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Commission Conference Agenda
August 18, 2020

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 6, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Deas, Williams) CH
Office of the General Counsel (Passidomo, Dziechciarz) THT

RE: Applications for Certificate of Authority to Provide Telecommunications Service

AGENDA: 8/18/2020 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

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

DOCKET NO.	COMPANY NAME	CERT. NO.
20200154-TX	Gigamonster Networks, LLC	8952
20200165-TX	Light Source Communications, LLC	8953

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 entities 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 6, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Cowdery) *SMC*
Division of Economics (Coston, Guffey, Hampson) *EJD*
Division of Industry Development & Market Analysis (Hinton, Vogel) *CH*

RE: Docket No. 20200175-EU – Petition for emergency variance from or waiver of Rule 25-6.049(5)-(6), F.A.C., by Casa Devon Venture, LP.

AGENDA: 08/18/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: August 18, 2020 (30-day statutory deadline for the Commission to grant or deny the petition or determine it is not an emergency has been waived until this date)

SPECIAL INSTRUCTIONS: None

Case Background

On July 1, 2020, Casa Devon Venture, LP (Casa Devon) filed an emergency petition for a variance from or waiver of the individual electric metering requirement of Rule 25-6.049(5) and (6), Florida Administrative Code (F.A.C.), so that it can master meter its Casa Devon apartment building. As alternative relief, Casa Devon asks that if the Commission does not grant the variance, it should find that Casa Devon does not need a rule variance or waiver because the Casa Devon apartment falls within one of the individual metering requirement exceptions described in Rule 25-6.049(5)(c) or (d), F.A.C.

Rule 25-6.049, F.A.C.

Rule 25-6.049(5), F.A.C., requires individual electric metering by the utility for each separate occupancy unit of new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks. The purpose of these provisions is to promote energy conservation in Florida by directly linking the amount customers pay for electricity to the amount of electricity the customer uses.

The rule states that the individual metering requirement does not apply to certain listed situations, including:

> (c) For electricity used in specialized-use housing accommodations such as hospitals, nursing homes, living facilities located on the same premises as, and operated in conjunction with, a nursing home or other health care facility providing at least the same level and types of services as a nursing home, convalescent homes, facilities certificated under chapter 651, F.S., college dormitories, convents, sorority houses, fraternity houses, and similar facilities; and
>
> (d) For lodging establishments such as hotels, motels, and similar facilities which are rented, leased, or otherwise provided to guests by an operator providing overnight occupancy as defined in paragraph (8)(b).

In addition, individual metering is not required for condominiums that meet certain criteria set out in sections (5)(g) and (6) of the rule. These exceptions are based on the concept that the individual metering requirement no longer achieves the Florida Energy Efficiency and Conservation Act's purpose when a customer, such as a condominium or nursing home owner, rents the unit or charges for the room on a short-term basis for a flat per-night or per-week fee. In those cases, the customer cannot control how much electricity is used in the unit or room.

The individual metering requirement in Rule 25-6.049(5), F.A.C., is based on the Commission's authority under Sections 366.05(1) and 366.06(1), Florida Statutes (F.S.), to prescribe rate classifications and service rules for investor-owned electric utilities. The rule also implements the conservation policies in the Florida Energy Efficiency and Conservation Act. Section 366.81, F.S., of that act states the Legislature's finding that it is critical to utilize the most efficient and cost-effective conservation systems in order to protect the health, prosperity, and general welfare of Florida and its citizens. The statute states that since solutions to Florida's energy problems are complex, the Legislature intends that the use of solar energy should be encouraged. Section 366.81, F.S., further states that the Legislature finds and declares that the statute should be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption, increasing the overall efficiency and cost-effectiveness of electricity, and conserving expensive resources.

Casa Devon's Petition

Casa Devon states that it is the owner and developer of the Casa Devon apartment building, an existing 210-unit apartment in Miami that provides low-income, affordable housing to senior citizens through the Federal Department of Housing and Urban Development (HUD). Casa Devon seeks a variance or waiver from the individual electric metering requirement of Rule 25-

6.049, F.A.C., so that it can convert its apartment building from individually metered apartments to being master metered. Casa Devon requests that the variance or waiver be permanent with the condition that Casa Devon continue to operate as a specialized-use HUD housing facility with a solar energy system achieving energy conservation through reduced electricity purchases from the utility.

Casa Devon states that it has a Housing Assistance Payment contract with HUD that sets rental rates such that tenants pay thirty percent of their gross income toward rent and the remainder is paid for by HUD or a Public Housing Agency through subsidies or vouchers. According to Casa Devon, under the current arrangement, rent amount includes a utility allowance for water, wastewater, and electricity that varies by individual unit owner, but that Casa Devon estimates to average about $58 per unit. The petition shows that the Casa Devon apartment tenants are currently individually metered by Florida Power & Light Company (FPL).

Casa Devon states that on January 1, 2020, the Housing Assistance Payment contract was renewed by HUD for a new twenty-year term with an agreement to automatically renew for an addition 16 years, guaranteeing affordable housing at the facility until December 31, 2055. In addition to other renovation conditions, the contract renewal requires that:

> The Owner [Casa Devon] will also convert the Project [Casa Devon apartment building] to be master metered, which will result in tenants no longer paying for electricity. After completing the master meter conversion, the Owner will then add a solar panel system that will offset approximately 75% of the total electrical load.

Petition, Exhibit A.

Casa Devon states that it agreed to this arrangement, whereby it covers the cost of electricity, because of the benefits of installing the planned solar energy system. Casa Devon will get a Solar Investment Tax Credit for installing the solar energy system, through which it expects to receive a tax deduction of more than $300,000. Further, the solar energy system is predicted to offset 65 to 75 percent of the total annual electrical load to the Casa Devon apartment building. Casa Devon states that this arrangement gives the residents a significant benefit of not having to pay electric bills. Casa Devon alleges that it is required by HUD to finish the construction, installation, and approval of permitting of the solar energy system by December 31, 2020.

As an alternative request, if the Commission does not grant its request for variance or waiver, Casa Devon asks the Commission to find that it should be allowed to master meter the apartment building under either the "specialized-use housing" exception of paragraph (c) of Rule 25-6.049(5) or because it is similar to a hotel or hotel-condominium and therefore falls under the Rule 25-6.049(5)(d) exception. Casa Devon argues that the apartment building should be considered a specialized-use exception because it is not an ordinary housing arrangement, but is a specialized arrangement provided through the Federal government to provide housing for fixed-income or low-income senior citizens who will not be paying for electricity usage. Casa Devon argues that the load characteristics and usage patterns of the Casa Devon apartments will be more similar to other specialized-use housing or hotels than those of typical residential customers because the residents will not be paying for utilities.

Florida Power & Light Company's Comments

On July 27, 2020, FPL filed comments regarding Casa Devon's petition. FPL states that Casa Devon's "purported need" for a waiver and "professed economic hardship" were caused by Casa Devon's own action because it entered into the HUD agreement to master meter and install a solar energy system without first consulting the Commission's rules. FPL states that if the Commission were to grant the waiver, it would establish a factual predicate for others to ignore Commission rules, engage in a prohibited activity, and then ask the Commission for relief.

FPL believes that, instead of master metering and installing its planned solar energy system, Casa Devon could allow its 210 residents the option to either individually net meter using solar through the use of micro-inverters or string inverters, or keep their current individually metered service with FPL. In addition, FPL states that there is no way to determine whether all 210 residents have agreed to terminate their service with FPL, or whether FPL could safely deliver electricity to the apartment building if master metering is permitted.

With regard to Casa Devon's alternative request for relief, FPL argues that the Casa Devon apartment building does not qualify for master metering as specialized-use housing or housing similar to a hotel or hotel-condominium under Rule 25-6.049(5)(c) or (d), F.A.C. FPL argues that the Casa Devon apartment residents are permanent occupants and therefore the rationale for allowing master metering for overnight or temporary occupancy is simply not present.

