of K W Resort Utilities Corporation (KWRU) to determine if KWRU had violated any Commission order, rule or statute.<sup>1</sup> An audit was conducted by Commission staff for the period of April 2013 through March 2017, in which

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<sup>1</sup> Order No. PSC-16-0123-PAA-SU, issued March 23, 2016, in Docket No. 150071-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities Corporation.

KWRU was found to have charged rates inconsistent with its tariffs. Based on this audit, Order No. PSC-2018-0444-PAA-SU (Order No. PSC-2018-0444) was issued on August 31, 2018.<sup>2</sup> The proposed agency action portion of Order No. PSC-2018-0444 found that:

- The April 2013 through March 2017 audit period utilized by Commission staff was reasonable.
- The appropriate time period for the refunds was April 2013 through March 2016.
- KWRU was required to refund Safe Harbor (Safe Harbor) \$26,408 with interest in accordance with Rule 25-30.360, Florida Administrative Code (F.A.C.).
- KWRU was required to refund Sunset (Sunset) \$41,034 with interest in accordance with Rule 25-30.360, F.A.C.
- KWRU was not required to refund rates charged for pools due to KWRU's reasonable belief that the approved tariff for pools it had for Key West Golf Club-HOA "was applicable to any additional customers with pools."
- KWRU did not have to refund general service customers that were billed base facility charges (BFC) based on units instead of Florida Keys Aqueduct Authority (FKAA) metered rates for several reasons: 1) the error occurred during the transition from flat to volumetric for residential customers in which a billing software error incorrectly identified these customers as residential units; 2) the billing determinants in KWRU's 2009 rate case may have been based on units rather than meter sizes; and 3) KWRU corrected its billing practices following the implementation of Order No. PSC-16-0123-PAA-SU.<sup>3</sup>
- KWRU's settlement with Roy's Trailer Park was a reasonable solution to address that customer's corrected outstanding balance from being billed by KWRU based on units instead of FKAA meters.

The show cause portion of Order No. PSC-2018-0444 directed KWRU to show cause why it should not be fined a \$10,000 penalty for violations of Sections 367.081(1) and 367.091(3), Florida Statutes (F.S.).

The Office of Public Counsel (OPC) filed a protest of the PAA Order on September 21, 2018. In its protest, OPC raised the issues of whether Rule 25-30.350, F.A.C., requires that refunds be granted for the entire period that overbilling took place, 2009 through April 2016, and the calculation of customer refunds. KWRU filed a Cross Petition for Formal Evidentiary Hearing

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<sup>2</sup> Order No. PSC-2018-0444 has two parts. The first part is proposed agency action (PAA) regarding the calculation of refunds for KWRU customers, which will be referenced herein as the PAA Order. The second part is a show cause order as to why KWRU should not be penalized \$10,000 which shall be referenced herein as the Show Cause Order.

<sup>3</sup> Order No. PSC-16-0123-PAA-SU, issued March 23, 2016, in Docket No. 150071-SU, In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.

(Cross Petition) on October 1, 2018. In its Cross Petition, KWRU protested the \$10,000 penalty (Show Cause Order) and the refunds ordered for Safe Harbor and other customers. On March 14, 2019, Order No. PSC-2019-0101-PCO-SU (OEP) was issued setting a final hearing on the PAA order issues raised by OPC and KWRU for September 17-18, 2019.

On May 17, 2019, KWRU and OPC filed a Joint Motion for Approval of Stipulation and Settlement (Stipulation and Settlement). The Stipulation and Settlement is contained in Attachment A. The Stipulation and Settlement has the following provisions:

- Fourth Avenue, LLC shall be refunded \$1,004.34 and ITNOR Waters Edge shall be refunded \$1,025.49 within 30 days of Commission approval of the Stipulation and Settlement.
- OPC will withdraw its protest of the PAA Order filed on September 21, 2019.
- OPC takes no position on refunds to Safe Harbor or Sunset.
- The Stipulation and Settlement does not address the Show Cause portion of Order No. PSC-2018-0444.
- KWRU will limit its contested issues to refunds to Safe Harbor and Sunset (PAA Order) and the penalty (Show Cause Order).
- The Stipulation and Settlement must be approved by the Commission without modification.

