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Commission Conference Agenda
September 5, 2019

Item 1

State of Florida

Public Service Commission

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

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

DATE: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Williams, Yglesias de Ayala)
Office of the General Counsel (Trice, Murphy)

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 9/5/2019 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

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

DOCKET NO.	COMPANY NAME	CERT. NO.
20190150-TX	Metro Fibernet, LLC d/b/a MetroNet	8938
20190151-TX	NGA 911, L.L.C.	8939

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

Item 2

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: August 27, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (King) AK SML.
Division of Economics (Guffey, Coston) S.K.G. WEC JZH

RE: Docket No. 20190041-WS – Proposed adoption of Rule 25-30.0115, F.A.C., Definition of Landlord and Tenant.

AGENDA: 09/05/19 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

RULE STATUS: Proposal may be deferred

SPECIAL INSTRUCTIONS: None

Case Background

At the January 8, 2019 Agenda Conference, staff brought a recommendation to the Commission in Docket No. 20180142-WS recommending that the Commission issue an order to show cause to Palm Tree Acres for providing water and wastewater services without a certificate of authorization in contravention of Section 367.031, Florida Statutes (F.S.).[1] The core issue was whether Palm Tree Acres is a utility subject to the Commission's jurisdiction.

Section 367.021(12), F.S., defines a utility subject to the Commission's jurisdiction as "every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation," except for those individuals and entities

[1] Document No. 07686-2018, filed in Docket No. 20180142, *Initiation of show cause proceedings against Palm Tree Acres Mobile Home Park, in Pasco County, for Noncompliance with Section 367.031, F.S., and Rule 25-30.033, F.A.C.*

exempted from Commission regulation as a utility in Section 367.022, F.S. Palm Tree Acres argued that it was one of the entities exempted from Commission regulation under Section 367.022, F.S. Specifically, it argued that it fit the exemption in Section 367.022(5), F.S., which provides that "[l]andlords providing service to their tenants without specific compensation for the service" are exempt from the Commission's jurisdiction.

Staff and certain residents of Palm Tree Acres argued that Palm Tree Acres was not a landlord as that term is used in Section 367.022(5), F.S., nor were the residents that owned their lots tenants.

Four days before the January 8, 2019 Agenda Conference, Palm Tree Acres sent the Commission a letter arguing that staff's interpretation of "landlord" and "tenant" in Section 367.022(5), F.S., constituted a rule of general applicability that was not adopted pursuant to the requirements of the Administrative Procedure Act. Thus, if the Commission pursued enforcement action via staff's interpretation of Section 367.022(5), F.S., Palm Tree Acres would initiate an unadopted rule challenge. Palm Tree Acres reinforced this intention at the January 8, 2019 Agenda Conference.

At the January 8, 2019 Agenda Conference, the Commission voted to defer consideration of staff's recommendation and initiated rulemaking to explore the possibility of adopting a rule defining "landlord" and "tenant" as used in Section 367.022(5), F.S.

Notice of initiation of rulemaking appeared in the February 15, 2019 edition of the Florida Administrative Register (vol. 45, issue 32). The notice also set the time and place for a staff-led rule development workshop, which was held on March 4, 2019. The workshop was attended by representatives from the Florida Manufactured Housing Association (FMHA); the Goss family, who owns several mobile home parks in Florida, including Palm Tree Acres; and the Office of Public Counsel (OPC). All three filed post-workshop comments on March 18, 2019.

This recommendation addresses whether the Commission should propose the adoption of a new rule to define the terms "landlord" and "tenant" in Section 367.022(5), F.S. The Commission has jurisdiction pursuant to Sections 120.54, 367.121(1)(f), and 367.022, F.S.

Discussion of Issues

Issue 1: Should the Commission propose the adoption of Rule 25-30.0115, F.A.C., Definition of Landlord and Tenant?

Recommendation: Yes, the Commission should propose the adoption of Rule 25-30.0115, F.A.C., as set forth in Attachment A. Additionally, the Commission should certify the rule as a minor violation rule. (King, Guffey)

Staff Analysis: Section 367.021(12), F.S., defines a utility subject to the Commission's jurisdiction as "every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." Section 367.022, F.S., provides exemptions from Commission regulation for a finite group of individuals and entities. Section 367.022(5), F.S., contains an exemption for "[l]andlords providing service to their tenants without specific compensation for the service." Staff is recommending that the Commission propose a new rule that would define the terms "landlord" and "tenant," as used in that exemption. As set forth in Attachment A, staff's recommended rule language reads as follows:

> **25-30.0115 Definition of Landlord and Tenant**
>
> As used in Section 367.022(5), F.S.:
>
> (1) "landlord" is the party who conveys a possessory interest in real property to a tenant by way of a lease and who provides water and/or wastewater service to the tenant at that property; and
>
> (2) "tenant" is the party to whom the possessory interest in real property is conveyed by the landlord by way of a lease and who receives water and/or wastewater service from the landlord at that property.

The recommended language is based on the plain and ordinary meaning of landlord and tenant, and related terms, as defined by the eleventh edition of Black's Law Dictionary. Black's Law Dictionary defines landlord as "[s]omeone who rents a room, building, or piece of land to someone else." A lessor, which Black's deems a synonym to landlord, is "[s]omeone who conveys real or personal property by lease." A tenant is "[s]omeone who holds or possesses lands or tenements by any kind of right or title." And a lessee is "[s]omeone who has a possessory interest in real or personal property under a lease."

Finally, Black's also defines a "landlord-tenant relationship." The relationship is created by lease, either express or implied, and must include "a landlord's reversion, a tenant's estate, [and] transfer of possession and control of the premises." During the rulemaking process, staff used the word "agreement" instead of "lease" in discussions of potential rule language. However, staff recommends using "lease" instead of "agreement" because the former is more precise.

The only addition staff made to these dictionary definitions was a clause mandating that the landlord provide and the tenant receive the water and wastewater services at the conveyed property. This requirement comports with a plain reading of the text of Section 367.022(5), F.S., and the Legislature's declared intent of Commission regulation of water and wastewater utilities as it appears in Section 367.011, F.S.

Staff's recommended definitions of landlord and tenant are also consistent with previous Commission practice.[2] The decision in Order No. PSC-92-0746-FOF-WU is on point. In that case, the Commission denied Gem Estates' request for an exemption from Commission jurisdiction under Section 367.022(5), F.S., because the mobile home owners in Gem Estates owned their own land.[3] Because the residents owned their lots, the subdivision owner was not a landlord.

Stakeholder Comments

Staff received comments from the Goss family, FMHA, and OPC. OPC and the Goss family also submitted suggested changes to staff's recommended language. The Goss family and FMHA disagreed with staff's recommended language, and the Goss family's suggested language is substantially different from staff's recommended language. OPC, on the other hand, generally agreed with staff's recommended language, but made one suggested change that does not change the substance of staff's recommended language.

The Goss family owns 27 mobile home parks in Florida, including Palm Tree Acres. The crux of its argument is that staff's definitions of landlord and tenant are too narrow and ignore certain landlord-tenant relationships recognized in Chapter 723, F.S. Consistent with its argument that both mobile home park and mobile home subdivision owners should be considered landlords, the Goss family suggests the following changes to staff's recommended language:

> (1) "landlord" is the party who conveys a possessory interest in, *or access to,* real property to a tenant by way of agreement[4] between the two parties and

[2] *E.g.*, Order 24806, issued July 11, 1991, in Docket 19910385-SU, *In re: Request for exemption from Florida Public Service Commission regulation for a wastewater treatment plant in Highlands County by Oak Leafe Wastewater Treatment Plant* (noting "some of Oak Leafe's residents will own their lots," citing the definition for "tenant" in Section 83.43(4), F.S., and declaring that Oak Leafe will not provide service solely to tenants); Order 21711, issued August 10, 1989, in Docket No. 19890514-WS, *In Re: Request by Rubidel Recreation, Inc. for Exemption from FPSC Regulation for Water and Sewage Treatment Facilities in Lake County* ("Because there will be property owners in the [utility's] service area . . . , . . . the utility does not meet the requirements of [the exemption in Section 367.022(5), F.S.]."); *see, e.g.*, Order 24311, issued April 2, 1991, in Docket No. 1990733-WS, *In Re: Request for Exemption from Florida Public Service Commission Regulation for Water and Wastewater Systems in Lake County by Stewart/Barth Utility* (holding that the utility was not a landlord for the tenants of condominiums not owned by the utility); Order 23150, issued July 5, 1990, in Docket No. 19870060-WS, *In re: Resolution by Board of Sumter County Commissioners declaring Sumter County subject to jurisdiction of Florida Public Service Commission* (deciding that a mobile home park owner qualified as a landlord where several of its residents possessed their lots under 99-year leases).

[3] Issued August 4, 1992, in Docket No. 19920281-WU, *In re: Request for exemption from Florida Public Service Commission regulation for provision of water service by Gem Estates Water System in Pasco County*.

[4] As previously discussed, the word "agreement" was used in earlier drafts of the rule, but staff is recommending that the proposed rule use "lease" instead of "agreement" because the former is more precise.

> who provides water and/or wastewater service to the tenant *as part of that conveyance* ~~at that property~~; and
>
> (2) "tenant" is the party to whom the possessory interest in, *or access to*, real property is conveyed by the landlord and who receives water and/or wastewater service from the landlord *as part of that conveyance* ~~at that property~~.

The Florida Mobile Home Act

The Goss family's suggested language, which is based mainly on Chapter 723 of the Florida Statutes, is substantially different from staff's recommended language. Specifically, the Goss family argues that Chapter 723, also known as the Florida Mobile Home Act, labels mobile home subdivision owners as landlords and labels owners of lots in that subdivision as tenants. Therefore, the Goss family argues the Commission should likewise recognize mobile home subdivision owners as landlords in interpreting the exemption in Section 367.022(5), F.S. FMHA echoed this argument in its post-workshop comments, but it did not suggest specific rule language.

The Goss family supports this argument with the example of Palm Tree Acres, which is both a mobile home park and a mobile home subdivision regulated under Chapter 723. The Goss family argues that Palm Tree Acres is a landlord in its capacity as a mobile home subdivision because even though it does not rent the lot owners their lots, it is renting the lot owners access to and use of common amenities in the park/subdivision. This argument trades on a conflation of two terms of property law: license and lease.

> A tenant under a lease is one who has been given a possession of land which is "exclusive even of the landlord except as the lease permits his entry, and saving always the landlord's right to enter to demand rent or to make repairs." A licensee is one who has a "mere permission to use land, dominion over it remaining in the owner and no interest in or exclusive possession of it being given" to the occupant.

Turner v. Fla. State Fair Auth., 974 So. 2d 470, 473–74 (Fla. 2d DCA 2008) (quoting *Seabloom v. Krier*, 219 Minn. 362, 18 N.W.2d 88, 91 (1945)); *License*, Black's Law Dictionary (11th ed. 2019). Staff believes that by granting lot owners *access to and use of* a park's common areas, a mobile home subdivision owner creates a licensor-licensee relationship rather than a landlord-tenant relationship. *See Napoleon v. Glass*, 229 So. 2d 883, 885 (Fla. 3d DCA 1969).