Procedural Matters

Under Section 120.542, F.S., and Uniform Rule of Procedure Rule 28-104.005(1), F.A.C., an agency must give notice of receipt of a petition for emergency variance or waiver on its website within 5 days of receipt. On July 1, 2020, the Commission published notice of receipt of the emergency petition on its website. Notice of the emergency petition was also published in the July 2, 2020 edition of the Florida Administrative Register (FAR), Vol. 45, No. 80, as required by Section 120.542(3), F.S., and Uniform Rule of Procedure Rule 28-104.005(1), F.A.C. Rule 28-104.005(1), F.A.C., provides that interested persons may submit comments within 5 days after publication of the notice in the FAR. Even though FPL filed its comments after this 5-day period, there was sufficient time for staff to review the comments and address them in this recommendation. In addition, this item is noticed that interested persons may participate at the Agenda Conference.

Pursuant to Rule 28-104.005(2), F.A.C., a petition for emergency variance or waiver must be granted or denied, or the request must be determined not to be an emergency, within 30 days of its receipt by the agency, or it is deemed approved, unless the time limit is waived by the petitioner. Casa Devon waived the 30-day deadline until the August 18, 2020 Commission Conference. Thus, the petition will be deemed approved if the Commission does not grant or deny the petition or determine that it is not an emergency by August 18, 2020.

This recommendation addresses whether the Commission should grant the emergency petition for variance or waiver by Casa Devon. The Commission has jurisdiction under Sections 120.542, 366.04, 366.05, and 366.81, F.S.

Discussion of Issues

Issue 1: Should the Commission grant the petition for emergency variance from or waiver of Rule 25-6.049(5), Measuring Customer Service, F.A.C., by Casa Devon Venture, LP?

Recommendation: Yes, Casa Devon's petition for emergency variance from or waiver of Rule 25-6.049(5), F.A.C., should be granted subject to the condition that Casa Devon install the solar energy system in the apartment building substantially as described in the petition and the system remains in operation and achieves energy conservation through reduced electricity purchases from the utility. If these conditions are not met, the variance or waiver should cease to be effective. Casa Devon should be put on notice that if the variance or waiver ceases to be effective, it will be responsible for the cost of converting the Casa Devon apartment building from master metering to individual metering pursuant to Rule 25-6.049(7), F.A.C. (Cowdery, Coston, Guffey, Hampson, Hinton, Vogel)

Staff Analysis: Casa Devon is asking the Commission for an emergency variance from or waiver of Rule 25-6.049(5) and (6), F.A.C., so that it can convert the Casa Devon apartment building from individual metering to master metering. If the Commission does not grant it a variance or waiver from the rule, Casa Devon requests as alternative relief that the Commission find that the Casa Devon apartment building falls under an exception to individual metering under Rule 25-6.049(5)(c) and (d), F.A.C. Casa Devon asks the Commission to consider its petition on an emergency basis.

Legal Standard for Rule Variances and Waivers

Section 120.542(1), F.S., states that the purpose of a rule variance or waiver[1] is to provide relief to persons subject to regulation in cases where strict application of rule requirements can lead to unreasonable, unfair, and unintended results in particular circumstances. Section 120.542(2), F.S., sets forth a two-prong test for granting variances or waivers to rules. If the petitioner satisfies both prongs of the test, the agency must grant the variance or waiver.

First, the petitioner must show that "application of [the] rule would create a substantial hardship or would violate principles of fairness." A "substantial hardship" is a "demonstrated economic, technological, legal, or other type of hardship." Principles of fairness are violated when "the literal application of a rule affects a particular person in a manner significantly different from the way it affects other similarly situated persons who are subject to the rule." Second, the petitioner must demonstrate that it will achieve the purpose of the underlying statutes by other means.

Each petitioner for rule variance or waiver has the burden of proving its entitlement to a variance or waiver under its particular circumstances. Thus, the Commission's determination as to whether a petitioner should be granted a variance or waiver is based on whether the legal test has been met under the specific circumstances of each petitioner.[2]

[1] A waiver is a decision by an agency not to apply all or part of a rule to a person who is subject to the rule. Section 120.52(22), F.S. A variance is an agency decision to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule. Section 120.52(21), F.S.

[2] Compare this to declaratory statements by agencies under Section 120.565, F.S., where an agency gives its opinion as to the applicability of a statute, rule, or order of the agency to the petitioner's particular set of circumstances.

Section 120.542(2), F.S., authorizes the filing of emergency petitions for rule variances and waivers. In order to be considered on an emergency basis, Uniform Rule of Procedure Rule 28-104.004(2), F.A.C., requires a petition for emergency variance or waiver to identify:

> (a) The specific facts that make the situation an emergency; and
>
> (b) The specific facts to show that the petitioner will suffer an immediate adverse effect unless the variance or waiver is issued more expeditiously than the time frames provided in Section 120.542, F.S.

The time frame for processing an emergency petition for variance requires that the agency publish notice of the petition in the FAR within 5 days of filing, compared to 15 days for a non-emergency petition. For an emergency petition, an agency must grant, deny, or find that a petition is not an emergency within 30 days of the petition's filing, unless the 30 days is waived by the petitioner. In contrast, a non-emergency petition must be granted or denied within 90 days after receipt of the original petition, the last item of timely requested additional information, or the petitioner's written request to finish processing the petition.

Request to Consider the Petition on an Emergency Basis

Casa Devon states that in May 2020, FPL advised Casa Devon that it would not permit master metering of the apartment building. Casa Devon states that since that time, the apartment renovation project has been on hold because Casa Devon cannot move forward with master metering the apartment or installing the solar energy system. Casa Devon is requesting that its petition be considered on an emergency basis because rehabilitation and renovation to the Casa Devon apartments must be completed by December 31, 2020 under HUD requirements, and those renovations cannot be completed without the variance or waiver of the individual metering requirement. Casa Devon states that if its petition is heard on an emergency basis, Casa Devon and the solar subcontractor believe that the two-month delay caused by Casa Devon's inability to master meter can be made up and the project finished on time. However, Casa Devon states that it does not believe there will be enough time to complete the installation of the solar energy system by December 31, 2020, if its petition is not heard on an emergency basis.

Staff believes that Casa Devon has demonstrated that an emergency situation exists. The petition alleges that rehabilitation and renovation to Casa Devon apartments must be completed by December 31, 2020 under HUD requirements and that there will not be enough time to complete the installation of the solar energy system by that date if the petition is not heard on an emergency basis. The Commission has recognized that a contract deadline can be a factor forming the basis for considering a petition for waiver on an emergency basis. E.g. In re Petition for emergency temporary waiver by BellSouth Telecommunications, Inc., Docket No. 20040659-TL, Order No. PSC-04-0793-PAA-TL, issued August 12, 2004 (granting emergency consideration of a rule waiver petition where an upcoming contract termination date and potential work stoppage would impact BellSouth's ability to comply with certain Commission rules).

Unlike a proceeding on a petition for variance or waiver, substantially affected persons may intervene in a declaratory action proceeding. This is because the agency's interpretation of the applicability of its statute, rule, or order has precedential effect and may determine the substantial interests of other persons in similar circumstances.

Casa Devon states that it would suffer an immediate adverse effect if the petition is not heard expeditiously because by failing to meet the December 31, 2020 completion date, it would be in default of its agreement with HUD, causing HUD to potentially terminate the contract or seek other relief such as rescinding or reducing its monthly rental payments to the property. Further, Casa Devon alleges that it would also fail to meet the energy savings requirements it agreed to in order to receive the tax incentives, which could result in a financial loss of in excess of $200,000. Casa Devon states that failure to finish the project by December 31, 2020, would also impact senior citizens in Miami-Dade County who need the 210 affordable housing-units that the Casa Devon apartments provide. Staff agrees that these facts demonstrate that Casa Devon will suffer an immediate adverse effect unless the variance or waiver is issued expeditiously.