On May 28, 2019, KWRU filed a Motion to Abate Proceedings. In its Motion to Abate, KWRU argued that the Stipulation and Settlement allowed both the PAA and Show Cause portions of Order No. PSC-2018-0444 to be resolved at an Agenda Conference, thereby negating the necessity for a formal evidentiary hearing. On June 4, 2019, KWRU filed the direct testimony of Christopher A. Johnson. The Motion to Abate was granted on June 14, 2019, by Order No. PSC-2019-0235-PCO-SU, suspending the hearing schedule in this docket until further notice.

On June 14, 2019, KWRU also filed an Offer of Settlement (KWRU Offer) to resolve the remaining issues in this docket not addressed in the Stipulation and Settlement. The KWRU Offer is contained in Attachment B. The KWRU Offer contains the following provisions:

- The Settlement Agreement and Release between Safe Harbor and KWRU dated May 12, 2016, Exhibit CAJ-9 to witness Johnson's direct testimony, releases KWRU from any refund which may be due to Safe Harbor in this docket for overbilling and no additional refunds are necessary.
- The Settlement Agreement and Release between Sunset and KWRU dated October 23, 2019, Exhibit CAJ-8 to witness Johnson's direct testimony, states that the payment of \$41,034.00 by KWRU to Sunset is a complete satisfaction of any claim that Sunset is owed any additional refunds for overbilling by KWRU and no additional refunds are necessary.

- KWRU is willing to pay a penalty of \$2,500.00 for improper billing.

Unlike most cases when a settlement is reached by the parties where an evidentiary hearing is scheduled, staff is making a substantive recommendation to the Commission on Issues 1 and 2, the Stipulation and Settlement and KWRU's Offer, both of which were filed to resolve the unique facts and posture of this case. The order protested here involved refunds to customers for which staff is not a party, and a fine for which staff is a party and acts in a prosecutorial role. Because all issues have become so intertwined, staff believes the most expedient process is to make substantive recommendations on all settlement and stipulation issues before the Commission.

This recommendation addresses both the Stipulation and Settlement and KWRU Offer. A complete resolution of both the PAA Order issues and Show Cause issue can only be achieved if both the Settlement and Stipulation addressed in Issue 1 and Settlement Offer addressed in Issue 2 are approved. The Commission has jurisdiction pursuant to Section 367.081, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission approve the Stipulation and Settlement jointly filed by KW Resort Utilities Corporation and the Office of Public Counsel?

**Recommendation:** Yes. (Brownless, Schrader)

**Staff Analysis:** The Stipulation and Settlement filed by the parties on May 17, 2019, proposes to settle several legal and billing issues addressed in Order No. PSC-2018-0444 that were protested by OPC and cross-protested by KWRU. Specifically, the Stipulation and Settlement requires KWRU to issue refunds to two additional KWRU customers: \$1,004.34 to Fourth Ave., LLC, and \$1,025.49 to ITNOR Waters Edge, within 30 days of the Commission's approval of the Stipulation and Settlement. These refunds would be paid in addition to any refunds issued up until the time of the filing of the Stipulation and Settlement,

OPC also agrees to withdraw its protest of the PAA Order and take no position regarding further refunds to Safe Harbor or Sunset ~~and to take no position on the imposition of a penalty~~. The parties also state that the Stipulation and Settlement "is in the best interests of both the Utility and its customers." In sum, OPC has agreed to waive its right to a hearing on the factual and legal PAA Order issues it protested in exchange for the payment of refunds to two additional customers incorrectly billed by the use of BFCs based on the number of units or individual dwellings present behind a master meter, rather than based on the customer's meter size.