To conform the Commission's definitions of landlord and tenant to the Goss family's interpretation of Chapter 723, F.S., the Goss family's suggested rule language, unlike staff's recommended language, does not include the phrase "at the property." Instead, the Goss family suggests that the definitions require that the provision water and wastewater services be part of the conveyance to the lot owners of access to or use of other property and services.

However, the landlord/tenant exemption makes little sense if the water and wastewater services are not provided at the leased property. In Section 367.011(3), F.S., the Legislature specifically declared that Commission regulation of water and wastewater utilities is predicated on concerns about public health, safety, and welfare. Such concerns arise in the context of public utilities

because the service is essential and the customer only has one choice of provider at any given location. But a tenant purchasing water and wastewater services from his or her landlord for delivery at the real property conveyed by the parties' lease has the ability to switch utilities by moving at the end of the lease. Landowners lack this ability because to move they would have to sell their property, presumably at a significant loss if the sole utility provides subpar services, charges excessive rates, or disconnects service to the property.

Additionally, staff disagrees with the broader arguments of the Goss family and FMHA that Chapter 723 defines mobile home subdivision owners as landlords and the owners of lots mobile home subdivisions as tenants. Chapter 723 is aimed primarily at regulating the relationship between a mobile home park owner and a mobile home owner who rents a lot from the park. *See* § 723.004, F.S. (finding there are factors unique to the relationship between a mobile home park owner and one who rents a lot from a mobile home park owner). Given the plain and ordinary definition of a landlord-tenant relationship is based on the conveyance of a possessory interest in real property, it should be no surprise that those terms would appear in statutes primarily regulating a relationship in which one person—a mobile home park owner—conveys a possessory interest in real property to another—a mobile home owner. The Goss family appears to argue that because Section 723.002(2), F.S., applies 8 of Chapter 723's almost 70 sections to mobile home subdivision owners and owners of lots in mobile home subdivisions, that somehow a landlord-tenant relationship is created between the subdivision owner and the lot owner. However, none of those 8 sections create a landlord-tenant relationship between mobile home subdivision owners and lot owners.

It is telling that the Goss family relies mainly on Section 723.058(3), F.S., to support its argument that Chapter 723 labels mobile home subdivision owners as landlords. That section provides that

> No mobile home owner, owner of a lot in a mobile home subdivision, or purchaser of an existing mobile home located within a park or mobile home subdivision, as a condition of tenancy, or to qualify for tenancy, or to obtain approval for tenancy in a mobile home park or mobile home subdivision, shall be required to enter into, extend, or renew a resale agreement.

At best, Section 723.058(3), F.S., uses the terms "lot owner" and "tenancy" in the same sentence. However, nowhere does Section 723.058(3), F.S., define a lot owner as a tenant or a subdivision owner as a landlord. The term "tenancy" is used, not as a term of art, but colloquially as a term to describe one's ability to take up residence in the park/subdivision. In short, the section prohibits a mobile home park or subdivision owner from conditioning one's ability to reside in the park or subdivision on the execution of a resale agreement. Using Section 723.058(3), F.S., to imply that the entire chapter is intended to create a landlord-tenant relationship between a mobile home subdivision owner and a lot owner is not supported by the law.

Additionally, staff believes it is outside the scope of the Commission's statutory authority to interpret Section 367.022(5), F.S., in a way that goes beyond the plain and ordinary meaning of the terms used by the Legislature in that section. Nothing in Chapters 723 or 367 indicate that the Commission should refer to Chapter 723 in defining terms used in Section 367.022(5), F.S.

Moreover, as discussed above, the Commission has consistently used the plain and ordinary meaning of the terms "landlord" and "tenant" when applying Section 367.022(5), F.S.

The Cost of Regulation

The Goss family and FMHA's second argument is that regulating mobile home subdivisions as utilities will saddle the subdivision's residents with much higher costs for water and wastewater services; therefore, the Commission should interpret "landlord" and "tenant" in a way that avoids imposing these costs. In a May 4, 2018 letter to the Commission's General Counsel, FMHA argued that staff's interpretation of Section 367.022(5), F.S., would subject "many of its member[]" parks and subdivisions to costly regulation. But in its post-workshop comments, FMHA stated that it could identify few parks and subdivisions, if any, that would be subject to regulation under staff's recommended rule.

The Goss family again turned to Palm Tree Acres as an example of these increased costs. It presented analysis showing that Palm Tree Acres' 19 lot owners would pay approximately $469 per month for water and wastewater services if Palm Tree Acres was regulated by the Commission. However, it appears that the analysis allocates regulatory costs to only those 19 customers, even though the utility currently has 244 customers. If the analysis had properly allocated those costs to all 244 customers, the monthly cost for those 19 customers would likely be considerably lower.

Staff has considered the stakeholder comments regarding the alleged increased costs of regulation, but finds them unpersuasive. First, as explained above, staff's recommended language is consistent with previous Commission practice. The scope of the Commission's jurisdiction remains unchanged, which means the rule would not bring any entities under the Commission's jurisdiction that were not previously subject to its jurisdiction.

Second, as explained above, the Goss family's suggested changes are not consistent with the plain and ordinary meaning of the terms landlord and tenant. Staff recommends definitions that hew to the plain and ordinary definitions of those words as found in Black's Law Dictionary for two reasons. One, Florida courts have developed well-established law guiding statutory interpretation that is based on using the plain and ordinary meaning of words as discerned by dictionaries. *W. Fla. Reg'l Med. Ctr., Inc. v. See*, 79 So. 3d 1, 8–9 (Fla. 2012). Two, the Commission's interpretation of statutes is no longer afforded deference when reviewed by courts. Art. V, § 21, Fla. Const.; *Citizens v. Brown*, 269 So. 3d 498, 504 (Fla. 2019). Therefore, if a court was asked to review the Commission's interpretation of Section 367.022(5), F.S., as embodied in Rule 25-30.0115, F.A.C., the validity of the Commission's interpretation would depend almost completely on whether its interpretation conformed to the well-established rules of statutory interpretation used by courts. *See W. Fla. Reg'l Med. Ctr.*, 79 So. 3d at 8–9.

The Commission's rules are designed to implement the purposes of statutes. Many of those statutes contain broad policy goals that afford the Commission discretion in crafting programs to achieve those purposes. But Section 367.022, F.S., is different. It prescribes the Commission's jurisdiction in clear and definite terms. It does not give the Commission discretion to decide the limits of its jurisdiction. When the terms of a statute are plain and unambiguous, changing that plain meaning is solely within the purview of the Legislature.

Written or Oral Agreements

OPC largely agreed with staff's proposed rule language. It did, however, suggest the following change: "(1) 'landlord' is the party who conveys a possessory interest in real property to a tenant by way of agreement,[5] either written or oral, and who provides water and/or wastewater service to the tenant at that property . . . ."

OPC's concern is that, in the absence of its suggested addition, a landlord-tenant relationship could be limited based on whether the lease is written or oral. Staff recommends the Commission determine that this clarification is unnecessary. A lease of real property can be made orally[6] or in writing, and the current language incorporates both.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., beginning July 1, 2017, for each rule filed for adoption, the agency head must certify whether any part of the rule is designated as a rule the violation of which would be a minor violation. Under Section 120.695(2)(b), F.S., a violation of a rule is minor if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. Rule 25-30.0115, F.A.C., will be a minor violation rule. The rule is purely informational; therefore, a violation will not result in economic or physical harm to a person or an adverse effect on the public health, safety, or welfare or create a significant threat of such harm. Therefore, for the purposes of filing the rule for adoption with the Department of State, staff recommends that the Commission certify proposed Rule 25-30.0115, F.A.C., as a minor violation rule.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54(3)(b)1., F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. A SERC was prepared for this rulemaking and is appended as Attachment B. As required by Section 120.541(2)(a)1., F.S., the SERC analysis includes whether the rule is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after implementation. The adoption of this rule will not cause any of the impact/cost criteria to be exceeded.

The SERC concludes that the rule will not likely increase, directly or indirectly, regulatory costs in excess of $200,000 in the aggregate in Florida within 1 year after implementation. Further, the SERC concludes that the rule will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within 5 years of implementation. Thus, the rule does not require legislative ratification, pursuant to Section 120.541(3), F.S.

In addition, the SERC states that the rule would have no impact on small businesses, would have no implementation or enforcement cost on the Commission or any other state and local government entity, and would have no impact on small cities or small counties. The SERC states

[5] As previously discussed, the word "agreement" was used in earlier drafts of the rule, but staff is recommending that the proposed rule use "lease" instead of "agreement" because the former is more precise.
[6] Florida's Statute of Frauds, which can be found in Section 725.01, F.S., limits an oral lease of real property to a length of one year or less.

that there will be no transactional costs likely to be incurred by individuals and entities required to comply with the requirements.

Conclusion

The Commission should propose the adoption of Rule 25-30.0115, F.A.C., as set forth in Attachment A. Additionally, the Commission should certify the rule as a minor violation rule.

Issue 2: Should this docket be closed?

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

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

25-30.0115 Definition of Landlord and Tenant

As used in Section 367.022(5), F.S.:

(1) "landlord" is the party who conveys a possessory interest in real property to a tenant by way of a lease and who provides water and/or wastewater service to the tenant at that property; and

(2) "tenant" is the party to whom the possessory interest in real property is conveyed by the landlord by way of a lease and who receives water and/or wastewater service from the landlord at that property.

Rulemaking Authority 350.127(2), 367.121(1)(f) FS. Law Implemented 367.022(5) FS.

History-New _____.

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: August 2, 2019

TO: Andrew King, Senior Attorney, Office of the General Counsel

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

RE: Statement of Estimated Regulatory Costs (SERC) for Proposed New Rule 25-30.0115, Florida Administrative Code (F.A.C.)

Attached is the SERC for proposed new Rule 25-30.0115, Definition of Landlord and Tenant, F.A.C. The new rule does not create any new policy changes or new requirements.

The attached SERC addresses the considerations required pursuant to Section 120.541, F.S. A staff rule development workshop was held on March 4, 2019 to solicit input on the proposed new rule language. Post workshop written comments were received from the Office of the Public Counsel, Florida Manufactured Housing Association, Federation of Manufactured Home Owners of Florida, Inc., and the Goss family, owners of several mobile home parks and subdivisions in Florida.

The proposed new rule is not imposing any new regulatory requirements, only defining the terms "landlord" and "tenant." The SERC analysis indicates that the proposed new rule will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of $1 million in aggregate within five years of implementation. The proposed new rule will have no impact on small businesses, will have no implementation cost on the Commission or other state and local government entities, and will have no impact on small cities or counties. None of the impact/cost criteria established in Section 120.541(2)(a), (c), (d), and (e), F.S. will be exceeded as a result of the proposed new rule.

cc: SERC file

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rule 25-30.0115, F.A.C.

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

   Yes ☐ No ☒

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

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

   Yes ☐ No ☒

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

A. Whether the rule directly or indirectly:

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

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

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

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

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

Yes ☐ No ☒

Economic Analysis: The purpose of this rule revision is to add and define the words "landlord" and "tenant" which are used in Section 367.022(5), F.S., which establishes an exemption from Commission regulation of water and wastewater service. No new regulatory requirements are imposed by this rule.