Based on the specific facts provided, staff recommends that the Commission consider the petition for rule variance or waiver on an emergency basis. Staff notes that even if Casa Devon had not requested emergency treatment of its petition, staff would have brought this petition to the August 18, 2020 Commission Conference.[3] The petition contains the information required by Rule 28-104.002, F.A.C., and staff did not need any additional written information to complete its review. Further, given the nature of the apartment building at issue, low income housing for senior citizens in Miami that Casa Devon is restoring and renovating to include an extensive solar energy system, staff believes it is in the public interest to consider the petition in a timely manner.

The Purpose of the Underlying Statutes

Casa Devon states that the purpose of the underlying statutes implementing Rule 25-6.049, F.A.C., is to give the conditions under which individual metering and master metering must be used to ensure fair and reasonable rates/charges and energy conservation. Casa Devon states that it believes the underlying purpose of this law, promotion of energy conservation, will be achieved through its requested variance or waiver because master metering the apartment building and installation of the solar photovoltaic system will offset 65 to 75 percent of the apartment building's total annual electric load, therefore reducing electricity purchases from the utility.

Casa Devon further states that "[without] master metering, Casa Devon cannot install the solar energy system and would not be able to offer the fair and reasonable rates it is offering to these residents - $0 for utilities." FPL disagrees with this statement, arguing that Casa Devon could install solar panels without master metering, possibly using micro-inverters or string inverters, to allow each of the 210 residents to make their own choice to net meter, or to keep their current service with FPL through their existing individual meter.

FPL's suggested alternative does not show that Casa Devon's petition does not meet the purposes of the rule's underlying statutes. Instead, FPL's argument seems to take issue with whether the installation of solar is technically feasible without master metering. But whether or not the installation of solar is technically feasible without master metering is not relevant to deciding whether Casa Devon's proposed master metering project meets the purpose of the underlying statutes. Further, the HUD project is dependent on master metering, the primary

[3] If Casa Devon's petition for variance was not considered on an emergency basis, the Commission would need to grant or deny the petition within 90 days of the filing of the petition, which would be September 29, 2020.

energy source of which is solar, which is dependent on receiving the Solar Investment Tax Credit for the solar energy system installation. The Solar Investment Tax Credit and estimated energy cost savings are the basis for Casa Devon's agreement to pay all the apartment building's electric utility costs, instead of apartment renters paying for their individually metered electricity. In the absence of master metering, it appears that Casa Devon would not be able to economically undertake the restoration project as designed or economically offer solar energy.

Casa Devon has demonstrated that it will achieve the conservation purpose of the Florida Energy Efficiency and Conservation Act by means other than the individual metering requirement of Rule 25-6.049(5), F.A.C. Under Section 366.81, F.S., of the Florida Energy Efficiency and Conservation Act, the Legislature finds that it is critical to utilize the most efficient and cost-effective conservation systems in order to protect the health, prosperity, and general welfare of Florida and its citizens. The statute states that the Legislature intends that the use of solar energy should be encouraged and that the statute should be liberally construed in order to meet the complex problems of reducing and controlling the growth rates of electric consumption, increasing the overall efficiency and cost-effectiveness of electricity, and conserving expensive resources. Staff believes the underlying purpose of the Florida Energy Efficiency and Conservation Act will be achieved through master metering because installation of the solar photovoltaic array is projected to offset 65 to 75 percent of the apartment building's load resulting in lower electricity purchases from the utility.

Substantial Hardship

Casa Devon alleges that it will incur a substantial hardship if Rule 25-6.049, F.A.C., is applied to require individual metering because that would cause Casa Devon to violate its agreement with HUD, in which Casa Devon agreed to pay for the apartment building's electricity through master metering. Casa Devon states that the inability to master meter will constitute a default under the Housing Assistance Payment contract that would cause HUD to potentially terminate the contract or seek other relief such as rescinding or reducing its monthly rental payments to the apartment building.

Additionally, Casa Devon states that the decision to pay for the apartment building's electricity was predicated on Casa Devon's ability to master meter the project so that it could install a solar energy system that would offset 65 to 75 percent of the total electrical load. Casa Devon states that, by installing the solar energy system, it would receive a Solar Investment Tax Credit which would offset the cost of it paying for the residents' electricity. Casa Devon states that if the apartment building is required to keep the existing individual metering, the solar energy system planned to be installed – for which engineering fees have been paid and panels already procured – will not offset the tenant electrical loads. Casa Devon alleges that the solar energy system cannot be installed without master metering because the planned size of the solar energy system is necessary to achieve the 65 to 75 percent reduction in electric load.

If master metering is not allowed, Casa Devon states that it will need to develop a new solar energy approach to include individual systems for each apartment's meter to ensure that the peak monthly generation of each system does not exceed the consumption of its corresponding meter. Casa Devon alleges that this would also require additional costs for electrical cable management, smaller inverters to be installed at the individual meters, and a multitude of other considerations

and components that will offset any cost savings realized through the system. Casa Devon alleges that if it were to operate the solar energy system on individual meters, there would be decreased energy conservation and increased operation reporting requirements. Casa Devon alleges that individual metering would result in a loss of roughly 60 to 70 percent of the planned energy load reduction because the only financially viable solar energy system to use with individual metering would offset only the electricity load in common areas instead of the entire apartment building.

Casa Devon states that individual metering would result in the loss of the Solar Investment Tax Credit that was a huge factor in incentivizing investors to fund the comprehensive rehabilitation of the Casa Devon apartment building. Casa Devon states that if this much smaller solar energy system were installed, the tax credit deduction would be reduced to around $24,000, which would be completely nullified by the significant financial commitments Casa Devon has made for the restoration and rehabilitation of the Casa Devon apartment building. Additionally, there would be a negative financial impact on the current operating budget projections that currently assume a 65 to 75 percent load reduction.

FPL states that Casa Devon's alleged economic hardship was caused by its own actions of entering into the HUD agreement without first consulting the Commission's rules to determine whether it could master meter. FPL states that if the Commission were to grant the waiver, it would establish a factual predicate for others to ignore Commission rules, engage in a prohibited activity, and then ask the Commission for relief. FPL states that the Florida Supreme Court addressed this very situation in affirming the Commission's denial of a rule waiver in Panda Energy International v. Jacobs, 813 So. 2d 46 (Fla. 2002).

The Commission proceeding giving rise to the Panda Energy appeal was a need determination case.[4] On the day after the prehearing conference, Panda filed a petition to intervene in the proceeding. After being granted intervention, and two days before the hearing, Panda filed a motion for a continuance of the hearing. As part of its motion, Panda addressed Rule 25-22.080, F.A.C., which requires that the hearing be conducted within 90 days of the filing of the need petition. Panda argued that because Rule 25-22.080, F.A.C., was a procedural rule, the Commission could waive its requirements for good cause.

Florida Power Corporation (FPC) filed a Response in Opposition to Panda's Motion for Continuance. As part of FPC's response, it argued that granting the continuance would violate Rule 25-22.080, F.A.C., and that the requirements of Rule 25-22.080, F.A.C., could be waived only through a variance procedure of Section 120.542, F.S., and Rule 28-104.002, F.A.C., which, it stated, Panda did not address in its motion.

The motion for continuance was heard by the Commission at the beginning of the need determination hearing. The Commission denied Panda's motion for continuance on the ground that Panda did not show good cause for a continuance as required by Rule 28-106.210, F.A.C.
In denying Panda's motion for continuance, the Commission did not address FPC's argument about the need for a Rule 25-22.080, F.S., rule waiver under Section 120.542, F.S.

[4] Petition for determination of need for Hines Unit 2 Power Plant by Florida Power Corporation, Docket No. 20001064-EI.