Under the terms of the Stipulation and Settlement, KWRU is able to contest the refunds for Safe Harbor and Sunset (PAA Order issues) and the penalty issue (Show Cause Order issue). In its Motion to Abate, KWRU made the representation that approval of the Stipulation and Settlement would enable KWRU to resolve both the PAA and Show Cause Order issues "at the Commission Conference, negating the necessity for a formal administrative hearing." From this statement, Commission staff concludes that if given an opportunity to present oral argument on the PAA and Show Cause Order issues at an Agenda Conference, KWRU envisions waiving its right to an evidentiary hearing on these issues.

Both OPC and KWRU have entered into the Stipulation and Settlement in good faith and represent that it is in the public interest. The Stipulation and Settlement resolves some protested billing issues and provides an administratively efficient means of resolving the issues that remain: Safe Harbor and Sunset refunds and the \$10,000 penalty. Given these unique facts, the Stipulation and Settlement appears to be in the public interest and to fairly and reasonably settle the issues between KWRU and OPC in this docket.

**Issue 2:** Should KWRU's Offer of Settlement be approved?

**Recommendation:** Yes, if the Commission votes to approve Issue 1. If the Commission does not vote to approve Issue 1, this case should be set for hearing with appropriate modifications to the filing dates made in Order No. PSC-2019-0101-PCO-SU, Order Establishing Procedure. (Brownless, Schrader)

**Staff Analysis:** The KWRU Offer of Settlement (KWRU Offer) proposes to settle the remaining issues in this docket that were not addressed by the Stipulation and Settlement. The KWRU Offer asks that the Commission approve resolutions to the refund amounts due to Safe Harbor and Sunset and approve a lower amount for the Show Cause penalty.

Regarding the remaining refunds due to Safe Harbor and Sunset, KWRU filed the Settlement Agreement and Release it has reached with each party as Exhibits to witness Christopher Johnson's Prefiled Direct Testimony filed on June 4, 2019. The KWRU Offer asserts that the Settlement Agreement and Release reached with Safe Harbor on May 12, 2016, resolved a number of issues between KWRU and Safe Harbor "including, but not limited to, mutual obligations for refunds between the parties." Further, the KWRU Offer states that, pursuant to this agreement and release, "any refund which may be due to Safe Harbor in this docket is deemed satisfied and no additional refunds are necessary." For Sunset, the KWRU Offer states that the Settlement Agreement and Release, dated October 23, 2018, reached between KWRU and Sunset, provides that in consideration of a payment made by KWRU to Sunset of \$41,034.00, Sunset released KWRU from all claims related to any further refunds due that are addressed in Order No. PSC-2018-0444.

Regarding the Show Cause penalty, KWRU states that Commission staff, during the August 6, 2018 Agenda Conference recommended a penalty of \$1,000; however the Commission increased this penalty to \$10,000. KWRU argues that this penalty "greatly exceeds a reasonable amount based upon the particular circumstances of the KWRU tariff at that time." In support of this argument, KWRU points to the arguments it previously made at the August 6, 2018 Agenda Conference, pointing in particular to the following discussion from the Conference:<sup>4</sup>

Ms. [Patti] Daniels: ...I do want to reiterate and emphasize to you is that Mr. Friedman is absolutely correct that the –the tariff lacked clarity for many, many years...

Commissioner Brown: Are you – Patti, are you saying, though, that staff had a role in some of the confusion that occurred?

Ms. Daniels: Absolutely Commissioner.

Commissioner Brown: Is that why staff is recommending a nominal fee of a thousand dollar fine?

Ms. Daniel: Absolutely.

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<sup>4</sup> Agenda Conference 25-26, Aug 6, 2018.

Date: July 26, 2019

In consideration of its arguments, KWRU's Settlement requests that the Commission approve a penalty of \$2,500 to resolve the Show Cause portion of Order No. PSC-2018-0444.

Regarding the refunds to Safe Harbor and Sunset, it appears that KWRU and those customers have reached a mutually agreeable resolution of the amounts due to those customers. Regarding the Show Cause penalty, it appears that while KWRU did violate its approved tariff, KWRU has reasonably shown that Commission staff had at least some role in the confusion that KWRU asserts it had regarding the interpretation and application of the tariff. Finally, KWRU has corrected its billing practices and is currently billing in accord with its tariff. Given these unique facts, acknowledging the agreements between KWRU and both Marinas and accepting a lower penalty of \$2,500 appears to be reasonable and in the public interest.