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

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

The entities required to comply with this rule are water and wastewater utilities.

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

The rule will impact water and wastewater users involved in a landlord -tenant relationship per Section 367.022(5), F.S. The rule is stating the plain or ordinary and usual meaning of the terms "landlord" and "tenant".

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

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

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

☐ Minimal. Provide a brief explanation.

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

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

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

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

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

☒ None.

☐ Minimal. Provide a brief explanation.

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

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

☐ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

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

No new regulatory requirements are proposed in this rule. The rule is simply defining the terms "landlord" and "tenant" as stated in Section 367.022(5), F.S.

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

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

☒ No adverse impact on small business.

☐ Minimal. Provide a brief explanation.

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

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

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

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

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

☒ None.

Additional Information:

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

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

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

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Item 3

FILED 8/22/2019
DOCUMENT NO. 08323-2019
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper) ~~CH~~ SMC BJ ALM
Division of Accounting and Finance (Norris, Sewards)
Division of Economics (Hudson, Ramos, Guffey) MR SH SKG EJD ~~MP~~ JH

RE: Docket No. 20190152-WS – Proposed Amendment of Rule 25-30.350, F.A.C., Underbillings and Overbillings for Water and Wastewater Service, and Rule 25-30.360, F.A.C., Refunds.

AGENDA: 09/05/19 – Regular Agenda – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

Rule 25-30.350, Underbillings and Overbillings for Water and Wastewater Service, Florida Administrative Code (F.A.C.), addresses underbillings and overbillings by water and wastewater companies. Subsection (2) of the rule provides the criteria for underbillings and allows the customer to pay for the unbilled service over the same time period as the time period during which the underbilling occurred or some other mutually agreeable time period. In addition, the rule sets forth the criteria by which an overbilling is determined and sets forth the procedure for how the refund amount should be calculated based on available records. This rulemaking does not amend any of the underbillings requirements. The focus of this rulemaking is on the overbillings portion of Rule 25-30.350, F.A.C.

Rule 25-30.360, Refunds, F.A.C., provides a process for disbursing overbilling refunds to water and wastewater customers. The rule sets forth the procedures for the timing of refunds, basis of the refund, cases where refunds include interest, the method of refund distribursement, security money collected subject to a refund, and refund reports.

On April 18, 2019, Office of Public Counsel (OPC) filed a petition for declaratory statement that sought clarification on how the Commission applies Rule 25-30.350, F.A.C., and Rule 25-30.360, F.A.C., in the case of overbillings. On June 24, 2019, OPC withdrew its petition for declaratory statement after staff agreed to initiate rulemaking to explore whether Rule 25-30.350, F.A.C., and Rule 25-30.360, F.A.C., should be amended to clarify the process that the Commission uses to refund overbillings.

A Notice of Development of Rulemaking was published in Volume 45, No. 120, of the Florida Administrative Register on June 20, 2019. A rule development workshop was held on July 15, 2019. Representatives from OPC and Utilities Inc. Florida were in attendance.

This recommendation addresses whether the Commission should amend Rules 25-30.350 and 25-30.360, F.A.C. The Commission has jurisdiction pursuant to Sections 120.54, 367.081, 367.091, and 367.161, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission amend Rule 25-30.350, Underbillings and Overbillings for Water and Wastewater Service, F.A.C., and Rule 25-30.360, Refunds, F.A.C.?

Recommendation: Yes, the Commission should amend Rule 25-30.350, F.A.C., and Rule 25-30.360, F.A.C, as set forth in Attachment A. The Commission should certify Rules 25-30.350 and 25-30.360, F.A.C., as minor violation rules. (Harper, Sewards, Norris, Hudson, Guffey, Ramos)

Staff Analysis: Rule 25-30.350, F.A.C., sets forth the procedure for calculating overbillings. Rule 25-30.360, F.A.C., sets forth the procedure for disbursing the amount of refunds. Staff believes that both Rule 25-30.350, F.A.C., and Rule 25-30.360, F.A.C., work in conjunction, i.e., once the Commission determines that a water or wastewater utility has overbilled a customer pursuant to Rule 25-30.350, F.A.C., any refund required due to overbilling must be disbursed by the utility pursuant to Rule 25-30.360, F.A.C. Staff recommends that both rules be amended to clarify that the two rules are to function in conjunction with each other.

Staff recommends that subsection (3) of Rule 25-30.350, F.A.C., include a reference to Rule 25-30.360, F.A.C., to clarify that if there is a determination of overbilling, any refunds for overbillings must be disbursed pursuant to Rule 25-30.360, F.A.C. Similarly, in subsection (1) of Rule 25-30.360, F.A.C., staff recommends adding a reference to Rule 25-30.350, F.A.C., to clarify that before a refund can be disbursed, the calculation for overbillings must first be made pursuant to Rule 25-30.350, F.A.C. In other words, all refund calculations are made pursuant to Rule 25-30.350, F.A.C., and the disbursement of the refunds are made pursuant to Rule 25-30.360, F.A.C.

In addition, staff recommends removing the discretionary language in subsection (1) of Rule 25-30.360, F.A.C., and the reference to the customer deposit rule. Subsection (1) should instead state that unless another rule specifically sets forth procedures for making refunds, Rule 25-30.360, F.A.C., is applicable in the case of a customer refund.[1]

Minor Violation Rules Certification

Rules 25-30.350 and 25-30.360, F.A.C., are on the Commission's list of minor violation rules. Pursuant to Section 120.695, F.S., as of July 1, 2017, the agency head shall certify whether any part of each rule filed for adoption is designated as a minor violation rule. A minor violation rule is a rule that would not result in economic or physical harm to a person or an adverse effect on the public health, safety, or welfare or create a significant threat of such harm when violated. Staff recommends that the Commission continue to certify both rules as minor violation rules.

[1]For example, a customer could receive monies back from a utility pursuant to Rule 25-30.311, Customer Deposits, F.A.C. Because Rule 25-30.311, F.A.C., specifically sets forth a procedure from making refunds, it would continue to be an exception to the more general refund requirements of Rule 25-30.360, F.A.C.

Statement of Estimated Regulatory Costs

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

The SERC concludes that the amendments to Rules 25-30.350 and 25-30.360, F.A.C., will likely not directly or indirectly increase regulatory costs in excess of $200,000 within 1 year after implementation. Further, the SERC concludes that the amendment of the rules will not likely increase regulatory costs, including any transactional costs, or have an adverse impact on business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. Thus, the amendment of the rules does not require legislative ratification, pursuant to Section 120.541(3), F.S.

In addition, the SERC states that the amendments to Rules 25-30.350 and 25-30.360, F.A.C., would have no impact on small businesses, would have no implementation or enforcement cost on the Commission or any other state and local government entity, and would have no impact on small cities or small counties. The SERC states that no additional transactional costs are likely to be incurred by individuals and entities required to comply with the requirements.

Conclusion

The Commission should amend Rules 25-30.350 and 25-30.360, F.A.C., as set forth in Attachment A. The Commission should certify Rules 25-30.350 and 25-30.360, F.A.C., as minor violation rules.

Issue 2: Should this docket be closed?

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

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

25-30.350 Underbillings and Overbillings for Water and Wastewater Service.

(1) A utility may not backbill customers for any period greater than 12 months for any undercharge in billing which is the result of the utility's mistake.

(a) The utility shall allow the customer to pay for the unbilled service over the same time period as the time period during which the underbilling occurred or some other mutually agreeable time period. The utility shall not recover in a ratemaking proceeding, any lost revenues which inure to the utility's detriment on account of this provision.

(b) The revised bill shall be calculated on a monthly basis, assuming uniform consumption during the month(s) subject to underbilling, based on the individual customer's average usage for the time period covered by the underbilling. The monthly bills shall be recalculated by applying the tariff rates in effect for that time period. The customer shall be responsible for the difference between the amount originally billed and the recalculated bill. All calculations used to arrive at the rebilled amount shall be made available to the customer upon the customer's request.

(2) In the event of an overbilling, the utility shall refund the overcharge to the customer based on available records. If the commencement date of the overbilling cannot be determined, then an estimate of the overbilling shall be made based on the customer's past consumption.

(3) In the event of an overbilling, the customer may elect to receive the refund as a one-time disbursement, if the refund is in excess of $20, or as a credit to future billings. Refunds for overbillings shall be disbursed pursuant to Rule 25-30.360, F.A.C.

Rulemaking Authority 350.127(2), 367.121 FS. Law Implemented 367.091, 367.121 FS. History–New 11-10-86, Amended 6-17-13, _____.

25-30.360 Refunds.

(1) Applicability. ~~With the exception of deposit refunds,~~ A~~a~~ll refunds under this chapter ~~ordered by the Commission~~ shall be made in accordance with ~~the provisions of~~ this rule, unless another rule in this chapter specifically sets forth the procedure for making refunds ~~otherwise ordered by the Commission~~. The calculation for overbillings shall be pursuant to Rule 25-30.350, F.A.C., and disbursed pursuant to this rule.

(2) Timing of Refunds. Refunds must be made within 90 days of the Commission's order unless a different time frame is prescribed by the Commission. A timely motion for reconsideration temporarily stays the refund, pending the final order on the motion for reconsideration. In the event of a stay pending reconsideration, the timing of the refund shall commence from the date of the order disposing of any motion for reconsideration. This rule does not authorize any motion for reconsideration not otherwise authorized by Chapter 25-22, F.A.C.

(3) Basis of Refund. Where the refund is the result of a specific rate change, including interim rate increases, and the refund can be computed on a per customer basis, that will be the basis of the refund. However, where the refund is not related to specific rate changes, such as a refund for overearnings, the refund shall be made to customers of record as of a date specified by the Commission. In such case, refunds shall be made on the basis of usage. Per customer refund refers to a refund to every customer receiving service during the refund period. Customer of record refund refers to a refund to every customer receiving service as of a date specified by the Commission.

(4) Interest.

(a) In the case of refunds which the Commission orders to be made with interest, the average monthly interest rate until refund is posted to the customer's account shall be based on the 30 day commercial paper rate for high grade, unsecured notes sold through dealers by

major corporations in multiples of $1,000 as regularly published in the Wall Street Journal.

(b) This average monthly interest rate shall be calculated for each month of the refund period:

1. By adding the published interest rate in effect for the last business day of the month prior to each month the refund period and the published rate in effect for the last business day of each month of the refund period divided by 24 to obtain the average monthly interest rate;

2. The average monthly interest rate for the month prior to distribution shall be the same as the last calculated average monthly interest rate.

(c) The average monthly interest rate shall be applied to the sum of the previous month's ending balance (including monthly interest accruals) and the current month's ending balance divided by 2 to accomplish a compounding effect.

(d) Interest Multiplier. When the refund is computed for each customer, an interest multiplier may be applied against the amount of each customer's refund in lieu of a monthly calculation of the interest for each customer. The interest multiplier shall be calculated by dividing the total amount refundable to all customers, including interest, by the total amount of the refund, excluding interest. For the purpose of calculating the interest multiplier, the utility may, upon approval by the Commission, estimate the monthly refundable amount.