On appeal, the Court held that the Commission did not abuse its discretion in denying Panda's motion for continuance. In addition, the Court stated that in order to obtain a continuance, Panda would need a waiver from the Commission's rule implementing the statutory deadlines for need proceedings. The Court found that because the limited amount of time for preparing for hearing was a direct result of Panda's decision to delay intervening, Panda did not demonstrate either a substantial hardship or a violation of principles of fairness. Panda Energy, 813 So. 2d at 51.

Staff disagrees with FPL's statement that "the Supreme Court addressed this very situation in affirming the Commission's denial of a rule waiver" in Panda Energy. As explained above, the Florida Supreme Court in Panda Energy affirmed the Commission's denial of Panda's motion for continuance on the basis that Panda had not shown good cause as required by Rule 28-106.210, F.A.C. The Court's additional finding that Panda did not meet the requirements of a rule waiver was based on the fact that Panda chose to delay intervening in the case, which was why Panda had a limited amount of time to prepare for the hearing. The fact pattern in Panda Energy concerning a motion for continuance of a hearing is very different from Casa Devon's facts showing substantial hardship if a rule variance is not granted to allow master metering.

Staff also disagrees with FPL's statement that if the Commission were to grant the waiver, it would establish a factual predicate for others to ignore Commission rules, engage in a prohibited activity, and then ask the Commission for relief. To begin with, there is no indication that Casa Devon engaged in any prohibited activity. Further, as explained above, petitions for rule waivers are decided based upon whether a petitioner meets the statutory requirements of Section 120.542, F.S. If Casa Devon demonstrates that application of the individual metering requirement of Rule 25-6.049(5), F.A.C., would create a demonstrated economic, technological, legal, or other type of hardship and that it will achieve the purpose of the underlying statutes by other means, then a waiver or variance must be granted. See Section 120.542(2), F.S. Each petitioner for rule variance or waiver has the burden of proving its entitlement to a variance or waiver under its particular circumstances.

Further, FPL appears to conflate Casa Devon's request that the Commission consider the petition on an emergency basis with Casa Devon's showing of substantial hardship to obtain a rule waiver or variance. The determination of substantial hardship in this case is not based upon the emergency nature of the filing or when the filing of the petition occurred. It does not matter whether Casa Devon filed a petition for waiver or variance before it entered into the HUD contract or afterwards. What matters is whether the facts presented by Casa Devon meet the requirements for a rule waiver or variance, including a showing of substantial hardship or violation of principles of fairness and that the underlying purpose of the statutes will be met.

In addition to its other comments, FPL states that based upon the materials filed with the Commission, along with information provided by Casa Devon to FPL during the past few months, FPL cannot say with any degree of certainty that the apartment building can be master metered, noting that FPL has not received any electrical engineering plans and that the local building official would need to sign off on the delivery system beyond FPL's point of delivery. These issues are not relevant to the Commission's decision as to whether the petition meets the statutory requirements for a rule waiver, that is, whether Casa Devon has shown that application

of the rule would create a substantial hardship or would violate principles of fairness and that the purpose of the underlying statutes will be achieved by other means.

Staff believes that Casa Devon has demonstrated that it will incur substantial hardship if it is not granted a variance from or waiver of the individual metering requirement of Rule 25-6.049(5), F.A.C. If Casa Devon is not granted a variance and is not allowed to master meter its apartment building, it will not be feasible to install the solar energy system it has contracted for, the estimated 65 to 75 percent load reduction will not occur, and it will not qualify for the Solar Investment Tax Credit that was intended to offset Casa Devon's agreement to cover the cost of tenant utilities through master metering. This argument for substantial hardship would have been essentially the same if the petition for variance had been filed before Casa Devon entered into the HUD contract. In addition, under the facts of this case, the inability to master meter will constitute a default under the Housing Assistance Payment contract, which requires master metering and the installation of a solar panel system that will offset approximately 75% of the total electrical load, that would cause HUD to potentially terminate the contract or seek other relief such as rescinding or reducing its monthly rental payments to the property.

Conclusion

Staff recommends that Casa Devon's petition for emergency variance from or waiver of Rule 25-6.049(5), F.A.C., should be granted subject to the condition that Casa Devon install the solar energy system in the apartment building substantially as described in the petition and the system remains in operation and achieves energy conservation through reduced electricity purchases from the utility. If these conditions are not met, the variance or waiver should cease to be effective. Casa Devon should be put on notice that if the variance or waiver ceases to be effective, it will be responsible for the cost of converting the Casa Devon apartment building from master metering to individual metering pursuant to Rule 25-6.049(7), F.A.C.

However, by granting the rule waiver, it does not mean that FPL is required to master meter the Casa Devon apartment building if it is not technically feasible and safe to do so. It is up to Casa Devon and FPL to work together to determine the technical feasibility of master metering the apartment building based upon electrical engineering plans and other relevant information.

Casa Devon also requested a variance of or waiver from Subsection (6) of Rule 25-6.049, F.A.C. However, Subsection (6) applies only to master-metered condominiums, so it does not apply to Casa Devon's apartment building.

Further, Casa Devon requested, alternatively, that if the Commission does not grant a variance or waiver from the individual metering requirement, it should interpret the exemptions from individual metering in paragraphs (c) and (d) of Rule 25-6.049(5), F.A.C., as applying to Casa Devon's apartment building so that it can master meter. If the Commission grants Casa Devon's petition for variance/waiver, this request for alternative relief is moot and should not be considered. Moreover, Casa Devon's alternative request for the Commission to give its opinion as to the applicability of the provisions of Rule 25-6.049(5)(c) and (d), F.A.C., to Casa Devon's particular set of circumstances is, in effect, a request for a declaratory statement. See Section 120.565, F.S. Casa Devon's petition for variance or waiver did not request a declaratory statement and does not meet the Rule 25-105.002, F.A.C., filing requirements for a petition for

declaratory statement. For this additional reason, the Commission should not consider Casa Devon's alternative relief request.

Issue 2: Should this docket be closed?

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

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

Item 3

State of Florida

Public Service Commission

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

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

DATE: August 6, 2020

TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Shaw Stiller, Senior Attorney, Office of the General Counsel SS

RE: Docket No. 20200001-EI - Fuel and purchased power cost recovery clause with generating performance incentive factor.

Please be advised that the attached recommendation filed today in this docket is confidential. Duke Energy Florida, LLC will file a request for confidential classification of this recommendation. At that time a redacted version of the recommendation will be made publically available.

Item 4

State of Florida

Public Service Commission

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

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

DATE: August 6, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Sewards, Mouring) ALM BF
Office of the General Counsel (Stiller, Crawford) JC

RE: Docket No. 20200178-GU – Petition for approval to track, record as a regulatory asset, and defer incremental costs resulting from the COVID-19 pandemic, by Peoples Gas System.

AGENDA: 08/18/20 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On July 2, 2020, Peoples Gas System (Peoples or Company) filed a petition for approval to establish a regulatory asset to record costs incurred due to Coronavirus Disease 2019 (COVID-19). Peoples has requested deferral of incremental bad debt expense and safety-related costs attributable to COVID-19. Given the ongoing nature of the COVID-19 pandemic, the total extent of Peoples' COVID-19-related costs is not known at this time. Commission consideration of the potential recovery of the regulatory asset will be addressed in a future proceeding.

This recommendation addresses the creation of a regulatory asset and the deferral of consideration of any potential recovery to a future proceeding. The Commission has jurisdiction over this matter pursuant to Sections 366.04 and 366.06, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve Peoples Gas System's request for approval to establish a regulatory asset for recording costs attributable to COVID-19?

Recommendation: Yes. The Commission should approve Peoples' request to establish a regulatory asset for recording costs incurred due to COVID-19. The approval to establish a regulatory asset, for accounting purposes, does not limit the Commission's ability to review the amounts, recovery method, recovery period, and other related matters for reasonableness in a future proceeding in which the regulatory asset is included.