Due to the unique facts in this case, a complete resolution of both the PAA Order issues and Show Cause issue can only be achieved if both the Settlement and Stipulation addressed in Issue 1 and the Settlement Offer addressed in Issue 2 are approved. Therefore, if the Commission approves the Stipulation and Settlement in Issue 1, staff would also recommend approval of the KWRU Offer. If the Commission does not vote to approve the Stipulation and Settlement in Issue 1, then staff recommends that the KWRU Offer not be accepted and that this matter be set for hearing with appropriate modifications to the filing dates established in Order No. PSC-2019-0101-PCO-SU.

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

**Recommendation:** Staff recommends that if the Commission approves both the Stipulation and Settlement and the KWRU Offer, and if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of issuance of the order, this docket should be administratively closed upon the issuance of a consummating order. If the Commission does not approve both the Stipulation and Settlement and the KWRU Offer, this docket should remain open pending resolution at hearing. (Brownless, Schrader)

**Staff Analysis:** Staff recommends that if the Commission approves both the Stipulation and Settlement and the KWRU Offer, and if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of issuance of the order, this docket should be administratively closed upon the issuance of a consummating order. If the Commission does not approve both the Stipulation and Settlement and the KWRU Offer, this docket should remain open pending resolution at hearing.



**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into the billing practices of  
K W Resort Utilities Corp. in Monroe County.

DOCKET NO. 20170086-SU

FILED: May 17, 2019

**STIPULATION AND SETTLEMENT**

WHEREAS, K W Resort Utilities Corp. (KWRU or Utility), and the Citizens of the State of Florida, through the Office of Public Counsel (“OPC”), have signed this Stipulation and Settlement (the “Agreement;” unless the context clearly requires otherwise, the term “Party” or “Parties” means a signatory to this Agreement); and

WHEREAS, on March 13, 2017, the Commission ordered its staff to open this docket, No. 20170086-SU, and ordered Commission staff to conduct a full audit of KWRU's billing practices to determine if KWRU had violated any of the Commission's orders, rules, or statutes. Order No. PSC-17-0091-FOF-SU, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.*; and

WHEREAS, on November 6, 2017, Commission Staff filed in this docket its Audit Report, titled, “K W Resort Utilities Corp. Specialized Billing Audit Forty-Eight Months Ending March 30, 2017;” and

WHEREAS, the Utility filed its response to the Commission Staff's Audit Report on or about January 31, 2018; and

WHEREAS, on May 17, 2018, the Commission Staff issued a Notice of Apparent Violation to the Utility; and

WHEREAS, on August 31, 2018 the Commission entered PAA Order No. PSC-2018-0444-PAA-SU (“PAA Order”) requiring KWRU to refund money to certain customers and to pay a penalty; and

WHEREAS, on September 21, 2018, OPC filed a Petition protesting portions of the PAA Order unrelated to the penalty, and on October 1, 2018, KWRU filed a Cross-Petition for a Formal Administrative Hearing; and

WHEREAS, on March 25, 2019, the Commission entered Order No. PSC-2019-0113-PCO-SU denying KWRU's motion to dismiss or strike; denying OPC's motion for partial summary final order and KWRU's motion for summary final order; and

WHEREAS, the Parties to this Agreement have undertaken to resolve the issues raised in this docket so as to achieve fairness to customers and the Utility and to ensure compliance with the applicable Florida Statutes and Florida Rules of Administrative Procedure; and

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 367 and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties upon acceptance of the Agreement as provided herein and upon approval in the public interest;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. This Agreement will become effective on the date it is signed by both Parties (the "Effective Date"). The Parties agree that, in addition to any refunds issued to date, KWRU shall issue refunds in the amount of \$1,004.34 to Fourth Ave., LLC, and \$1,025.49 to ITNOR Waters Edge, respectively, within 30 days of the approval of this Agreement in its entirety by the Commission without modification, via entry of a Commission Order. This

Agreement does not address Safe Harbor Marina or Sunset Marina. OPC will take no position as to whether these customers are entitled to any further refund.

2. OPC agrees to withdraw its Petition protesting the PAA Order.
3. KWRU agrees to withdraw its Cross-Petition and request for administrative hearing in this docket, except as it relates to Safe Harbor Marina and Sunset Marina.
4. This Agreement is silent on KWRU's right to advocate on matters in this docket related to the penalty outlined in the PAA Order.
5. No Party to this Agreement will request, support, or seek to impose a change in the application of any provision hereof.
6. The provisions of this Agreement are contingent on approval of this Agreement in its entirety by the Commission without modification. The Parties agree that approval of this Agreement is in the public interest. The Parties further agree that they will support this Agreement and will not request or support any order, relief, outcome, or result in conflict with the terms of this Agreement in any administrative or judicial proceeding relating to, reviewing, or challenging the establishment, approval, adoption, or implementation of this Agreement or the subject matter hereof. No party will assert in any proceeding before the Commission or any court that this Agreement or any of the terms in the Agreement shall have any precedential value, except to enforce the provisions of this Agreement. Approval of this Agreement in its entirety will resolve all matters and issues which are the subject matter of this Agreement in Docket No. 20170086-SU pursuant to, and in accordance with, Section 120.57(4), Florida Statutes. No Party shall seek appellate review of any order pertaining to this Agreement.

7. This Agreement is dated as of the date the last signature is affixed. It may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Agreement by their signature.

K W Resort Utilities Corp.  
Mr. Christopher Johnson  
C/O K.W. Resort Utility  
6630 Front Street  
Key West FL 33040-6050

By:   
Christopher Johnson  
Title: President  
Date: 05-17-2019

Office of the Public Counsel  
J.R. Kelly, Esq.  
The Florida Legislature  
111 West Madison Street  
Room 812  
Tallahassee, FL 32399-1400

By:   
J.R. Kelly  
Public Counsel  
Date: 05-17-2019

P

FILED 6/14/2019  
DOCUMENT NO. 04901-2019  
FPSC - COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Investigation into the billing practices of  
K W Resort Utilities Corp. in Monroe County.

DOCKET NO. 20170086-SU

**KW RESORT UTILITIES CORP.'S OFFER OF SETTLEMENT**

K W Resort Utilities Corp. (KWRU or Utility), makes the following offer of Settlement to resolve the issues that were not addressed in the Stipulation and Settlement entered into between KWRU and Office of Public Counsel previously filed in this Docket.

RECITALS

WHEREAS, on March 13, 2017, the Commission ordered its staff to open this docket, No. 20170086-SU, and to conduct a full audit and investigation of KWRU's billing practices to determine if KWRU had violated any of the Commission's orders, rules, or statutes. Order No. PSC-17-0091-FOF-SU, in Docket No. 150071-SU, *In re: Application for increase in wastewater rates in Monroe County by K W Resort Utilities, Corp.*; and

WHEREAS, on November 6, 2017, Commission Staff filed in this docket its Audit Report, titled, "K W Resort Utilities Corp. Specialized Billing Audit Forty-Eight Months Ending March 30, 2017;" and

WHEREAS, the Utility filed its response to the Commission Staff's Audit Report on or about January 31, 2018; and

WHEREAS, on May 17, 2018, the Commission Staff issued a Notice of Apparent Violation to the Utility; and

WHEREAS, on August 31, 2018 the Commission entered PAA Order No. PSC-2018-0444-PAA-SU ("PAA Order") requiring KWRU to refund money to certain customers and to pay a penalty; and

WHEREAS, on September 21, 2018, OPC filed a Petition protesting portions of the PAA Order unrelated to the penalty, and on October 1, 2018, KWRU filed a Cross-Petition for a Formal Administrative Hearing; and

WHEREAS, on March 25, 2019, the Commission entered Order No. PSC-2019-0113-PCO-SU denying KWRU's motion to dismiss or strike; denying OPC's motion for partial summary final order and KWRU's motion for summary final order; and

WHEREAS, on May 17, 2019, KWRU and OPC entered into a Stipulation and Settlement which settled OPC's concerns, but provided that OPC "will take no position as to whether these customers [Safe Harbor Marina and Sunset Marina] are entitled to any further refunds", and was silent as to the penalty.

NOW THEREFORE, KWRU offers the following in settlement of the issues of further refunds to Safe Harbor Marina and Sunset Marina and the \$10,000 penalty:

1. Safe Harbor Marina. KWRU and Safe Harbor Marina entered into a Settlement Agreement and Release, dated May 12, 2016, which has been filed in this docket, and is Exhibit CAJ-9 to witness Christopher Johnson's Prefiled Direct Testimony filed on June 4, 2019. That Agreement resolved a number of issues between them including, but not limited to, mutual obligations for refunds between the parties. Thus, pursuant to that Agreement, any refund which may be due to Safe Harbor Marina in this docket is deemed satisfied and no additional refunds are necessary.

Sunset Marina. KWRU and Sunset Marina entered into a Settlement Agreement and Release, dated October 23, 2018, which has been filed in this docket, and is Exhibit CAJ-8 to witness Christopher Johnson's Prefiled Direct Testimony, filed on June 4, 2019. In consideration of payment by KWRU to Sunset Marina in the amount of \$41,034.00, Sunset Marina released KWRU from all claims related to any further refunds due that are

addressed in PAA Order [Order No. PSC-2018-0444-SU]. Thus, all refund issues with respect to Sunset Marina in this docket are resolved and no additional refunds are necessary.

Penalty. Although for the reasons discussed below, Commission staff recommended a penalty in the amount of \$1,000, the Commission increased that penalty to \$10,000 which greatly exceeds a reasonable amount based upon the particular circumstances of the KWRU tariff at that time. There was much discussion at the August 7, 2018, Agenda regarding the unique nature of the tariff rates for KWRU during the time in question<sup>1</sup> and there is no need to reiterate them at this time. The following from the transcript at the August 7, 2018, Agenda points out the reasonableness of KWRU's interpretation and application of its tariff:

Ms. Daniels: ....I do want to reiterate and emphasize to you is that Mr. Friedman is absolutely correct that the –the tariff lacked clarity for many, many years...(p. 25)

Commissioner Brown: Are you – Patti, are you saying, though, that staff had a role in some of the confusion that occurred?

Ms. Daniels: Absolutely Commissioner.

Commissioner Brown: Is that why staff is recommending a nominal fee of a thousand dollar fine?

Ms. Daniel: Absolutely (p.26)

Based upon foregoing, KWRU offers a penalty of \$2,500.

2. KWRU believes that approval of this Agreement is in the public interest.
3. The approval of this Offer, and the Stipulation and Settlement entered into between OPC and KWRU, will resolve all matters and issues raised in Docket No. 20170086-SU.

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<sup>1</sup> KWRU's rates are now based on the traditional meter size and gallonage charges and are consistent with KWRU's current tariffs.



Respectfully submitted as of the 13<sup>th</sup> day of June, 2019, by:

Barton W. Smith  
Smith Law Firm  
138 Simonton Street  
Key West, Florida 33040  
bart@smithhawks.com

/s/ Martin S. Friedman  
Martin S. Friedman  
Dean Mead  
420 South Orange Ave., Suite 700  
Orlando, FL 32801  
mfriedman@deanmead.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail on this 13<sup>th</sup> day of June 2019, to the following:

Stephanie Morse  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street; Room 812  
Tallahassee, FL 32399-1400  
[morse.stephanie@leg.state.fl.us](mailto:morse.stephanie@leg.state.fl.us)

Suzanne Brownless  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850  
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/s/ Martin S. Friedman  
Martin S. Friedman