(e) Commission staff shall provide applicable interest rate figures and assistance in calculations under this Rule upon request of the affected utility.

(5) Method of Refund Distribution. For those customers still on the system, a credit shall be made on the bill. In the event the refund is for a greater amount than the bill, the remainder of the credit shall be carried forward until the refund is completed. If the customer so requests, a check for any negative balance must be sent to the customer within 10 days of the request. For customers entitled to a refund but no longer on the system, the company shall mail a refund check to the last known billing address except that no refund for less than $1.00 will be

made to these customers.

(6) Security for Money Collected Subject to Refund. In the case of money being collected subject to refund, the money shall be secured by a bond unless the Commission specifically authorizes some other type of security such as placing the money in escrow, approving a corporate undertaking, or providing a letter of credit. The company shall provide a report by the 20th of each month indicating the monthly and total amount of money subject to refund as of the end of the preceding month. The report shall also indicate the status of whatever security is being used to guarantee repayment of the money.

(7) Refund Reports. During the processing of the refund, monthly reports on the status of the refund shall be made by the 20th of the following month. In addition, a preliminary report shall be made within 30 days after the date the refund is completed and again 90 days thereafter. A final report shall be made after all administrative aspects of the refund are completed. The above reports shall specify the following:

(a) The amount of money to be refunded and how that amount was computed;

(b) The amount of money actually refunded;

(c) The amount of any unclaimed refunds; and

(d) The status of any unclaimed amounts.

(8) Any unclaimed refunds shall be treated as cash contributions-in-aid-of-construction.

Rulemaking Authority 350.127(2), 367.121 FS. Law Implemented 367.081, 367.0814, 367.082(2) FS. History–New 8-18-83, Formerly 25-10.76, 25-10.076, Amended 11-30-93, _____.

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: Adria E. Harper, Senior Attorney, Office of the General Counsel

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

RE: **Statement of Estimated Regulatory Costs** for Proposed Rule 25-30.350, Underbillings and Overbillings for Water and Wastewater Service, Florida Administrative Code (F.A.C.), and Rule 25-30.360, Refunds, F.A.C.

The purpose of this rulemaking initiative is to clarify the procedure for customer refunds due to overbillings by water and wastewater companies.

The attached Statement of Estimated Regulatory Costs (SERC) addresses economic impacts and considerations required pursuant to Section 120.541, Florida Statutes (F.S.). The SERC analysis indicates that the proposed rule amendments will not likely increase regulatory costs, including any transactional costs or have an adverse impact on business competitiveness, productivity, or innovation in excess of $1 million in the aggregate within five years of implementation. The proposed rule amendments would have no impact on small business, would have no implementation cost to the Commission or other state and local government entities, and would have no impact on small cities or counties.

A noticed rule development workshop was held on July 15, 2019. Comments received have been incorporated to the revised rules. No regulatory alternatives were submitted pursuant to Section 120.541(1)(g), F.S. The SERC concludes that none of the impacts/cost criteria established in Sections 120.541(2)(a), (c), (d), and (e) F.S. will be exceeded as a result of the proposed rule revisions.

cc: SERC File

FLORIDA PUBLIC SERVICE COMMISSION
STATEMENT OF ESTIMATED REGULATORY COSTS
Rules 25-30.350, Underbillings and Overbillings for Water and Wastewater Service, F.A.C., and Rule 25-30.360, Refunds, F.A.C.

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

   Yes ☐ No ☒

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

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

   Yes ☐ No ☒

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

A. Whether the rule directly or indirectly:

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

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

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

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

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

Yes ☐ No ☒

Economic Analysis:

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

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

The number of entities required to comply with this rule includes 124 water utilities and 92 wastewater utilities within the State of Florida.

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

Types of individuals likely to be affected by this rule would be residential, commercial, and industrial water and wastewater utility customers of the above mentioned 124 water utilities and 92 wastewater utilities.

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

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

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

☐ Minimal. Provide a brief explanation.

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

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

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

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

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

☒ None.

☐ Minimal. Provide a brief explanation.

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

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

☐ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

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

Revised Rule 25-30.350, F.A.C. states that refunds for water and wastewater customers shall be disbursed pursuant to Rule 25-30.360, F.A.C. The revision adds clarification to provide a timeframe to disburse customer refunds.

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

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

☒ No adverse impact on small business.

☐ Minimal. Provide a brief explanation.

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

(2) A "Small City" is defined by Section 120.52, F.S., as any municipality that has an

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

☒ No impact on small cities or small counties.

☐ Minimal. Provide a brief explanation.

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

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

☒ None.

Additional Information:

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

☒ No regulatory alternatives were submitted.

☐ A regulatory alternative was received from

☐ Adopted in its entirety.

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

4

Item 4

FILED 8/22/2019
DOCUMENT NO. 08317-2019
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Simmons, Crawford)
Office of Consumer Assistance and Outreach (Plescow, Hicks)
Division of Economics (Bethea, Hudson)
Division of Engineering (Doehling, Graves)

RE: Docket No. 20190108-WS – Request for initiation of formal proceedings for relief against Utilities, Inc. of Florida regarding over billing and broken meter, by Eugene R. Lopez (Complaint # 1270964W).

AGENDA: 09/05/19 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On February 16, 2018, Eugene Lopez filed informal complaint number 1270964W with the Public Service Commission (Commission) against Utilities, Inc. of Florida (UIF or Utility). In his informal complaint, Mr. Lopez alleged that due to a broken water meter, UIF improperly billed him in January and February of 2018 because his meter was not measuring his water usage. He also alleged he was being backbilled for up to 12 months of usage he may or may not have used.

Staff advised Mr. Lopez on March 20, 2019, that his informal complaint had been reviewed by the Commission's Process Review Team (PRT), in accordance with Rule 25-22.032, Florida

Administrative Code (F.A.C.), and it appeared that UIF had not violated any applicable statutes, rules, company tariffs, or Commission orders. Staff advised Mr. Lopez that if he disagreed with the complaint conclusion, he could file a petition for initiation of formal proceedings for relief against UIF.

Mr. Lopez filed a formal complaint on April 24, 2019, pursuant to Rule 25-22.036, F.A.C. In the complaint, Mr. Lopez states he has never exceeded 8,000 gallons of water usage in any month; over the past ten or so years, he has never paid more than $90 for his water usage; over the past several years, he has repeatedly informed UIF that his meter has not been working properly; and UIF claims it has no responsibility for the broken meter. Mr. Lopez claims UIF arbitrarily overcharged him in his January 2018 water bill due to a broken water meter.

On July 11, 2019, staff sent a letter to Mr. Lopez requesting any additional information or documentation that might assist the Commission in addressing his complaint. On July 19, 2019, Mr. Lopez told staff he had already provided all the necessary documentation to address his complaint.

Mr. Lopez seeks for the Commission to find that UIF overbilled him and to require UIF to reimburse him $188.85, the final disputed amount in the case. This recommendation addresses the appropriate disposition of Mr. Lopez's complaint against UIF. The Commission has jurisdiction over this matter pursuant to Sections 367.011 and 367.081, Florida Statutes.

Discussion of Issues

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

Recommendation: Staff recommends that Mr. Lopez's formal complaint be denied. Mr. Lopez's account was properly billed in accordance with Florida statutes and rules and UIF's tariffs. UIF did not violate any applicable statute, rule, company tariff, or order of the Commission in the processing of Mr. Lopez's account. (Simmons)

Staff Analysis: Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission, or of any Commission rule or order. Mr. Lopez's petition fails to show that UIF's billing of Mr. Lopez violates a statute, rule, or order as required by Rule 25-22.036(2), F.A.C. Therefore, the Commission should deny Mr. Lopez's petition for relief.

On January 9, 2018, UIF sent Mr. Lopez a monthly bill for $303.79, which represented consumption of 64,480 gallons between December 1, 2017, and January 3, 2018. Because Mr. Lopez was enrolled in Auto Pay, $250 (the maximum amount) was withdrawn from Mr. Lopez's account. This left a balance of $53.79. Mr. Lopez contacted UIF stating he did not agree with the January 2018 bill amount and denied the existence of any leaks or additional water consumption at his service address.

On January 29, 2018, at the request of Mr. Lopez, his meter was reread. The meter indicated additional usage of 14,555 gallons since January 3, 2018. On February 1, 2018, a regular meter reading was obtained, which indicated an additional usage of 1,045 gallons since January 29, 2018.[1] Because Mr. Lopez was not satisfied with the meter readings, a field meter test was scheduled for February 8, 2018.

The scheduled field meter test was performed on February 8, 2018. The meter test results reflected zero consumption at flow rates of 15 gallons per minute (GPM), 2GPM, and 0.25GPM. UIF stated that the meter appeared to have stopped working after the February 1, 2018, meter reading.[2] UIF stated that the non-functioning meter was a benefit to Mr. Lopez because the water consumed between February 1 and February 8 was not billed. UIF also stated Mr. Lopez's meter was a positive displacement meter[3] which only slows down over time, it does not speed up (i.e., the meter will not over-record water usage). UIF installed a new meter that same day. UIF sent to Mr. Lopez a monthly bill the same day for $169.65, including current charges of $109.46, which represented consumption of 15,600 gallons from January 3, 2018, to February 1, 2018, a $6.40

[1] On February 6, 2018, Mr. Lopez was sent a final notice to pay the remaining balance of $53.79 by February 16, 2018, to avoid an interruption in his service. Pursuant to Rule 25-22.032(3), F.A.C., Mr. Lopez became protected from disconnection for nonpayment of the disputed amount when his informal complaint was filed with the Commission on February 16, 2018.

[2] The meter showed a reading of 1836720, which was the same reading taken on February 1, 2018.

[3] A positive displacement meter is a flow meter that directly measures the volume of fluid passing through it. The accuracy of a displacement meter may be impacted by a number of factors, including excessive wear, temperature extremes, corrosion, and suspended solids. These factors may cause the meter to slip or bind, which would result in under-registration.

late payment charge, and a $53.79 past due balance. Mr. Lopez disagreed that he used 15,600 gallons during the billing period. The $303.79 from the January bill and $115 from the February bill (rounding of the $109.46 and $6.40) totaled the initial disputed amount of $418.79.

On February 16, 2018, Mr. Lopez's informal complaint was filed with the Commission. On that same day, staff forwarded the complaint to UIF requesting that the Utility investigate the matter and provide Mr. Lopez and staff with a response to the complaint by March 12, 2018, pursuant to Rule 25-22.032(6)(b), F.A.C.

UIF responded to Mr. Lopez's complaint on March 12, 2018, stating that he was only charged for water usage that registered through the meter and that he was not backbilled for unregistered water. UIF also stated that Mr. Lopez was correctly charged for usage that registered on the meter based on Commission-approved rates. However, UIF provided an adjustment credit of $79.76 and removed the $6.40 late fee charge. With the adjustment credit and late fee charge removed, Mr. Lopez had a remaining balance of $139.51.[4] UIF offered Mr. Lopez a four-month installment plan to pay the balance.