Peoples should be required to track any assistance or benefits received by the Company in connection with COVID-19, regardless of form, that would offset any COVID-19-related expenses. This would include, but is not limited to, any cost savings directly attributable to the suspension of disconnections or other activities during the emergency declaration. The regulatory asset costs and offsets should be recorded and maintained in a detailed manner that will allow incremental costs and any benefits and savings to be readily identifiable in a future proceeding. In addition, Peoples should be prepared to explain what actions and efforts it has undertaken to reduce or minimize these costs and to maximize the receipt of any available COVID-19 assistance or benefits. Finally, Peoples should be required to file monthly reports identifying the amounts of the costs incurred, any assistance or benefits received, and any cost savings realized which have been recorded in the regulatory asset. The first COVID-19 regulatory asset report should be filed on October 1 and every month thereafter until the Company presents the regulatory asset for Commission consideration. (Sewards)

Staff Analysis: The Commission is charged with the duty of ensuring that utilities provide safe, adequate, and reliable utility service at reasonable rates. By law, such rates must allow utilities the opportunity to recover the prudently incurred costs and a fair rate of return on capital invested by utilities for the purpose of providing such service. In turn, utilities have a responsibility, and are expected, to manage their business in a manner that addresses changes in costs and variability in sales.

On July 2, 2020, Peoples filed a petition for approval to establish a regulatory asset to defer certain costs incurred due to COVID-19. Peoples has requested approval to record incremental bad debt expense and safety-related costs attributable to COVID-19 in the requested regulatory asset.

Peoples states aged accounts receivable of 60 days or more exceeds 12 percent of its total accounts receivable balance, or approximately $2.3 million, exceeding the Company's normal level. Peoples anticipates that COVID-19-related bad debt expense will continue to increase in future months. An allowance for bad debt expense is included in base rates. In Peoples' last rate case, this allowance was based on a four-year average and was set at approximately $1.6 million per year.[1]

[1] Order No. PSC-2009-0411-FOF-GU, issued June 9, 2009, in Docket No. 080318-GU, *In re: Petition for rate increase by Peoples Gas System.*

Peoples has stated incremental safety costs attributable to COVID-19 related to the Company's efforts to follow all necessary guidelines and protocols include, but are not limited to, personal protective equipment, materials and supplies to protect employees' and customers' health and safety, additional cleaning and sanitization, employee health monitoring, COVID-19 testing of employees, transportation expense, and overtime expense related to safety preparations.

The concept of deferral accounting allows companies to defer costs due to events beyond their control and seek recovery through rates at a later time. If the subject costs are significant, the alternative would be for a company to seek a rate proceeding each time it experiences an exogenous event. The costs in the instant docket are attributed to the COVID-19 pandemic. Due to the uncertainty of this situation, Peoples states that it is not possible to fully anticipate the scope or timeframe of the financial impact on the Company and its customers related to COVID-19. Because of the unique circumstances resulting from the global pandemic, staff recommends that the Commission approve Peoples' request to establish a regulatory asset for recording costs incurred due to COVID-19 and defer Commission consideration of the potential recovery of the amounts recorded in the regulatory asset to a future proceeding. For the same reasons, it is too early to determine if the total amount and/or all types of the proposed costs will be permissible for recovery. The approval to establish a regulatory asset, for accounting purposes, does not limit the Commission's ability to review the amounts, recovery method, recovery period, and other related matters for reasonableness in a future proceeding in which the regulatory asset is included. If staff's recommendation herein is approved, the order that issues will be procedural and preliminary in nature. An adversely affected party's point of entry to request an evidentiary hearing before the Commission will be afforded in a future proceeding addressing cost recovery of the regulatory asset.

In addition, staff recommends that Peoples be required to track any assistance or benefits received by the Company in connection with COVID-19, regardless of form, that would offset any COVID-19-related expenses. This would include, but is not limited to, any cost savings directly attributable to the suspension of disconnections or other activities during the emergency declaration. The regulatory asset costs and offsets should be recorded and maintained in a detailed manner that will allow incremental costs and any benefits and savings to be readily identifiable in a future proceeding. In addition, Peoples should be prepared to explain what actions and efforts it has undertaken to reduce or minimize these costs and to maximize the receipt of any available COVID-19 assistance or benefits. Finally, Peoples should be required to file monthly reports identifying the amounts of the costs incurred, any assistance or benefits received, and any cost savings realized which have been recorded in the regulatory asset. The first COVID-19 regulatory asset report should be filed on October 1 and every month thereafter until the Company presents the regulatory asset for Commission consideration.

Issue 2: Should this docket be closed?

Recommendation: Yes. The docket should be closed upon the issuance of the procedural order. (Stiller)

Staff Analysis: The docket should be closed upon the issuance of the procedural 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 6, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Cicchetti, Buys, Hightower) ALM MC
Office of the General Counsel (Brownless) JC

RE: Docket No. 20200148-WS – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for Gold Coast Utility Corp.

AGENDA: 08/18/20 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

The Tax Cuts and Jobs Act of 2017 (TCJA) was signed into law on December 22, 2017, and became effective for the taxable year beginning January 1, 2018. On January 9, 2018, the Office of Public Counsel (OPC) filed a "Petition to Establish Generic Docket to Investigate and Adjust Rates for 2018 Tax Savings." On February 6, 2018, in Order No. PSC-2018-0104-PCO-PU,[1] the Florida Public Service Commission (Commission) established jurisdiction over utilities' tax savings if such a date was not contained in an applicable settlement agreement. Subsequently, the Commission opened separate dockets to address the tax savings for electric and natural gas utilities. At this time, all electric, natural gas, and water and wastewater utilities (WAW) tax savings dockets have been resolved except for two WAW utilities, Gold Coast Utility

[1]Order No. PSC-2018-0104-PCO-PU, issued February 6, 2018 in Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.*

Corporation (Gold Coast) and St. James Utility Company. The instant docket was opened to address tax savings associated with Gold Coast.

For WAW utilities that have income taxes included in their revenue requirement, the 2018 annual reports are necessary to determine each utility's earned return and if a utility earned in excess of its allowed return. Gold Coast recently provided the Commission with its 2018 annual report.

The Commission has jurisdiction in this case pursuant to Sections 367.011, 367.081, and 367.121, Florida Statutes.

Discussion of Issues

Issue 1: What is the appropriate disposition of the tax impacts resulting from the passage of the TCJA for Gold Coast?

Recommendation: Gold Coast is not earning above its allowed rate of return range. No adjustment to base rates is necessary regarding the tax impacts resulting from the passage of the TCJA for Gold Coast. (Cicchetti)

Staff Analysis: Gold Coast is earning significantly below its authorized rate of return. Attachment A shows Gold Coast's Net Operating Income, Rate Base, Achieved Rate of Return, and Approved Rate of Return Cap.

It is staff's opinion that it is reasonable for the Commission to consider the earnings position of the utility when deciding if base rates should be reduced for changes in tax rates. Reducing base rates would result in cash flow reductions for the utilities, put downward pressure on earnings, and accelerate the need for a rate case sooner versus later. Consequently, staff recommends that no adjustment to base rates is necessary regarding the tax impacts resulting from the passage of the TCJA for Gold Coast. Such treatment is consistent with the Commission's decisions in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU, 20180054-GU, and 20180013-PU.[2]

[2]Order No. PSC-2019-0076-FOF-GU, issued February 25, 2019, in Docket No. 20180051-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Gas*; Order No. PSC-2019-0077-FOF-GU, issued February 25, 2019, in Docket No. 20180052-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Indiantown Division*; Order No. PSC-2019-0079-FOF-GU, issued February 25, 2019, in Docket No. 20180053-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Fort Meade Division*; Order No. PSC-2019-0078-FOF-GU, issued February 25, 2019, in Docket No. 20180054-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for the Florida Division of Chesapeake Utilities Corporation*. Order No. PSC-2019-0350-PAA-PU, issued August 22, 2019, in Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings by Office of Publc Counsel.*

Issue 2: Should this docket be closed?