On April 4, 2018, staff sent a letter to Mr. Lopez stating that staff had reviewed UIF's billing of his account and determined that UIF had not backbilled his account and that the meter readings obtained and bills sent in the past 12 months were based on actual meter readings. The letter also stated that Mr. Lopez should contact staff by April 20, 2018, or the case would be considered resolved. The case was closed on April 27, 2018, due to no further contact from Mr. Lopez. Pursuant to Rule 25-22.032(7), F.A.C., the case was reopened and forwarded to the PRT on May 24, 2018, when Mr. Lopez contacted staff stating he objected to the resolution of his case.

On June 29, 2018, Mr. Lopez provided staff and UIF with a spreadsheet concerning billing from January through June of 2018. In his notes, he stated that the average usage with his new meter was 4,300 gallons per month. He estimated his water usage in January and February of 2018 to be 6,000 gallons each. Based on these amounts, Mr. Lopez stated that the total bill amount from January to June of 2018 should be $392.91, and the $250 Auto Pay amount reduced his account balance to $142.91. UIF received a check from Mr. Lopez for $142.91 on July 2, 2018.

In response to Mr. Lopez's proposal, UIF offered an additional $45.97 adjustment credit. When staff contacted Mr. Lopez to discuss the additional adjustment, Mr. Lopez refused to take it, stating he had already paid in full for the past six months of water service. The new amount in dispute was established as $188.85, which is the June bill, $331.76, minus the $142.91 check Mr. Lopez sent UIF. Mr. Lopez has since paid the $188.85, but seeks reimbursement.

After further investigation, the PRT concluded on March 20, 2019, that it appeared UIF had not violated any applicable statutes, rules, company tariffs, or Commission orders. Mr. Lopez did not agree with staff's finding and filed a formal complaint on April 24, 2019.

[4] The balance of $139.51 was determined as follows: $303.79 (January bill) - $250 (Auto Pay amount) = $53.79; $53.79 + $109.46 (February bill) + $6.40 (late fee) = $169.65; $169.65 + $56.02 (March bill) = $225.67; $225.67 - $79.76 (adjustment credit) - $6.40 = $139.51.

Based on the information provided to staff and discussions with both the Utility and Mr. Lopez, there is no evidence that UIF billed Mr. Lopez incorrectly. Mr. Lopez was billed based on actual meter readings and his account was not backbilled. Staff reviewed Mr. Lopez's usage and billing history for the years 2015-2018. While the January 2018 usage is higher than other months, the February 2018 usage is mostly in line with, or lower than, comparable months. As noted by UIF, positive displacement meters tend to under-record, not over-record, usage. Thus, staff recommends that the Commission deny Mr. Lopez's petition as it does not demonstrate that UIF's billing of his account violates any statutes, rules, or orders, or that UIF's calculation of the January and February 2018 bills is unreasonable.

Issue 2: Should this docket be closed?

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

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

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: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Wooten, Bates, Eastmond, Long)
Office of the General Counsel (Dziechciarz)

RE: Docket No. 20190119-TP – 2020 State certification under 47 C.F.R. §54.313 and §54.314, annual reporting requirements for high-cost recipients and certification of support for eligible telecommunications carriers.

AGENDA: 09/05/19 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 10/01/19 (Filing deadline with the Federal Communications Commission and Universal Service Administrative Company)

SPECIAL INSTRUCTIONS: None

Case Background

One of the primary principles of universal service support as described in the Telecommunications Act of 1996 (Telecom Act) is for consumers in all regions to have reasonably comparable access to telecommunications and information services at reasonably comparable rates.[1] The federal universal service high-cost program is designed to help ensure that consumers in rural, insular, and high-cost areas have access to modern communications networks capable of providing voice and broadband service, both fixed and mobile, at rates that

[1] 47 U.S.C. §254(b)(3) (2019)

are reasonably comparable to those in urban areas.[2] The program supports the goal of universal service by allowing eligible telecommunications carriers (ETCs) to recover some of the costs of service provision in high-cost areas from the federal Universal Service Fund. In order for carriers to receive universal service high-cost support, state commissions must certify annually to the Universal Service Administrative Company (USAC) and to the Federal Communications Commission (FCC) that each carrier complies with the requirements of Section 254(e) of the Telecom Act by using high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."

Certification of ETCs for high-cost support is defined as follows:

> Certification of support for eligible telecommunications carriers
>
> (a) Certification. States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator [USAC] and the Commission [FCC] stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. High-cost support shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.[3]

Certification may be filed online with USAC through USAC's online portal. Immediately following online certification, the USAC website will automatically generate a letter that may be submitted electronically to the FCC to satisfy the submission requirements of 47 C.F.R. §54.314(c). In order for a carrier to be eligible for high-cost universal service support for all of calendar year 2020, certification must be submitted by the Commission by October 1, 2019.[4]

[2] FCC, "Universal Service for High Cost Areas - Connect America Fund," updated July 25, 2019, https://www.fcc.gov/general/universal-service-high-cost-areas-connect-america-fund, accessed July 30, 2019.
[3] 47 C.F.R §54.314(a) (2019)
[4] 47 C.F.R §54.314(d) (2019)

Discussion of Issues

Issue 1: Should the Commission certify to USAC and the FCC, through online certification with USAC and by electronic filing of a USAC-generated certification letter with the FCC, that BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast; Embarq Florida, Inc. d/b/a CenturyLink; Frontier Florida LLC; Frontier Communications of the South, LLC; Consolidated Communications of Florida Company; ITS Telecommunications Systems, Inc. d/b/a ITS Fiber; Knology of Florida, Inc. d/b/a WOW! Internet, Cable and Phone; Northeast Florida Telephone Company d/b/a NEFCOM; Quincy Telephone Company d/b/a TDS Telecom; Smart City Telecommunications LLC d/b/a Smart City Telecom; and Windstream Florida, LLC are eligible to receive federal high-cost support, that they have used the federal high-cost support in the preceding calendar year, and they will use the federal high-cost support they receive in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended?

Recommendation: Yes. The Commission should certify to USAC and the FCC, through online certification with USAC and by electronic filing of a USAC-generated certification letter with the FCC, that BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast; Embarq Florida, Inc. d/b/a CenturyLink; Frontier Florida LLC; Frontier Communications of the South, LLC; Consolidated Communications of Florida Company; ITS Telecommunications Systems, Inc. d/b/a ITS Fiber; Knology of Florida, Inc. d/b/a WOW! Internet, Cable and Phone; Northeast Florida Telephone Company d/b/a NEFCOM; Quincy Telephone Company d/b/a TDS Telecom; Smart City Telecommunications LLC d/b/a Smart City Telecom; and Windstream Florida, LLC are eligible to receive federal high-cost support, that they have used the federal high-cost support in the preceding calendar year, and they will use the federal high-cost support they receive in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. (Wooten, Bates, Eastmond, Long)

Staff Analysis: All Florida ETCs that are seeking high-cost support have filed affidavits with the Florida Public Service Commission (Commission) attesting that the high-cost funds received for the preceding calendar year and for the upcoming calendar year will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Additionally, each company has filed FCC Form 481 with USAC. Form 481 includes information such as emergency operation capability, FCC pricing standards comparability for voice and broadband service, holding company and affiliate brand details, and tribal lands service and outreach. Price cap carriers certify in Form 481 that high-cost support received was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor. Rate-of-return carriers certify in Form 481 that reasonable steps are being made to achieve FCC broadband upload and download standards and, if privately held, submit documents detailing the company's financial condition. Based on previous years' data, staff estimates that the amount of 2020 high-cost support that these carriers may receive in Florida will be approximately $45 million.[5]

[5] This estimate was obtained using data from the USAC high-cost funding data disbursement search tool and does not include wireless carriers.

Staff reviewed the affidavits and submissions made by each carrier to the Commission and to USAC. Each of the Florida ETCs receiving high-cost support has attested that all federal high-cost support provided to them within Florida was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Having reviewed the carriers' filings, staff recommends that the Commission certify to USAC and the FCC, through online certification with USAC and by electronic filing of a USAC-generated certification letter with the FCC, that BellSouth Telecommunications, LLC d/b/a AT&T Florida d/b/a AT&T Southeast; Embarq Florida, Inc. d/b/a CenturyLink; Frontier Florida LLC; Frontier Communications of the South, LLC; Consolidated Communications of Florida Company; ITS Telecommunications Systems, Inc. d/b/a ITS Fiber; Knology of Florida, Inc. d/b/a WOW! Internet, Cable and Phone; Northeast Florida Telephone Company d/b/a NEFCOM; Quincy Telephone Company d/b/a TDS Telecom; Smart City Telecommunications LLC d/b/a Smart City Telecom; and Windstream Florida, LLC are eligible to receive federal high-cost support, that they have used the federal high-cost support received in the preceding calendar year, and that they will use the federal high-cost support they receive in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of a Final Order. (Dziechciarz)

Staff Analysis: This docket should be closed upon issuance of a Final Order.

Item 6

FILED 8/22/2019
DOCUMENT NO. 08318-2019
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (D. Andrews, Norris)
Division of Economics (Bruce, Hudson)
Division of Engineering (Knoblauch, Salvador)
Office of the General Counsel (Simmons, Crawford)

RE: Docket No. 20190118-WU – Application for increase in water rates in Gulf County by Lighthouse Utilities Company, Inc.

AGENDA: 9/5/19 – Regular Agenda – Decision on Suspension of Rates – Interested Persons May Participate.

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: 9/10/19 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

Lighthouse Utilities Company, Inc. (Lighthouse or Utility) is a Class B utility serving approximately 1,851 customers in Gulf County. Rates were last established for this Utility in 2011.[1] In 2018, Lighthouse recorded total operating revenues of $728,696 and operating expenses of $648,650.

On September 26, 2018, Lighthouse filed an application for a limited proceeding rate increase in Docket No. 20180179-WU to recover the costs of capital projects. On October 10, 2018, Hurricane Michael destroyed or damaged substantial portions of the Utility's water distribution

[1] Order No. PSC-2011-0368-PAA-WU, issued September 1, 2011, in Docket No. 20100128-WU, *In re: Application for increase in water rates in Gulf County by Lighthouse Utilities Company, Inc.*

system. Lighthouse and the Office of Public Counsel (OPC) were not able to reach an agreement on whether a limited proceeding was the appropriate procedure for seeking rate relief under those circumstances. In a letter dated May 17, 2019, the Utility withdrew its application for a limited proceeding rate increase and conveyed its desire to file an application for general rate relief.

On July 12, 2019, Lighthouse filed its application for approval of interim and final water rate increases. On August 9, 2019, staff sent the Utility a letter indicating deficiencies in the filing of its minimum filing requirements and the Utility's response to staff's deficiency letter is due on September 9, 2019. In a letter dated August 13, 2019, Lighthouse withdrew its request for interim rate relief.

In its application, Lighthouse requested a test year ended December 31, 2018, for purposes of final rates and requested that the application be processed using the Proposed Agency Action procedure. A substantial portion of the expenses, costs, and investment that are part of this application for rate relief are related to capital projects for improved system reliability. Another substantial portion of the rate relief is related to storm restoration and repair costs that the Utility has incurred and will continue to incur as a result of Hurricane Michael.

OPC's intervention in this docket was acknowledged by Order No. PSC-2019-0236-PCO-WU, issued June 18, 2019.

The 60-day statutory deadline for the Commission to suspend Lighthouse's requested final rates is September 10, 2019. This recommendation addresses the suspension of Lighthouse's requested final rates. The Commission has jurisdiction pursuant to Section 367.081, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Utility's proposed final water rates be suspended?

Recommendation: Yes. Lighthouse's proposed final water rates should be suspended. (D. Andrews)

Staff Analysis: Section 367.081(6), F.S., provides that the rates proposed by a utility shall become effective within sixty days after filing unless the Commission votes, for good cause, to withhold consent of implementation of the requested rates. Further, Section 367.081(10), F.S., permits the proposed final rates to go into effect under bond, escrow, or corporate undertaking five months after the official filing date unless final action has been taken by the Commission or the Commission's action is protested by the Utility.

Staff has reviewed the filing and has considered the proposed rates, the revenues thereby generated, and the information filed in support of the rate application. Staff believes that it is reasonable and necessary to require further amplification and explanation regarding this data, and to require production of additional and/or corroborative data. To date, staff has initiated an audit of Lighthouse's books and records. The audit report is tentatively due on October 4, 2019. In addition, staff sent a data request to Lighthouse on August 21, 2019, and the response is due by September 23, 2019. Further, staff believes additional requests will be necessary to process this case. Based on the foregoing, staff recommends that the Utility's proposed final rates be suspended.

Issue 2: Should this docket be closed?

Recommendation: This docket should remain open pending the Commission's final action on the Utility's requested rate increase. (Simmons)

Staff Analysis: This docket should remain open pending the Commission's final action on the Utility's requested rate increase.

Item 7

State of Florida

Public Service Commission

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

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

DATE: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Draper, Coston)
Office of the General Counsel (Trierweiler)

RE: Docket No. 20190076-EI – Petition for approval of revised underground residential distribution tariffs, by Duke Energy Florida, LLC.

AGENDA: 09/05/19 – 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

Case Background

On April 1, 2019, Duke Energy Florida, LLC (Duke or utility) filed a petition for approval of revisions to its underground residential distribution (URD) tariffs. The URD tariffs apply to new residential subdivisions and represent the additional costs, if any, Duke incurs to provide underground distribution service in place of overhead service. The proposed (legislative version) URD tariffs are contained in Attachment A to the recommendation. Duke's current URD charges were approved in Order No. PSC-2017-0283-TRF-EI (2017 order).[1]

[1] Order No. PSC-2017-0283-TRF-EI, issued July 24, 2017, in Docket No. 20170069-EI, *In re: Petition for approval of revised underground residential distribution tariffs, but Duke Energy Florida, LLC.*

The Commission suspended Duke's proposed tariffs by Order No. PSC-2019-0212-PCO-EI.[2] Duke responded to staff's first data request on May 31, 2019. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

[2] Order No. PSC-2019-0212-PCO-EI, issued June 3, 2019, in Docket No. 20190076-EI, *In re: Petition for approval of revised underground residential distribution tariffs, by Duke Energy Florida, LLC.*

Discussion of Issues

Issue 1: Should the Commission approve Duke's proposed URD tariffs and associated charges?

Recommendation: Yes, the Commission should approve Duke's proposed URD tariffs and associated charges as shown in Attachment A, effective September 5, 2019. (Draper, Coston)

Staff Analysis: Rule 25-6.078, Florida Administrative Code (F.A.C.), defines investor-owned utilities' (IOU) responsibilities for filing updated URD tariffs. Duke has filed the instant petition pursuant to subsection (3) of the rule, which requires IOUs to file supporting data and analyses for updated URD tariffs if the cost differential varies from the Commission-approved differential by more than ten percent. On October 15, 2018, pursuant to Rule 25-6.078, F.A.C., Duke informed the Commission that its differential for the low density subdivision decreased by 81 percent from the differential approved in the 2017 order, requiring Duke to file the instant petition.

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). 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 than costs for standard overhead construction and the additional cost is paid by the customer as a CIAC. However, as shown on Table 1-1, Duke's proposed URD differential charges are $0 per lot for the low density and ganged meter subdivisions. Therefore, the URD customer will not be assessed a CIAC charge for requesting underground service in the low density and ganged meter subdivisions. For the high density subdivision the proposed differential decreased from $403 to $34 per lot. The decrease in the differentials is primarily attributable to changes in Duke's 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. The charges shown are per-lot charges.

Table 1-1
Comparison of URD Differential per Lot

Types of Subdivision	Current URD Differential	Proposed URD Differential
Low Density	$694	$0
High Density	$403	$34
Ganged Meter	$158	$0

Source: Order PSC-2017-0283-TRF-EI and Duke's 2019 Petition

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

Labor and Material Costs

The installation costs of both overhead and underground 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.

Duke's labor costs for overhead and underground construction are comprised of costs associated with work performed by both in-house employees and outside contractors. Duke's in-house labor rates are based upon actual labor costs negotiated in bargaining unit contracts and labor rates with contractors are negotiated. Table 1-2 compares total 2017 and 2019 labor and material costs for the three subdivision models.

Table 1-2
Labor and Material Costs per Lot

	2017 Costs	2019 Costs	Difference
Low Density			
Underground Labor/Material Costs	$1,477	$1,620	$143
Overhead Labor/Material Costs	$1,069	$1,323	$254
Per lot Differential	$408	$297	($111)
High Density			
Underground Labor/Material Costs	$1,181	$1,484	$303
Overhead Labor/Material Costs	$865	$1,009	$144
Per lot Differential	$316	$475	$159
Ganged Meter			
Underground Labor/Material Costs	$686	$581	($105)
Overhead Labor/Material Costs	$609	$750	$141
Per lot Differential	$77	($169)	($246)

Source: 2017 Order and Duke's 2019 filing

As Table 1-2 shows, the majority of overhead and underground labor and material costs have increased since 2017. Because of a design change as discussed in more detail in the section of the recommendation titled subdivision design changes, the only exception to the increase in costs can be seen in the underground ganged meter labor and material costs (decrease from $686 to $581).

Subdivision Design Changes

Duke stated that the utility began using a new underground design software in the fall of 2017. Duke explained that the new software incorporates the most recent loading parameters for cables and transformers to design the most cost-effective way (in terms of number of transformers, transformer size, and cable length) to serve a home. The high density subdivision design was modified to reflect front lot construction as required by Rule 25-6.0341(1), F.A.C.

With respect to the underground ganged meter subdivision design, Duke explained that the design was modified to reflect townhome construction. Duke has had very few new underground mobile home parks that are typically served by a ganged meter, but several new townhome projects taking underground service at a ganged meter. The result of incorporating townhome construction is more units served from the ganged meter, and therefore, reduced per lot costs. As seen in Table 1-2 above, the total underground labor and material costs decreased from $686 to $581.

The three overhead designs had minor modifications to meet both National Electric Safety Code and Duke's construction standards. Specifically, the overhead design was modified to incorporate Duke's current standards that require increased insulation levels, taller poles, and increased spaces between the phases.

Operational Costs

Rule 25-6.078(4), F.A.C., requires that the differences in net present value (NPV) 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 inclusion of the operational cost is intended to capture longer term costs and benefits of undergrounding.

Operational costs include operations and maintenance costs along with capital costs and represent the cost differential between maintaining and operating an underground versus an overhead system over the life of the facilities. The inclusion of the storm restoration cost in the URD calculations lowers the differential, since an underground distribution system generally incurs less damage than an overhead system as a result of a storm, and therefore, less restoration costs when compared to an overhead system.

The utility used a 5-year average of historical operational costs (2014-2018) for its calculations in this docket. The methodology used by Duke in this filing for calculating the NPV of operational costs was approved in Order No. PSC-12-0348-TRF-EI.[3] Staff notes that operational costs may vary among IOUs due to multiple factors, including differences in size of service

[3] Order No. PSC-12-0348-TRF-EI, issued July 5, 2012, in Docket No. 110293-EI, *In re: Petition for approval of revised underground residential distribution tariffs, by Progress Energy Florida, Inc.*

territory, miles of coastline, regions subject to extreme winds, age of the distribution system, or construction standards.

Non-storm Operational Costs

Duke's operational costs for an overhead system have increased more than the operational cost for an underground system. The resulting differentials are shown in Column B in Table 1-3. For the low density subdivision, the operational cost differential in 2017 was $350 (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 $80. For the high density and ganged meter subdivisions, the operational cost differentials decreased from $126 and $109 to -$20 and -$1, respectively, indicating that overhead operational costs are slightly higher than underground operational costs. Duke explained that the primary reason for this change in operational costs is the increase in overhead operational costs as a result of Duke's increased maintenance, such as pole replacements, on its overhead distribution system.

Avoided Storm Restoration Costs

Duke explained that the recent hurricane season significantly increased the avoided storm restoration costs impacts. Specifically, Duke stated the utility incorporated overhead storm restoration costs for hurricanes Irma, Nate, Michael, Matthew, Hermine, and tropical storm Colin. Therefore, the amount representing avoided storm restoration costs significantly increased from 2017.

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
NPV of Operational Costs Differential per Lot

Type of Subdivision	Pre-Operational Costs (A)	Non-storm Operational costs (B)	Avoided Storm costs (C)	Proposed URD Differentials (A)+(B)+(C)
Low Density	$297	$80	($726)	$0
High Density	$475	($20)	($421)	$34
Ganged Meter	($169)	($1)	($312)	$0

Source: 2019 Filing

Conclusion

Staff has reviewed Duke's proposed URD tariffs and associated charges, its accompanying work papers, and its responses to staff's data request. Staff believes the proposed URD tariffs and associated charges are reasonable. Staff recommends approval of Duke's proposed URD tariffs and associated charges as shown in Attachment A, effective September 5, 2019.

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariffs 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 Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariffs 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.

DUKE ENERGY.