Recommendation: Yes. Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, the decision should become final and effective upon issuance of the Consummating Order and this docket should be closed. (Brownless)

Staff Analysis: Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, the decision should become final and effective upon issuance of the Consummating Order and this docket should be closed.

Table 1-1
Tax Cuts and Jobs Act WAW Analysis

	Company	Net Operating Income	Rate Base	Achieved ROR	Approved ROR Cap
3	Gold Coast Utility Corporation	($144,575)	$387,557	-37.30%	7.53%

Source: 2018 Annual Report

Item 6

State of Florida

Public Service Commission

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

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

DATE: August 6, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Cicchetti, Buys, Hightower) ALM MC
Office of the General Counsel (Brownless) JC

RE: Docket No. 20200149-WS – Consideration of the tax impacts associated with Tax Cuts and Jobs Act of 2017 for St. James Utility Company.

AGENDA: 08/18/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

The Tax Cuts and Jobs Act of 2017 (TCJA) was signed into law on December 22, 2017, and became effective for the taxable year beginning January 1, 2018. On January 9, 2018, the Office of Public Counsel (OPC) filed a "Petition to Establish Generic Docket to Investigate and Adjust Rates for 2018 Tax Savings." On February 6, 2018, in Order No. PSC-2018-0104-PCO-PU,[1] the Florida Public Service Commission (Commission) established jurisdiction over utilities' tax savings if such a date was not contained in an applicable settlement agreement. Subsequently, the Commission opened separate dockets to address the tax savings for electric and natural gas utilities. At this time, all electric, natural gas, and water and wastewater utilities (WAW) tax savings dockets have been resolved except for two WAW utilities, Gold Coast Utility

[1]Order No. PSC-2018-0104-PCO-PU, issued February 6, 2018 in Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings, by Office of Public Counsel.*

Corporation and St. James Utility Company (St. James). The instant docket was opened to address tax savings associated with St. James.

For WAW utilities that have income taxes included in their revenue requirement, the 2018 annual reports are necessary to determine each utility's earned return and if a utility earned in excess of its allowed return. St. James recently provided the Commission with its 2018 annual report.

The Commission has jurisdiction in this case pursuant to Sections 367.011, 367.081, and 367.121, Florida Statutes.

Discussion of Issues

Issue 1: What is the appropriate disposition of the tax impacts resulting from the passage of the TCJA for St. James?

Recommendation: St. James is not earning above its allowed rate of return range. No adjustment to base rates is necessary regarding the tax impacts resulting from the passage of the TCJA for St. James. (Cicchetti)

Staff Analysis: St. James is earning significantly below its authorized rate of return. Attachment A shows St. James' Net Operating Income, Rate Base, Achieved Rate of Return, and Approved Rate of Return Cap.

It is staff's opinion that it is reasonable for the Commission to consider the earnings position of the utility when deciding if base rates should be reduced for changes in tax rates. Reducing base rates would result in cash flow reductions for the utilities, put downward pressure on earnings, and accelerate the need for a rate case sooner versus later. Consequently, staff recommends that no adjustment to base rates is necessary regarding the tax impacts resulting from the passage of the TCJA for St. James. Such treatment is consistent with the Commission's decisions in Docket Nos. 20180051-GU, 20180052-GU, 20180053-GU, 20180054-GU, and 20180013-PU.[2]

[2]Order No. PSC-2019-0076-FOF-GU, issued February 25, 2019, in Docket No. 20180051-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Gas*; Order No. PSC-2019-0077-FOF-GU, issued February 25, 2019, in Docket No. 20180052-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Indiantown Division*; Order No. PSC-2019-0079-FOF-GU, issued February 25, 2019, in Docket No. 20180053-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for Florida Public Utilities Company – Fort Meade Division*; Order No. PSC-2019-0078-FOF-GU, issued February 25, 2019, in Docket No. 20180054-GU, *In re: Consideration of the tax impacts associated with the Tax Cuts and Jobs Act of 2017 for the Florida Division of Chesapeake Utilities Corporation*. Order No. PSC-2019-0350-PAA-PU, issued August 22, 2019, in Docket No. 20180013-PU, *In re: Petition to establish a generic docket to investigate and adjust rates for 2018 tax savings by Office of Publc Counsel.*

Issue 2: Should this docket be closed?

Recommendation: Yes. Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, the decision should become final and effective upon issuance of the Consummating Order and this docket should be closed. (Brownless)

Staff Analysis: Upon expiration of the protest period, if a timely protest is not received from a substantially affected person, the decision should become final and effective upon issuance of the Consummating Order and this docket should be closed.

Table 1-1
Tax Cuts and Jobs Act WAW Analysis

	Company	Net Operating Income	Rate Base	Achieved ROR	Approved ROR Cap
3	St. James Utility Company	$ (196,755)	$ (1,638,999)	Loss	9.50%

Source: 2018 Annual Report

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 6, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Phillips) TB
Division of Accounting and Finance (Higgins, Mouring) MC ALM
Division of Economics (Forrest) CJD
Office of the General Counsel (Stiller, Trierweiler) JC

RE: Docket No. 20200144-EI – Petition for limited proceeding to true-up First and Second SoBRAs, by Tampa Electric Company.

AGENDA: 08/18/20 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

By Order No. PSC-2017-0456-S-EI, issued on November 27, 2017, the Florida Public Service Commission (Commission) approved Tampa Electric Company's (TECO or Company) Amended and Restated Stipulation and Settlement Agreement (2017 Settlement).[1] The 2017 Settlement allows for the inclusion of solar projects that meet certain criteria into base rates through a Solar Base Rate Adjustment (SoBRA) mechanism.

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

On June 5, 2018, the Commission approved TECO's First SoBRA in Order No. PSC-2018-0288-FOF-EI.[2] The First SoBRA consisted of two solar projects, Payne Creek and Balm, with a total installed capacity of 144.7 megawatts (MW). The base rate increase associated with the First SoBRA went into effect September 1, 2018. On December 7, 2018, the Commission approved TECO's Second SoBRA in Order No. PSC-2018-0571-FOF-EI.[3] The Second SoBRA consisted of five solar projects, Lithia, Grange Hall, Bonnie Mine, Peace Creek, and Lake Hancock, with a total installed capacity of 261.3 MW. The base rate increase associated with the Second SoBRA went into effect January 1, 2019.

On April 30, 2020, TECO filed a petition for a true-up of the First and Second SoBRAs. The Commission has jurisdiction pursuant to Sections 366.06 and 366.076, Florida Statutes (F.S.).

[2]Order No. PSC-2018-0288-FOF-EI, issued on June 5, 2018, in Docket No. 20170260-EI, *In re: Petition for limited proceeding to approve first solar base rate adjustment (SoBRA), effective September 1, 2018, by Tampa Electric Company.*

[3]Order No. PSC-2018-0571-FOF-EI, issued on December 7, 2018, in Docket No. 20180133-EI, *In re: Petition for limited proceeding to approve second solar base rate adjustment (SoBRA), effective January 1, 2019, by Tampa Electric Company.*

Discussion of Issues

Issue 1: What are the actual total costs for TECO's First and Second SoBRA projects?

Recommendation: Based on staff's review, the actual total costs for TECO's First and Second SoBRA projects are as listed in Table 1-3. None of the projects exceed the $1,500/kilowatt-alternative current (kW_{ac}) cost cap requirement of the 2017 Settlement. (Phillips)

Staff Analysis: The 2017 Settlement allows TECO to recover the cost of solar projects that meet certain criteria through a base rate adjustment, using estimated costs and in-service dates with a true-up mechanism. Paragraph 6(c) of the 2017 Settlement states that the SoBRA rate adjustment for each tranche will be implemented on the earliest in-service date specified in paragraph 6(b) and based on estimated installation cost. Each SoBRA rate adjustment will subsequently be trued-up based on actual in-service dates and installation costs. Paragraph 6(d) of the 2017 Settlement specifies a total installed capital cost cap for each project of $1,500/$kW_{ac}$.

Staff has reviewed the actual in-service dates and installed cost variances for TECO's First and Second SoBRA projects, which are discussed below. Based on staff's analysis, each project is below the cost cap.

In-Service Dates

Only two of the seven projects, Payne Creek and Lithia, entered commercial service on their estimated in-service dates. For the remaining five projects, TECO, under its engineering, procurement, and construction (EPC) contracts, sought and received liquidated damages from contractors for performance delays. TECO received a total of $9,170,565 in liquidated damages, which it used to offset lost revenue from delayed in-service dates and to reduce the actual installed costs for solar projects. The estimated and actual in-service dates for each solar project are listed in Table 1-1.

Table 1-1
In-Service Dates for First and Second SoBRAs

Project Name	Estimated In-Service Date	Actual In-Service Date
First SoBRA		
Payne Creek Solar	September 1, 2018	September 1, 2018
Balm Solar	September 1, 2018	September 27, 2018
Second SoBRA		
Lithia Solar	January 1, 2019	January 1, 2019
Grange Hall Solar	January 1, 2019	January 2, 2019
Peace Creek Solar	January 1, 2019	March 1, 2019
Bonnie Mine Solar	January 1, 2019	January 23, 2019
Lake Hancock Solar	January 1, 2019	April 25, 2019

Source: Exhibit JSC-1 from Document No. 02326-2020

Installed Costs

Pursuant to paragraph 6(d) of the 2017 Settlement, the allowable installed costs include all types of costs that have traditionally been allowed in rate base for solar projects, including EPC contracts. For TECO's First and Second SoBRAs, the EPC contracts include major equipment (i.e., solar modules, inverters), balance of system (i.e., racking, collection cables), and development. The EPC contract accounts for the majority of the project costs followed by land, transmission interconnection, and owner's costs. Each of the solar projects, excluding Payne Creek and Bonnie Mine, were below estimated installed costs. The cost variances for each category and the total cost variances are listed in Table 1-2.

Table 1-2
Total Installed Cost Variances by Project

Project Name	EPC Cost ($)	Land Cost ($)	Transmission Cost ($)	Owner's Cost ($)	Total ($)
First SoBRA					
Payne Creek Solar	938,410	(62,561)	(388,302)	1,142,852	1,630,400
Balm Solar	495,469	(1,697,613)	(837,914)	1,316,303	(723,755)
Second SoBRA					
Lithia Solar	(906,777)	(447,022)	(712,877)	650,184	(1,416,493)
Grange Hall Solar	(656,548)	(147,567)	(1,197,813)	478,840	(1,523,088)
Peace Creek Solar	40,841	(122,993)	(1,728,866)	559,812	(1,251,206
Bonnie Mine Solar	(190,578)	(142,724)	(361,837)	1,128,941	433,803
Lake Hancock Solar	(1,692,012)	(44,975)	(355,295)	1,020,143	(1,072,140)

Source: Exhibit MDW-1 from Document No. 02326-2020

EPC Costs

EPC costs represent approximately 83 percent of the total costs on average for the First and Second SoBRAs. Three of the seven solar projects' actual EPC costs were higher than estimated. Several factors contributed to the increased EPC costs, such as the requirement for the Balm and Peace Creek projects to install crushed concrete to improve road subgrade and design allowing for better access to solar substations, and for the Payne Creek project to purchase additional modules to account for those damaged during construction.

Land and Transmission Costs

The land and transmission costs represent approximately 11 and 3 percent of the total costs on average, respectively, and for each of the solar projects were below the original estimated costs. For example, the Balm and Lithia projects closing costs, legal fees, and broker fees were lower than expected causing the land cost to be lower than originally estimated. The largest variances for transmission costs were for the Grange Hall and Peace Creek projects. TECO's original transmission interconnection estimates were based on construction in or near wetlands, but the Company was able to avoid the wetlands, thereby lowering the transmission cost for each project.

Owner's Costs

The owner's costs represent approximately 2 percent of the total costs on average, and for all of the solar projects were higher than estimated. The projects required additional staff for safety

oversight to ensure safety protocols were followed due to a number of safety incidents that occurred during the construction of the first two SoBRA projects. Other owner's costs were associated with environmental or governmental requirements. For example, the Lithia project site was home to an atypical amount of gopher tortoises that required relocating, and the Lake Hancock project added a vegetation buffer to reduce visibility to nearby residential areas based on a requirement from the City of Bartow.

Total Costs

Pursuant to paragraph 6(d) of the 2017 Settlement, in addition to the installed costs discussed above, TECO is eligible to include allowance for funds used during construction (AFUDC) associated with SoBRA projects, which represent approximately 2 percent of the total costs on average. The actual cost for each project, inclusive of the variances above and AFUDC, are listed on a total cost and per kW_{ac} cost basis in Table 1-3. Based on staff's analysis, each project is below the cost cap specified in paragraph 6(d) of the 2017 Settlement of $1,500 per kW_{ac}. Staff has reviewed the total actual costs, and they appear reasonable and consistent with the 2017 Settlement.

Table 1-3
Total Costs for First and Second SoBRAs

Project Name	Total Cost ($)	Total Cost ($/$kW_{ac}$)
First SoBRA		
Payne Creek Solar	94,359,584	1,342
Balm Solar	109,963,383	1,478
Second SoBRA		
Lithia Solar	111,364,821	1,481
Grange Hall Solar	87,347,026	1,430
Peace Creek Solar	81,943,638	1,479
Bonnie Mine Solar	56,102,532	1,496
Lake Hancock Solar	46,403,012	1,459

Source: Exhibit MDW-1 from Document No. 02326-2020

Conclusion

Based on staff's review, the actual total costs for TECO's First and Second SoBRA projects are as listed in Table 1-3. None of the projects exceed the $1,500/$kW_{ac}$ cost cap requirement of the 2017 Settlement.

Issue 2: What is the adjusted annual revenue requirement for TECO's First and Second SoBRA projects?

Recommendation: The total adjusted cumulative annual revenue requirement associated with TECO's First and Second SoBRA projects is $70,213,000. (Higgins)

Staff Analysis: The 2017 Settlement established a framework for TECO to recover costs associated with the construction and operation of solar generating facilities meeting certain criteria. Under the framework, TECO can petition the Commission to implement project-specific estimated annual revenue requirements, beginning on specified dates, subject to certain agreed-upon conditions.[4] The revenue collected is subject to true-up. The actual annual revenue requirement and its difference from the currently-approved annual revenue requirement is the focus of staff's recommendation in this issue.[5]

The Company is requesting the Commission approve a revised cumulative annual revenue requirement based on the actual installed costs of the plants associated with its previously-approved First and Second SoBRA projects.[6] The revised cumulative annual revenue requirement for the First and Second SoBRA projects is specifically associated with the following generating plants: Balm, Payne Creek, Lithia, Grange Hall, Peace Creek, Bonnie Mine, and Lake Hancock.

The revised cumulative annual revenue requirement is formulated using the actual capital cost, shown in Table 1-3, in addition to incentives permitted under paragraph 6(m) of the 2017 Settlement, for each of the First and Second SoBRA projects in place of the originally-estimated capital cost. With regard to the incentive, according to subparagraph 6(m), if TECO's actual installed cost for a project is less than the cost cap of $1,500 per kWac, the Company and its customers share in the difference, 75 percent and 25 percent respectively.[7] TECO witness Jose A. Aponte describes the incentive's design and effect as serving to "encourage [TECO] to build solar projects for recovery under a SoBRA at the lowest possible cost." As necessitated by the updated base capital costs (Issue 1) of the individual First and Second SoBRA facilities, the relative incentives for all plants have been trued up from their estimated values as part of this issue. All other components of the estimated annual revenue requirement calculation remain the same, e.g., operation and maintenance expense, rate of depreciation, capital structure, and tax rates. The specific true-up produced by this change is the subject of Issue 3. The proposed revised cumulative annual revenue requirement of $70,213,000, as compared to the previously-estimated $70,290,000, represents a reduction of $77,000.

[4] 2017 Settlement, ¶6(b).
[5] Order Nos. PSC-2018-0288-FOF-EI and PSC-2018-0571-FOF-EI.
[6] *Id*.
[7] 2017 Settlement, ¶6(m).

Table 2-1 displays the estimated annual First and Second SoBRA revenue requirements by project and plant.

Table 2-1
First and Second SoBRA Estimated Annual Revenue Requirement[8]

Plant	Revenue Requirement ($000)
First SoBRA	
Balm Solar	$12,937
Payne Creek Solar	11,308
Subtotal	$24,245
Second SoBRA	
Lithia Solar	$13,291
Grange Hall Solar	10,611
Peace Creek Solar	9,868
Bonnie Mine Solar	6,601
Lake Hancock Solar	5,674
Subtotal	$46,045
Grand Total	$70,290

Source: Order No. PSC-2018-0288-FOF-EI, Order No. PSC-2018-0571-FOF-EI, and the Direct Testimony of TECO witness Jose A. Aponte, page 5.

Table 2-2 displays the proposed adjusted annual First and Second SoBRA revenue requirements associated with each project and plant.

Table 2-2
First and Second SoBRA Adjusted Annual Revenue Requirement

Plant	Revenue Requirement ($000)
First SoBRA	
Balm Solar	$12,934
Payne Creek Solar	11,408
Subtotal	$24,342
Second SoBRA	
Lithia Solar	$13,211
Grange Hall Solar	10,570
Peace Creek Solar	9,808
Bonnie Mine Solar	6,704
Lake Hancock Solar	5,578
Subtotal	$45,871
Grand Total	$70,213

Source: TECO's response to Staff's First Data Request, No. 1 (Document No. 02688-2020).

Conclusion

Staff recommends the total adjusted annual revenue requirement associated with the First and Second SoBRA projects is $70,213,000, or $77,000 less than originally estimated.

[8]Order Nos. PSC-2018-0288-FOF-EI and PSC-2018-0571-FOF-EI.

Issue 3: What is the appropriate true-up amount that should be reflected in the Capacity Cost Recovery Clause (CCRC), pursuant to paragraph 6(n) of the 2017 Settlement?

Recommendation: Staff recommends the appropriate true-up amount associated with the First and Second SoBRA projects that should be reflected in the CCRC, pursuant to paragraph 6(n) of the 2017 Settlement, is a credit of $5,096,041. Due to the inclusion of an estimated credit of $4,856,329 in TECO's mid-course correction filing, an outstanding credit balance of $239,712 remains and is to be incorporated in TECO's 2021 Capacity Cost Recovery factors. (Higgins)

Staff Analysis: The 2017 Settlement established a framework for TECO to recover costs associated with the construction and operation of solar generating facilities meeting certain criteria. Under the framework, the Company can petition the Commission to implement project-specific estimated annual revenue requirements beginning on specified dates subject to certain agreed-upon conditions.[9] The revenue collected is subject to true-up. The true-up amount (Total True-up) is the focus of staff's recommendation in this issue. The relevant time period used in formulating the Total True-up is September 1, 2018, through December 31, 2020.

As discussed in Issue 1, all actual capital costs and some in-service dates of the plants comprising the First and Second SoBRA projects differ from the values originally assumed. Relative to the revenue collected, these two differences inherently produce two distinct true-ups; a cost true-up, and an in-service date or "timing" true-up. The cost true-up is the difference between the revised annual revenue requirement that incorporates actual capital costs and the current annual revenue requirement based on estimated capital costs from the point of (actual) plant in-service through December 31, 2020. The timing true-up simply captures the effect of matching a specific plant's assumed in-service date to its actual in-service date. Staff notes that not all individual plants require a timing true-up. The net dollar impact/Total True-up, as required by paragraph 6(n) of TECO's 2017 Settlement is then flowed through the CCRC.[10]

Table 3-1 displays the components and associated amounts of the proposed First and Second SoBRA Projects Total True-up.

Table 3-1
First and Second SoBRA Projects Total True-up

Component	Amount (09/01/2018 through 12/31/2020)
Total Cost True-up	$93,176
Total Timing True-up	4,490,688
Total Interest[11]	512,177
Total	$5,096,041

Source: Direct Testimony of TECO witness Jeffery S. Chronister, page 19.

[9] 2017 Settlement, ¶6(b).
[10] *Id.*
[11] "Total Interest" is calculated at an annual AFUDC rate of 6.46 percent.

On March 25, 2020, the Company petitioned the Commission to reduce its then-approved CCRC rates.[12,13] Incorporated in its request was a First and Second SoBRA-related preliminary credit/refund of $4,856,329. The Commission approved TECO's request on May 14, 2020, thereby reducing the outstanding balance of the proposed Total True Up to $239,712 at year-end 2020.[14] According to TECO witness Chronister, the Company will include the remaining Total True-Up balance as part of its requested 2021 CCRC factors. TECO's CCRC petition for factors effective in 2021 is due to be filed by September 3, 2020.

Conclusion

Staff recommends the appropriate true-up amount associated with the First and Second SoBRA projects that should be reflected in the CCRC, pursuant to paragraph 6(n) of the 2017 Settlement, is a credit of $5,096,041. Due to the inclusion of an estimated credit of $4,856,329 in TECO's mid-course correction filing, an outstanding credit balance of $239,712 remains and is to be incorporated in TECO's 2021 Capacity Cost Recovery factors.

[12]Order No. PSC-2019-0484-FOF-EI, issued November 18, 2019, in Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.
[13]Commission Document No. 01597-2020.
[14]Order No. PSC-2020-0154-PCO-EI, issued May 14, 2020, in Docket No. 20200001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

Issue 4: What is the appropriate base rate adjustment for TECO's First and Second SoBRA projects and how should the Company implement this adjustment?

Recommendation: The appropriate base rate adjustment for TECO's First and Second SoBRA projects is an annual revenue requirement reduction of $77,000, which should be reflected in the Company's Fourth SoBRA revenue requirement calculation. (Forrest)

Staff Analysis: Issue 3 addresses the true-up for the period September 1, 2018 through December 31, 2020. This issue addresses the adjustment of base rates effective January 1, 2021. As discussed in Issue 2, staff recommends that the revised annual revenue requirement is $77,000 less than originally estimated.

TECO witness Ashburn stated in his testimony that, per the 2017 Settlement, the base rate adjustments are to be spread over all the rate classes. Witness Ashburn stated that TECO applied the $77,000 reduction to its calculation of base rates for all customer classes and found that the true-up adjustment was *de minimis* and did not shift any of the last digits in current rates. As a result, TECO proposed to incorporate the $77,000 revenue requirement reduction in the revenue requirement calculation of the Fourth SoBRA filing.

TECO filed its Fourth SoBRA petition on July 31, 2020, to be effective with the first billing cycle in January 2021.[15] Additionally, the Company states that the First and Second SoBRA true-up amount is scheduled to take effect in January 2021. As such, TECO proposed in the Fourth SoBRA petition to deduct $77,000 from its Fourth SoBRA revenue requirement calculation to adjust for the First and Second SOBRA revenue requirement true-up amount. Staff believes this is an appropriate approach given that the true-up amount would not impact current rates.

Conclusion

The appropriate base rate adjustment for TECO's First and Second SoBRA projects is a reduction of $77,000, which should be reflected in the Company's Fourth SoBRA revenue requirement calculation. This proposal ensures that the general body of ratepayers benefits from the revised revenue requirement.

[15]Document No. 04171-2020, in Docket No. 202000064-EI, Petition by Tampa Electric Company for a limited proceeding to approve Fourth SoBRA effective January 1, 2021.

Issue 5: Should this docket be closed?

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

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