SECTION NO. IV
~~SECOND~~ THIRD REVISED SHEET NO. 4.110
CANCELS ~~FIRST~~ SECOND REVISED SHEET NO. 4.110

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PART XI

UNDERGROUND RESIDENTIAL DISTRIBUTION POLICY

11.01 Definitions:

The following words and terms used under this policy shall have the meaning indicated:

(1)	Applicant:	Any person, partnership, association, corporation, or governmental agency controlling or responsible for the development of a new subdivision or dwelling unit and applying for the construction of underground electric facilities.
(2)	Building:	Any structure, within subdivision, designed for residential occupancy and containing less than five (5) individual dwelling units.
(3)	Commission:	Florida Public Service Commission.
(4)	Company:	Duke Energy Florida, ~~Inc~~ LLC
(5)	Direct Burial:	A type of construction involving the placing of conductors in the ground without the benefit of conduit or ducts. O her facilities, such as transformers, may be above ground.
(6)	Distribution System:	Electric service facili ies consisting of primary and secondary conductors, service laterals, transformers, and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage.
(7)	Feeder Main:	A three-phase primary installation which serves as a source for primary laterals and loops through suitable overcurrent devices.
(8)	Mobile Home (Trailer):	A non-self propelled vehicle or conveyance, permanently equipped to travel upon the public highways, that is usod either temporarily or permanently as a residence or living quarters.
(9)	Multiple-Occupancy Building:	A structure erected and framed of component structural parts and designed to contain five (5) or more individual dwelling units.
(10)	Point of Delivery:	The point where the Company's wires or apparatus are connected to those of he Customer.
(11)	Primary Lateral:	That part of the electric distribution system whose function is to conduct electricity at the primary lovel from the feeder main to the transformers serving he secondary street mains. It usually consists of a single-phase conductor or insulated cable, toge her with necessary accessory equipment for supporting, terminating and disconnecting from the primary mains by a fusible element.
(12)	Service Lateral:	The underground service conductors between the street or rear property main, including any risers at a pole or other structure or from transformers, and the first point of connection to the service entrance conductors in a terminal or meter box on he exterior building wall.
(13)	Subdivision:	The tract of land which is divided into five (5) or more building lots or upon which five (5) or more separate dwelling units are to be located, or the land on which is to be constructed new multiple-occupancy buildings.
(14)	Townhouse:	A one(1)-family dwelling unit of a group of three (3) or more such units separated only by firewalls. Each townhouse unit shall be constructed upon a separate lot and serviced with separate utilities and shall otherwise be independent of one ano her.

(Continued on Next Page)

ISSUED BY: Javier J. Portuondo, Managing Director, Rates & Regulatory Strategy – FL
EFFECTIVE: ~~April 29, 2013~~

DUKE ENERGY.

SECTION NO. IV
~~NINETEENTH~~ TWENTIETH REVISED SHEET NO. 4.113
CANCELS ~~EIGHTEENTH~~ NINETEENTH REVISED SHEET NO. 4.113

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(2) Contribution by Applicant:

(a) Schedule of Charges:

Company standard design underground residential distribution 120/240 volt single-phase service (see also Part 11.03(7)):

To subdivisions with a density of 1.0 or more but less than six (6) dwelling units per acre ..... ~~$694.00~~ 0.00 per dwelling unit

To subdivisions with a density of six (6) or more dwelling units per acre ..... ~~$403.00~~34.00 per dwelling unit

To subdivisions with a density of six (6) or more dwelling units per acre taking service at ganged meter pedestals ..... ~~$158.000~~.00 per dwelling unit

To mul i-occupancy buildings ..... See Part 11.06(2)

(b) The above costs are based upon arrangements that will permit serving the local underground distribution system within he subdivision from overhead feeder mains. If feeder mains within he 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 differen ial cost between such underground feeder mains wi hin he subdivision and equivalent overhead feeder mains as follows:

Three-phase primary main or feeder charge per trench-foot within subdivision:

(U.G. - Underground, O.H. - Overhead)

#1/0 AWG U.G. vs. #1/0 AWG O.H ..... ~~$3.03~~0.00 per foot

500 MCM U.G. vs. 336 MCM O.H ..... ~~$11.54~~0.00 per foot

1000 MCM U.G. vs. 795 MCM O.H. ..... ~~$12.66~~0.00 per foot

The above costs are based on underground feeder construction using the direct burial method. If conduit is required, the following addi ional charge(s) will apply:

2 inch conduit ..... ~~$2.06~~2.08 per foot
4 inch conduit ..... ~~$3.40~~3.55 per foot
6 inch conduit ..... ~~$5.06~~5.74 per foot
Cable pulling – single phase ..... ~~$1.76~~2.34 per foot
Cable pulling – 3 phase small wire ..... ~~$1.76~~3.87 per foot
Cable pulling – 3 phase feeder ..... ~~$3.63~~4.69 per foot

The above costs do not require the- use of pad-mounted switchgear(s), terminal pole(s), pull boxes or feeder splices. If such facilities are required, a differential cost for same will be determined by the Company on an individual basis and added to charges determined above.

(c) Credits (not to exceed the "average differential costs" stated above) will be allowed where, by mutual agreement, the Applicant provides trenching and backfilling for the use of the Company's facilities in lieu of a portion of the cash payment described above. These credits, based on the Company's design drawings, are:

Primary and/or Secondary Systems, for each Foot of Trench ..... ~~$2.84~~3.54

Service Laterals, for each Foot of Trench ..... ~~$3.84~~3.54

(Continued on Next Page)

ISSUED BY: Javier J. Portuondo, Managing Director, Rates & Regulatory Strategy – FL
EFFECTIVE: ~~July 13, 2017~~

DUKE ENERGY.

SECTION NO. IV
~~EIGHTEENTH~~ NINETEENTH REVISED SHEET NO. 4.114
CANCELS ~~SEVENTEENTH~~ EIGHTEENTH REVISED SHEET NO. 4.114

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(3) Point of Delivery:

The point of delivery shall be determined by the Company and will be on the front half of the side of the building that is nearest the point at which the underground secondary electric supply is available to the property. The Company will not install a service on the opposite side of he building where the underground secondary electric supply is available to the property. The point of delivery will only be allowed on the rear of the building by special excep ion. The Applicant shall pay the estimated full cost of service lateral length required in excess of that which would have been needed to reach the Company's designated point of service.

(4) Location of Meter and Socket:

The Applicant shall install a meter socket at the point dosignated by the Company in accordance with the Company's specifications. Every effort shall be made to locate he meter socket in unobstructed areas in order that the meter can be read without going through fences, etc.

(5) Development of Subdivisions:

The above charges are based on reasonably full use of the land being developed. Where he Company is required to construct underground electric facilities hrough a sec ion or sections of the subdivision or development where service will not be required for at least two (2) years, the Company may require a deposit from the Applicant before construction is commenced. This deposit, to guarantee performance, will be based on the estimated total cost of such facilities rather than the differential cost. The amount of the deposit, without interest, in excess of any charges for underground service will be returned to he Applicant on a prorata basis at quarterly intervals on the basis of installations to new customers. Any portion of such deposit remaining unrefunded, after five (5) years from he date the Company is first ready to render service from the extension, will be retained by the company.

(6) Relocation or Removal of Existing Facilities:

If the Company is required to relocate or remove existing overhead and/or underground distribution facilities in the implementation of these Rules, all costs thereof shall be borne exclusively by he Applicant. These costs shall include costs of relocation or removal, the in-place value (less salvage) of the facilities so removed, and any additional costs due to existing landscaping, pavement or unusual conditions.

(7) Other Provisions:

If soil compac ion is required by the Applicant at locations where Company trenching is done, an additional charge may be added to he charges set forth in this tariff. The charge will be es imated based on the Applicant's compaction specifications.

11.04 UNDERGROUND SERVICE LATERALS FROM ~~OVERHEAD~~ EXISTING SECONDARY ELECTRIC DISTRIBUTION SYSTEMS.

(1) New Underground Service Laterals:

When requested by he Applicant, the Company will install underground service laterals from ~~overhead~~ exis ing secondary systems to newly constructed residen ial buildings containing less han five (5) separate dwelling units.

(2) Contribution by Applicant:

(a) The Applicant shall pay the Company the following average differen ial cost between an overhead service and an underground service lateral:

For Service Lateral up to 80 feet ..... ~~$439.00~~$44.00

For each foot over 80 feet up to 300 feet ..... $ 0.0 per foot

Service laterals in excess of 300 feet shall be based on a specific cost estimate.

(b) Credits will be allowed where, by mutual agreement, the Applicant provides trenching and backfilling in accordance with the Company specifica ions and for the use of the Company facilities, in lieu of a portion of the cash payment described above. These credits, based on the Company's design drawings, are as follows:

For each Foot of Trench ..... $ ~~2.91~~3.54

The provisions of Paragraphs 11.03(3) and 11.03(4) are also applicable.

(Continued on Next Page)

ISSUED BY: Javier J. Portuondo, Managing Director, Rates & Regulatory Strategy – FL
EFFECTIVE: ~~July 13, 2017~~

DUKE ENERGY.

SECTION NO. IV
~~EIGHTEENTH~~ NINETEENTH REVISED SHEET NO. 4.115
CANCELS ~~SEVENTEENTH~~ ~~EIGHTEENTH~~ REVISED SHEET NO. 4.115

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11.05 UNDERGROUND SERVICE LATERALS REPLACING EXISTING RESIDENTIAL OVERHEAD SERVICES:

Applicability:

When requested by the Applicant, the Company will install underground service laterals from existing overhead lines as replacements for existing overhead services to existing residential buildings containing less than five (5) separate dwelling units.

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.

Trenching:

The Applicant shall also provide, at no cost to the Company, a suitable trench and perform the backfilling and any landscaping, pavement, or other suitable repairs. If he Applicant requests the Company to supply the tranch or remove any additional equipment othar than the Service Lateral, the charge to he Applicant for this work shall be based on a specific cost estimate.

Contribu ion by Applicant:

The charge excluding trenching costs shall be as follows:

For Service Lateral ..... ~~$816.00~~1 237.00 per service

11.08 UNDERGROUND DISTRIBUTION FACILITIES TO MULTIPLE-OCCUPANCY RESIDENTIAL BUILDINGS:

(1) Availability:

Underground electric distribution facilities may be installed within the tract of land upon which multiple-occupancy residential buildings containing five (5) or more separate dwelling units will be constructed.

(2) Contribution by Applicant:

There will be no contribution from the Applicant so long as the Company is free to construct the extension in he most economical manner, and reasonably full use is made of the tract of land upon which the multiple-occupancy buildings will be constructed. Other conditions will require a contribu ion from the Applicant.

(3) Responsibility of Applicant:

(a) Furnish details and specifica ions of he proposed building or complex of buildings. The Company will use these in the design of the electric distribution facili ies required to render service.

(b) Where the Company determines that transformers are to be located inside the building, the Applicant shall provide:

i. The vault or vaults necessary for he transformers and the associated equipment, including the ventilation equipment.

ii. The necessary raceways or conduit for the Company's supply cables from he vault or vaults to a suitable point five (5) feet outside he building in accordance with the Company's plans and specifications.

iii. Conduits underneath all buildings when required for he Company's supply cables. Such conduits shall extend five (5) feet beyond he edge of the buildings for joining to the Company's facilities.

iv. The service entrance conductors and raceways from the Applicant's service equipment to the designated point of delivery within he vault.

(Continued on Next Page)

ISSUED BY: Javier J. Portuondo, Managing Director, Rates & Regulatory Strategy – FL
EFFECTIVE: ~~July 13, 2017~~

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: August 22, 2019

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Coston, Draper) WBC ESD RJH
Office of the General Counsel (Brownless) JSC

RE: Docket No. 20190132-EI – Petition for authority for approval of non-firm energy pilot program and tariff by Florida Public Utilities Company.

AGENDA: 09/05/19 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 60-day suspension date waived by the utility until 09/05/2019

SPECIAL INSTRUCTIONS: None

Case Background

On June 18, 2019, Florida Public Utilities Company (FPUC or utility) filed a petition for approval of a non-firm energy pilot program and tariff (pilot program). Under the proposed pilot program, FPUC would purchase non-firm energy from Florida Power & Light Company (FPL), pursuant to its wholesale purchased power contract with FPL, and resell the non-firm energy to qualifying industrial customers who own self-generation. The utility proposes the pilot to end on December 31, 2020.

On July 2, 2019, FPUC waived the 60-day file and suspend provision of Section 366.06(3), Florida Statutes (F.S.), until the September 5, 2019 Agenda Conference. On July 23, 2019, FPUC responded to staff's first data request. In its response, FPUC included corrected tariff sheets. Specifically, FPUC removed the $500 monthly administrative charge that was erroneously included in the tariffs filed with the petition and corrected a tariff sheet's numbering.

On August 22, 2019, FPUC filed certain additional minor corrections to the proposed tariffs. The revised tariff sheets, as filed on August 22, 2019 are shown in Attachment A to this recommendation. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission approve FPUC's petition for the approval of its pilot program and associated tariff?

Recommendation: Yes, the Commission should approve FPUC's petition for the pilot program and associated tariff effective September 5, 2019. The proposed tariff sheets are shown in Attachment A to this recommendation. If FPUC wishes to extend or make permanent the pilot program, FPUC should petition the Commission regarding the future of the pilot program prior to the December 31, 2020 expiration date. (Coston, Draper)

Staff Analysis: FPUC does not generate electricity to serve its customers; rather, FPUC's Northeast Division currently purchases power to serve its customers from FPL pursuant to a wholesale purchased power agreement.[1] FPUC recovers its payments to FPL from its customers through the fuel and purchased power cost recovery clause factors (fuel factors) the Commission approves in the annual fuel hearing.

On April 10, 2017, FPUC and FPL executed a Native Load Firm All Requirements Power and Energy Agreement (agreement) that includes a provision allowing FPUC to purchase non-firm energy from FPL pursuant to FPL's wholesale TS-1 tariff. The TS-1 tariff is an economy energy tariff under which FPL sells non-firm energy at FPL's forecasted incremental fuel cost to wholesale customers. The TS-1 tariff has been approved by the Federal Energy Regulatory Commission (FERC).

The proposed pilot program is designed for FPUC to purchase non-firm energy from FPL pursuant to the TS-1 tariff and sell the non-firm energy to qualifying industrial customers. Specifically, to qualify for the proposed pilot program, customers must qualify for FPUC's General Service Large Demand (GSLD), GSLD-1, or standby tariffs and own dispatchable self-generation. The proposed pilot program is limited to a maximum of three customers.

FPUC currently provides service to two industrial customers that would qualify for the proposed pilot program: Rayonier Advanced Materials (Rayonier) and WestRock. Both customers produce paper and lumber products and are operating on Amelia Island. FPUC explained that when the utility discussed with Rayonier and WestRock the option of being able to purchase non-firm energy from FPL, both customers expressed interest in a non-firm energy option to add to their generation mix.

Rayonier and WestRock have on-site generation that provides the majority of their energy and capacity requirements. FPUC explained that these two customers use coal, natural gas, or heat from burning wood by-products to generate electricity. FPUC serves as a back-up energy resource. The amount of energy Rayonier and WestRock purchase from the utility varies based on the operational status of the facilities. The utility states that the pilot program could allow the participants to purchase non-firm energy at a lower price than the cost to self-generate, which could provide a benefit to the production costs of Rayonier and WestRock.

[1] FPUC's Northwest Division currently purchases power from Gulf Power Company pursuant to a wholesale purchased power agreement.

Customers who choose to take service under the pilot program agree to a minimum of 12 months of service; service will continue thereafter until the customer submits a written notice of termination to FPUC. Pursuant to the proposed pilot program, FPL will notify FPUC each Friday morning of the hourly non-firm energy prices starting Sunday at midnight. FPUC will then notify the participating customers of the non-firm energy prices (expressed in dollars per megawatt-hour) by 10 am. The customers must submit to FPUC their non-firm energy purchases, or nominations, for the following week by 2 pm of the same day and FPUC will forward that information to FPL. Participating customers must purchase a minimum of 1,500 megawatt-hours per year.

The utility explained that Rayonier and WestRock would immediately benefit from the proposed pilot program. While the proposed pilot program would be available to three customers, FPUC explained that the utility is not aware of a third customer who currently would be interested in the pilot program.

The non-firm energy costs charged by FPL to FPUC will be directly passed by the utility to the non-firm pilot customers. The utility states it would not assess any administrative, energy, or demand surcharges under the proposed pilot program. FPUC explained that it expects its administrative cost to administer the non-firm pilot to be minimal; however, FPUC would petition the Commission to modify the pilot program tariff in the future should administrative charges be appropriate. Additionally, FPUC stated the cost to purchase non-firm energy from FPL and revenues received from customers participating in pilot program would not be included in the utility's Purchased Power Cost Recovery filing, Docket No. 20190001-EI.

FPUC proposed to offer the non-firm tariff as a pilot in order to determine whether this energy supply option is beneficial to participating customers and the utility. FPUC states that the pilot program will be revenue neutral to the utility and the general body of ratepayers as the cost of the non-firm energy will be passed directly through to the customers participating in the pilot.

Furthermore, FPUC explained that the utility's overall load factor in its Northeast Division is currently impacted by the demand and energy purchases from Rayonier and WestRock. When these customers make short term purchases of electricity from FPUC, it increases FPUC's monthly maximum demand. However, this increase in demand does not increase the total energy amount by the same percentage, which results in a negative impact on the utility's load factor. FPUC states that the proposed pilot program would provide participants the incentive to purchase energy over longer periods of time resulting in a positive impact on FPUC's load factor in the Northeast Division. FPUC's load factor is considered by wholesale energy providers when negotiating the pricing contained in purchased power contracts. An improved load factor would benefit FPUC's general body of ratepayers through lower fuel factors when future agreements for wholesale power are negotiated.

Conclusion

The Commission should approve FPUC's petition for the pilot program and tariff, as shown in Attachment A, effective September 5, 2019. This pilot program would allow FPUC to assess the benefits of offering a non-firm energy program to its industrial customers with self-generation. The pilot program would be revenue-neutral to the utility and have a potential benefit to both participants and FPUC's general body of ratepayers. If FPUC wishes to extend or make

permanent the pilot program, FPUC should be required to petition the Commission regarding the future of the program prior to the December 31, 2020 expiration date.

Issue 2: 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. (Brownless)

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 Public Utilities Company
F.P.S.C Electric Tariff
Third Revised volume No. 1

Original Sheet No. 66.1

NON-FIRM ENERGY PROGRAM NFEP-EXP (EXPERIMENTAL)

Availability

Available within the territory served by the Company in Jackson, Calhoun, and Liberty Counties and on Amelia Island in Nassau County. This service is limited to a maximum of 3 Customers. The Rate Schedule shall expire on December 31, 2020.

Applicability

Applicable to Customers which are self-generators with dispatchable generation and are eligible for Rate Schedule GSLD, GSLD1 or Standby or who have executed a Special Contract approved by the Commission. Eligible Customers would nominate, in accordance with the procedures outlined below, an amount of electric load they commit to purchase that is above and in addition to the Customer's established baseline. Non-Firm (NF) Energy nominations must be made in 1,000 KW increments and is currently limited to a minimum of 1,000 kW and maximum of 15,000 kW. The Customer is not obligated to nominate NF Energy for any specific period but must nominate a minimum of 1,500 MWh per year. There is no payment penalty associated with the experimental tariff.

The default period for NF Energy nominations will be 7 days. Nominations for longer periods, e.g. monthly, will be made available when market conditions warrant. The same procedure for nominations and acceptance will apply to all periods. Customer may nominate NF Energy for on-peak hours, off-peak hours, or all hours. On-peak hours are Hour Ending (H.E.) 08:00 to H.E 23:00 weekdays and off-peak hours are H.E. 24:00 to HE 07:00 and all hours on weekends and established holidays. On-peak and off-peak hours are subject to change.

Once the Company confirms the Customer's nomination, the Customer is obligated to pay for all NF Energy nominated at the offered rate regardless of whether the Customer takes all NF Energy nominated for the month, unless recalled in accordance with NF Recall provisions.

Monthly Rate

The rates and all other terms and conditions of the Customer's otherwise applicable rate schedule shall be applicable under this program.

All NF Energy shall be charged at the hourly price, in $/MWh, as offered by the Company. Once nominated by the Customer and accepted by the Company, the Customer is responsible to pay the full NF Energy Charge for the nomination period regardless of whether the Customer takes all NF Energy nominated for the month. Any purchases that exceed the combined total of the Customer's baseline and NF Energy nominations will be billed based on the Customer's otherwise applicable rate. The NF Energy charges are in addition to the charges based on the Customers otherwise applicable rate.

Monthly NF Administrative Charge:
$0.00 per Customer per month

Monthly NF Demand Charge:
$0.00 per kW of NF demand

Issued by: Kevin Webber, President

Effective:

Florida Public Utilities Company
F.P.S.C Electric Tariff
Third Revised volume No. 1

Original Sheet No. 66.2

NON-FIRM ENERGY PROGRAM NFEP-EXP (EXPERIMENTAL)

(Continued From Sheet No. 66.1)

Monthly Rate

NF Energy Charge:
Amount as offered and accepted for each nomination

Monthly NF Demand

The Monthly NF Demand shall equal the maximum hour of NF Energy nominated by the Customer for the calendar month.

Minimum Monthly Bill

The Minimum Monthly Bill shall consist of the Monthly NF Administrative Charge plus applicable taxes and fees.

Term of Service

The Customer agrees to a minimum of 12 months of service under the Program. Service will continue thereafter until the Customer submits to the Company a written notice of termination. Service will discontinue at the end of the calendar month that notice of termination is received.

Nomination and Acceptance Procedure

1. By 10:00 AM each Friday, when NF Energy is available, the Company will provide the Customer with NF Energy price quotations for the following period beginning 0:00 (midnight) the following Sunday (time period is Monday 00:00 – Sunday 24:00).
2. The Customer will submit a NF Energy nomination schedule to the Company by 2 pm of the same day that the offer is submitted.
3. NF Energy nominations are accepted once the Company confirms receipt of the nomination. The Company will then schedule delivery of the NF Energy, if any, beginning 0:00 (midnight) the following Sunday.

Nomination Recall Provisions:

Once accepted, nominations by Customer may only be withdrawn if a Force Majeure is declared. A Force Majeure may be declared by the Customer if the Customer's equipment suffers major failure such that the Customer is prevented from taking the NF Energy. In such case, the Customer will notify the Company's designated contact by approved method as soon as condition is known and the Company will attempt to withdraw the scheduled delivery of NF Energy. If possible to do so, the Customer will no longer be responsible for purchasing the balance of NF Energy nominated during the event. Customer may declare Force Majeure a maximum of once per month.

Company may terminate NF Energy delivery at any time due to system emergencies or unusual pricing by notifying Customer of such termination, and Company has no obligation to deliver NF Energy.

Issued by: Kevin Webber, President

Effective: