Table of Contents
Commission Conference Agenda
October 6, 2020

Table of Contents
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Item 1

State of Florida

Public Service Commission

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

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

DATE: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper) SMC
Division of Economics (Coston, Guffey) JGH
Division of Engineering (Buys) TB

RE: Docket No. 20200091-EU – Proposed amendment of Rule 25-6.064, F.A.C., Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities; Rule 25-6.078, F.A.C., Schedule of Charges; Rule 25-6.115, F.A.C., Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities; and Rule 25-6.0343, F.A.C., Municipal Electric Utility and Rural Electric Cooperative Reporting Requirements.

AGENDA: 10/06/20 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

In 2019, the Florida Legislature passed SB 796 to enact Section 366.96, Florida Statutes (F.S.), which required the Commission to adopt new rules related to storm protection plans and cost recovery. The Commission adopted Rules 25-6.030, Storm Protection Plan, and 25-6.031, Storm Protection Plan Cost Recovery, Florida Administrative Code (F.A.C.), which became effective on February 18, 2020.

During the rulemaking process for the new storm protection plan rules, Commission staff also initiated rulemaking on Rules 25-6.064, 25-6.078, 25-6.115, and 25-6.0343, F.A.C., in the June

7, 2019 edition of the Florida Administrative Register, Volume 45, No. 111. These rules are as follows:

- Rule 25-6.064, Contribution-in-Aid-of-Construction, establishes a uniform procedure by which investor-owned electric utilities (IOUs) calculate amounts due as contributions-in-aid-of-construction (CIAC) from customers who request new facilities or upgraded facilities in order to receive electric service.

- Rule 25-6.078, Schedule of Charges, requires each utility to file with the Commission a written policy regarding the utility's tariff rules and regulations on the installation of underground facilities in new subdivisions. The rule provides requirements as to an Estimated Average Cost Differential and basis upon which each utility will provide underground service and prohibits charges that are more than the estimated difference in cost of an underground system and an equivalent overhead system.

- Rule 25-6.115, Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities, requires that each investor-owned utility to file a tariff showing certain information and amounts for applications for conversion of existing overhead electric distribution facilities to underground facilities.

- Rule 25-6.0343, Municipal Electric Utility and Rural Electric Cooperative Reporting Requirements, defines certain reporting requirements by municipal electric utilities and rural electric cooperatives providing distribution service to end-use customers in Florida.

For both the storm protection plan rules and these existing storm hardening related rules, the Commission held two noticed staff rule development workshops. The workshops were held on June 25, 2019 and August 20, 2019. Representatives from Florida Power & Light Company (FPL), Tampa Electric Company (TECO), Duke Energy Florida, LLC (DEF), Gulf Power Company (Gulf), Florida Public Utilities Company (FPUC), Florida Retail Federation (FRF), Florida Industrial Power Users Group (FIPUG), and the Office of Public Counsel (OPC) participated at the workshops and submitted post-workshop comments.

During the storm protection plan rule workshops, there was minimal discussion about Rules 25-6.064, 25-6.078, 25-6.115, and 25-6.0343, F.A.C. Several stakeholders opined that it would be difficult to determine any effects on existing rules until Rule 25-6.030, F.A.C., Storm Protection Plan, and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery, were adopted and became effective. The Florida Electric Cooperatives Association, Inc., (FECA) and Florida Municipal Electric Association (FMEA) were the only stakeholders that submitted post-workshop comments on an existing rule, Rule 25-6.0343, F.A.C. Those comments are further discussed in staff's analysis.

After reviewing the rules and workshop comments, it was determined that the storm protection plan rules would move forward separately in a single rulemaking docket and that any other previously noticed and existing storm hardening related rules would move forward in a separate

docket once the new storm rules were adopted and became effective. After the adoption of the storm protection plan rules, the Commission proceeded to repeal Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening, because it was no longer necessary and had been replaced by the new storm protection plan rules.

This recommendation relates to the above-mentioned existing and previously noticed rules. Staff believes it is necessary for the Commission to amend other existing rules to recognize the Commission's adoption of the new storm protection plan rule, Rule 25-6.030, F.A.C., and the repeal of Rule 25-6.0342. F.A.C. This recommendation addresses whether the Commission should amend Rules 25-6.064, 25-6.078, 25-6.115, and 25-6.0343, F.A.C.

Discussion of Issues

Issue 1: Should the Commission amend Rules 25-6.064, Contribution-in-Aid-of- Construction; 25-6.078, Schedule of Charges; 25-6.115, Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities; and 25-6.0343, F.A.C., Municipal Electric Utility and Rule Electric Cooperative Reporting Requirements?

Recommendation: Yes. The Commission should propose the amendment of Rules 25-6.064, 25-6.078, 25-6.115, and 25-6.0343, F.A.C., as set forth in Attachment A. The Commission should also certify Rules 25-6.064, 25-6.078, 25-6.115, and 25-6.0343, F.A.C., as minor violation rules. (Buys, Harper, Guffey)

Staff Analysis: Staff recommends that the Commission amend the rules as set forth in Attachment A. Overall, staff is recommending updates and clarifications to the rules. Staff's more substantive recommended amendments to the rules are discussed in more detail below.

Rules 25-6.064, 25-6.078, and 25-6.115, F.A.C., reference the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening, which has been repealed and replaced by new a rule, Rule 25-6.030, F.A.C, Storm Protection Plan. Thus, staff recommends Rules 25-6.064, 25-6.078, and 25-6.115, F.A.C., be amended to delete the reference to the repealed rule and instead reference new Rule 25-6.030, F.A.C. Also, staff recommends adding a reference in the rules to Rules 25-6.034, Standard of Construction, 25-6.0341, Location of the Utility's Electric Distribution Facilities, and 25-6.0345, F.A.C., Safety Standards for Construction of New Transmission and Distribution Facilities, in order for the rules to more specifically and accurately reflect all of the applicable requirements.

Rule 25-6.0343, F.A.C., provides certain reporting requirements for storm hardening plans submitted to the Commisison by municipal electric utilities and rural electric cooperatives. On July 15, 2019, FECA filed comments in the storm protection plan docket, suggesting Rule 25-6.0343, F.A.C., be amended to "allow co-ops and munis to file responses with the Commission Clerk every three years." Staff agrees and recommends that the rule be amended to include the 3 year time line for filing storm protection plans to be consistent with the IOUs' time line for storm protection plan filings made pursuant to Rule 25-6.030, F.A.C.

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. Rules 25-6.064, 25-6.078, 25-6.115, and 25-6.0343, F.A.C., will be minor violation rules, as a violation of these rules will not result in economic or physical harm to a person or have 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 rules for adoption with the Department of State, staff recommends that the Commission certify amended Rules 25-6.064, 25-6.078, 25-6.115, and 25-6.0343, F.A.C., as minor violation rules.

Statement of Estimated Regulatory Costs

Pursuant to Section 120.54(3)(b), F.S., agencies are encouraged to prepare a statement of estimated regulatory costs (SERC) before the adoption, amendment, or repeal of any rule. The SERC is appended as Attachment C to this recommendation. The SERC analysis also includes whether the rules are likely to have an adverse impact on growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within five years after implementation.

The attached SERC addresses the economic impacts and considerations required pursuant to Section 120.541, F.S. The SERC analysis indicates that the recommended amendments to Rules 25-6.064, 25-6.078, 25-6.115, and 25-6.0343, F.A.C., 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 recommended revisions would not potentially have adverse impacts on small businesses, 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.

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.

Conclusion

Based on the foregoing, staff recommends the Commission propose to amend Rules 25-6.064, 25-6.078, 25-6.115, and 25-6.0343, F.A.C., as set forth in Attachment A. Staff also recommends that the Commission certify Rules 25-6.064, 25-6.078, 25-6.115, and 25-6.0343, F.A.C., as a minor violation rules.

Issue 2: Should this docket be closed?

Recommendation: Yes. If no requests for hearing, information regarding the SERC, proposals for a lower cost regulatory alternative, or JAPC comments are filed, the rules should be filed with the Department of State, and the docket should be closed. (Harper)

Staff Analysis: If no requests for hearing, information regarding the SERC, proposals for a lower cost regulatory alternative, or JAPC comments are filed, the rules should be filed with the Department of State, and the docket should be closed.

25-6.064 Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities.

(1) Application and scope. The purpose of this rule is to establish a uniform procedure by which investor-owned electric utilities calculate amounts due as contributions-in-aid-of-construction (CIAC) from customers who request new facilities or upgraded facilities in order to receive electric service, except as provided in Rule 25-6.078, F.A.C.

(2) Contributions-in-aid-of-construction for new or upgraded overhead facilities ($CIAC_{OH}$) shall be calculated as follows:

$CIAC_{OH}$	=	Total estimated work order job cost of installing the facilities	-	Four years expected incremental base energy revenue	-	Four years expected incremental base demand revenue, if applicable

(a) The cost of the service drop and meter shall be excluded from the total estimated work order job cost for new overhead facilities.

(b) The net book value and cost of removal, net of the salvage value, for existing facilities shall be included in the total estimated work order job cost for upgrades to those existing facilities.

(c) The expected annual base energy and demand charge revenues shall be estimated for a period ending not more than 5 years after the new or upgraded facilities are placed in service.

(d) In no instance shall the $CIAC_{OH}$ be less than zero.

(3) Contributions-in-aid-of-construction for new or upgraded underground facilities ($CIAC_{UG}$) shall be calculated as follows:

CIACUG	=	$CIAC_{OH}$	+	Estimated difference between cost of providing the service underground and overhead

(4) Each utility shall apply the formula in subsections (2) and (3) of this rule uniformly to residential, commercial and industrial customers requesting new or upgraded facilities at any voltage level.

(5) The costs applied to the formula in subsections (2) and (3) shall be based on the

CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

requirements of Rule 25-6.030, F.A.C., Storm Protection Plan, Rule 25-6.034, F.A.C., Standard of Construction, Rule 25-6.0341, F.A.C., Location of the Utility's Electric Distribution Facilities, and Rule 25-6.0345, F.A.C., Safety Standards for Construction of New Transmission and Distribution Facilities ~~25-6.0342, F.A.C., Electric Infrastructure Storm~~.

(6) All CIAC calculations under this rule shall be based on estimated work order job costs. In addition, each utility shall use its best judgment in estimating the total amount of annual revenues which the new or upgraded facilities are expected to produce.

(a) A customer may request a review of any CIAC charge within 12 months following the in-service date of the new or upgraded facilities. Upon request, the utility shall true-up the CIAC to reflect the actual costs of construction and actual base revenues received at the time the request is made.

(b) In cases where more customers than the initial applicant are expected to be served by the new or upgraded facilities, the utility shall prorate the total CIAC over the number of end-use customers expected to be served by the new or upgraded facilities within a period not to exceed 3 years, commencing with the in-service date of the new or upgraded facilities. The utility may require a payment equal to the full amount of the CIAC from the initial customer. For the 3-year period following the in-service date, the utility shall collect from those customers a prorated share of the original CIAC amount, and credit that to the initial customer who paid the CIAC. The utility shall file a tariff outlining its policy for the proration of CIAC.

(7) The utility may elect to waive all or any portion of the CIAC for customers, even when a CIAC is found to be applicable. If however, the utility waives a CIAC, the utility shall reduce net plant in service as though the CIAC had been collected, unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived CIAC. Each utility shall maintain records of amounts waived and any subsequent changes that served to offset the CIAC.

(8) A detailed statement of its standard facilities extension and upgrade policies shall be filed by each utility as part of its tariffs. The tariffs shall have uniform application and shall be nondiscriminatory.

(9) If a utility and applicant are unable to agree on the CIAC amount, either party may appeal to the Commission for a review.

Rulemaking Authority 366.05(1), 350.127(2) FS. Law Implemented 366.03, 366.05(1), 366.06(1) FS. History–New 7-29-69, Amended 7-2-85, Formerly 25-6.64, Amended 2-1-07, _____.

25-6.078 Schedule of Charges.

(1) Each utility shall file with the Commission a written policy that shall become a part of the utility's tariff rules and regulations on the installation of underground facilities in new subdivisions. Such policy shall be subject to review and approval of the Commission and shall include an Estimated Average Cost Differential, if any, and shall state the basis upon which the utility will provide underground service and its method for recovering the difference in cost of an underground system and an equivalent overhead system from the applicant at the time service is extended. The charges to the applicant shall not be more than the estimated difference in cost of an underground system and an equivalent overhead system.

(2) For the purpose of calculating the Estimated Average Cost Differential, cost estimates shall reflect the requirements of Rule 25-6.030, F.A.C., Storm Protection Plan, Rule 25-6.034, F.A.C., Standard of Construction, Rule 25-6.0341, F.A.C., Location of the Utility's Electric Distribution Facilities, and Rule 25-6.0345, F.A.C., Safety Standards for Construction of New Transmission and Distribution Facilities ~~25-6.0342, F.A.C., Electric Infrastructure Storm Hardening~~.

(3) On or before October 15 of each year, each utility shall file with the Commission Clerk ~~Form PSC/ECO 13-E (10/97). Schedule 1~~, using current material and labor costs, Form PSC 1031 (08/20), entitled "Overhead/Underground Residential Differential Cost Data," which is incorporated by reference into this rule and is available at [insert hyperlink]. If the cost differential as calculated in Form PSC 1031 (08/20) ~~Schedule 1~~ varies from the Commission-approved differential by plus or minus 10 percent or more, the utility shall file a written policy and supporting data and analyses as prescribed in subsections (1), (4) and (5) of this rule on or before April 1 of the following year; however, each utility shall file a written policy and supporting data and analyses at least once every 3 years.

(4) Differences in Net Present Value of operational costs, including average historical

storm restoration costs over the life of the facilities, between underground and overhead systems, if any, shall be taken into consideration in determining the overall Estimated Average Cost Differential. Each utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

(5) Detailed supporting data and analyses used to determine the Estimated Average Cost Differential for underground and overhead distribution systems shall be concurrently filed by the utility with the Commission and shall be updated using cost data developed from the most recent 12-month period. The utility shall record these data and analyses on ~~Form PSC/ECO 13-E (10/97). Form PSC/ECO 13-E~~ Form PSC 1031 (08/20), ~~entitled "Overhead/Underground Residential Differential Cost Data"~~ which is incorporated by reference into subsection 3 of this rule ~~and may be obtained from the Division of Economics, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, (850) 413-6410~~.

(6) Service for a new multiple-occupancy building shall be constructed underground within the property to be served to the point of delivery at or near the building by the utility at no charge to the applicant, provided the utility is free to construct its service extension or extensions in the most economical manner.

(7) The recovery of the cost differential as filed by the utility and approved by the Commission may not be waived or refunded unless it is mutually agreed by the applicant and the utility that the applicant will perform certain work as defined in the utility's tariff, in which case the applicant shall receive a credit. Provision for the credit shall be set forth in the utility's tariff rules and regulations, and shall be no more in amount than the total charges applicable.

(8) The difference in cost as determined by the utility in accordance with its tariff shall be based on full use of the subdivision for building lots or multiple-occupancy buildings. If any

given subdivision is designed to include large open areas, the utility or the applicant may refer the matter to the Commission for a special ruling as provided under Rule 25-6.083, F.A.C.

(9) The utility shall not be obligated to install any facilities within a subdivision until satisfactory arrangements for the construction of facilities and payment of applicable charges, if any, have been completed between the applicant and the utility by written agreement. A standard agreement form shall be filed with the company's tariff.

(10) Nothing in this rule shall be construed to prevent any utility from waiving all or any portion of a cost differential for providing underground facilities. If, however, the utility waives the differential, the utility shall reduce net plant in service as though the differential had been collected unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived differential.

Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.03, 366.04(1), (4), 366.04(2)(f), 366.06(1) FS. History–New 4-10-71, Amended 4-13-80, 2-12-84, Formerly 25-6.78, Amended 10-29-97, 2-1-07, _____.

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25-6.115 Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities.

(1) Each investor-owned utility shall file a tariff showing the non-refundable deposit amounts for standard applications addressing the conversion of existing overhead electric distribution facilities to underground facilities. The tariff shall include the general provisions and terms under which the public utility and applicant may enter into a contract for the purpose of converting existing overhead facilities to underground facilities. The non-refundable deposit amounts shall be calculated in the same manner as the engineering costs for underground facilities serving each of the following scenarios: urban commercial, urban residential, rural residential, existing low-density single family home subdivision and existing high-density single family home subdivision service areas.

(2) For purposes of this rule, the applicant is the person or entity requesting the conversion of existing overhead electric distribution facilities to underground facilities. In the instance where a local ordinance requires developers to install underground facilities, the developer who actually requests the construction for a specific location is deemed the applicant for purposes of this rule.

(3) Nothing in the tariff shall prevent the applicant from constructing and installing all or a portion of the underground distribution facilities provided:

(a) Such work meets the investor-owned utility's construction standards;

(b) The investor-owned utility will own and maintain the completed distribution facilities; and

(c) Such agreement is not expected to cause the general body of ratepayers to incur additional costs.

(4) Nothing in the tariff shall prevent the applicant from requesting a non-binding cost estimate which shall be provided to the applicant free of any charge or fee.

(5) Upon an applicant's request and payment of the deposit amount, an investor-owned utility shall provide a binding cost estimate for providing underground electric service.

(6) An applicant shall have at least 180 days from the date the estimate is received to enter into a contract with the public utility based on the binding cost estimate. The deposit amount shall be used to reduce the charge as indicated in subsection (7) only when the applicant enters into a contract with the public utility within 180 days from the date the estimate is received by the applicant, unless this period is extended by mutual agreement of the applicant and the utility.

(7) The charge paid by the applicant shall be the charge for the proposed underground facilities as indicated in subsection (8) minus the charge for overhead facilities as indicated in subsection (9) minus the non-refundable deposit amount. The applicant shall not be required to pay an additional amount which exceeds 10 percent of the binding cost estimate.

(8) For the purpose of this rule, the charge for the proposed underground facilities shall include:

(a) The estimated cost of construction of the underground distribution facilities based on the requirements of Rule 25-6.030, F.A.C., Storm Protection Plan, Rule 25-6.034, F.A.C., Standard of Construction, Rule 25-6.0341, F.A.C., Location of the Utility's Electric Distribution Facilities, and Rule 25-6.0345, F.A.C., Safety Standards for Construction of New Transmission and Distribution Facilities ~~25-6.0342, F.A.C., Electric Infrastructure Storm Hardening Standards of Construction~~, including the construction cost of the underground service lateral(s) to the meter(s) of the customer(s); and

(b) The estimated remaining net book value of the existing facilities to be removed less the estimated net salvage value of the facilities to be removed.

(9) For the purpose of this rule, the charge for overhead facilities shall be the estimated construction cost to build new overhead facilities, including the service drop(s) to the meter(s)

of the customer(s). Estimated construction costs shall be based on the requirements of Rule 25-6.030, F.A.C., Storm Protection Plan, Rule 25-6.034, F.A.C., Standard of Construction, Rule 25-6.0341, F.A.C., Location of the Utility's Electric Distribution Facilities, and Rule 25-6.0345, F.A.C., Safety Standards for Construction of New Transmission and Distribution Facilities ~~25-6.0342, F.A.C., Electric Infrastructure Storm Hardening~~.

(10) An applicant requesting construction of underground distribution facilities under this rule may challenge the utility's cost estimates pursuant to Rule 25-22.032, F.A.C.

(11) For purposes of computing the charges required in subsections (8) and (9):

(a) The utility shall include the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the facilities.

(b) If the applicant chooses to construct or install all or a part of the requested facilities, all utility costs, including overhead assignments, avoided by the utility due to the applicant assuming responsibility for construction shall be excluded from the costs charged to the customer, or if the full cost has already been paid, credited to the customer. At no time will the costs to the customer be less than zero.

(12) Nothing in this rule shall be construed to prevent any utility from waiving all or any portion of the cost for providing underground facilities. If, however, the utility waives any charge, the utility shall reduce net plant in service as though those charges had been collected unless the Commission determines that there is quantifiable benefits to the general body of ratepayers commensurate with the waived charge.

(13) Nothing in this rule shall be construed to grant any investor-owned electric utility any right, title or interest in real property owned by a local government.

Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.03, 366.04, 366.05 FS. History–New 9-21-92, Amended 2-1-07, _____.

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25-6.0343 Municipal Electric Utility and Rural Electric Cooperative Reporting Requirements.

(1) Application and Scope. The purpose of this rule is to define certain reporting requirements by municipal electric utilities and rural electric cooperatives providing distribution service to end-use customers in Florida.

(2) The reports required by subsections (3)~~,~~ of this rule shall be filed with the Commission Clerk by March 1, 2020, and every three years thereafter for the three preceding calendar years. The reports required by subsections (4)~~,~~ and (5) of this rule shall be filed with the Commission Clerk by March 1 of each year for the preceding calendar year.

(3) Standards of Construction. Each municipal electric utility and rural electric cooperative shall report the extent to which its construction standards, policies, practices, and procedures are designed to address the ability of transmission and distribution facilities to mitigate damage caused by extreme weather. Each utility report shall, at a minimum, address the extent to which its construction standards, policies, guidelines, practices, and procedures:

(a) Comply, at a minimum, with the procedures set forth in Rule 25-6.0345, Florida Adminstrative Code, ~~the National Electrical Safety Code (ANSI C-2) [NESC]. For electrical facilities constructed on or after February 1, 2007, the shall apply. Electrical facilities constructed prior to February 1, 2007, shall be governed by the edition of the NESC in effect at the time of the facility's initial construction. A copy of the 2007 NESC, ISBN number 0-7381-4893-8, may be obtained from the Institute of Electric and Electronic Engineers, Inc. (IEEE)~~.

(b) Are guided by the extreme wind loading standards specified by the procedures set forth in Rule 25-6.0345, Florida Adminstrative Code, ~~Figure 250-2(d) of the 2002 edition of the NESC~~ for:

1. New construction;

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2. Major planned work, including expansion, rebuild, or relocation of existing facilities, assigned on or after the effective date of this rule; and

3. Targeted critical infrastructure facilities and major thoroughfares taking into account political and geographical boundaries and other applicable operational considerations.

(c) Address the effects of flooding and storm surges on underground distribution facilities and supporting overhead facilities.

(d) Provide for placement of new and replacement distribution facilities so as to facilitate safe and efficient access for installation and maintenance.

(e) Include written safety, pole reliability, pole loading capacity, and engineering standards and procedures for attachments by others to the utility's electric transmission and distribution poles.

(4) Facility Inspections. Each municipal electric utility and rural electric cooperative shall report, at a minimum, the following information pertaining to its transmission and distribution facilities:

(a) A description of the utility's policies, guidelines, practices, and procedures for inspecting transmission and distribution lines, poles, and structures including, but not limited to, pole inspection cycles and pole selection process.

(b) The number and percentage of transmission and distribution inspections planned and completed.

(c) The number and percentage of transmission poles and structures and distribution poles failing inspection and the reason for the failure.

(d) The number and percentage of transmission poles and structures and distribution poles, by pole type and class of structure, replaced or for which remediation was taken after inspection, including a description of the remediation taken.

(5) Vegetation Management. Each municipal electric utility and rural electric cooperative

shall report, at a minimum, the following information pertaining to the utility's vegetation management efforts:

(a) A description of the utility's policies, guidelines, practices, and procedures for vegetation management, including programs addressing appropriate planting, landscaping, and problem tree removal practices for vegetation management outside of road right-of-ways or easements, and an explanation as to why the utility believes its vegetation management practices are sufficient.

(b) The quantity, level, and scope of vegetation management planned and completed for transmission and distribution facilities.

Rulemaking Authority 350.127(2), 366.05(1) FS. Law Implemented 366.04(2)(f), (6) FS. History–New 12-10-06, _____.

Utility Name: _____ **Date:** _____

OVERHEAD/UNDERGROUND RESIDENTIAL DIFFERENTIAL COST DATA

Low Density 210 Lot Subdivision
Cost per Service Lateral

ITEM	OVERHEAD COST	UNDERGROUND COST	DIFFERENTIAL COST
Labor			
Material			
TOTAL			
NPV Operational Cost			
TOTAL Including NPV Operational Cost			

The differential cost has changed by ____%

PSC 1031 (XX/XX)
25-6.078, F.A.C.

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: May 14, 2020

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: Docket No. 20200091-EU: Proposed amendment of Rule 25-6.064, F.A.C., Contribution-in-Aid-of-Construction for Installation of New or Upgraded Facilities; Rule 25-6.078, F.A.C., Schedule of Charges; Rule 25-6.115, F.A.C., Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities; and Rule 25-6.0343, F.A.C., Municipal Electric Utility and Rural Electric Cooperative Reporting Requirements.
Statement of Estimated Regulatory Costs

Commission staff is recommending amendments to Rules 25-6.064, F.A.C., Contribution-in-Aid-of- Construction; 25-6.078, F.A.C., Schedule of Charges; and 25-6.115, F.A.C., Facility Charges for Conversion of Existing Overhead Investor-owned Distribution Facilities, which apply to all investor-owned electric utilities (IOUs). Staff is also recommending amendments to Rule 25-6.0343, F.A.C., Municipal Electric Utility and Rural Electric Cooperative Reporting Requirements, which apply to all municipal electric utilities and electric cooperatives.

In 2019, the Florida Legislature passed SB 796 to enact Section 366.96, Florida Statutes (F.S.), which requires each IOU to file a transmission and distribution storm protection plan for the Commission's review and hold annual proceedings to determine each IOU's prudently incurred costs to implement the storm protection plan. In furtherance of the Legislature's directive, the Commission adopted Rule 25-6.030, F.A.C., Storm Protection Plan, and Rule 25-6.031, F.A.C., Storm Protection Plan Cost Recovery, which became effective on February 18, 2020. As a result of the adoption of these new rules, the Commission is recommending amendments to Rules 25-6.064, F.A.C., 25-6.078, F.A.C., 25-6.115, F.A.C., and 25-6.0343, F.A.C. The recommended revisions are discussed in detail in the staff recommendation.

Two noticed staff rule development workshops were held on June 25, 2019 and on August 20, 2019. On April 7, 2020, staff issued a Statement of Estimated Regulatory Costs (SERC) data request to the Florida Municipal Electric Association, the Florida Electric Cooperatives Association, Inc. and electric IOUs for which all responded by April 21, 2020.

The attached SERC addresses the economic impacts and considerations required pursuant to Section 120.541, F.S. The SERC analysis indicates that the recommended amendments to Rules 25-6.064, F.A.C., 25-6.078, F.A.C., 25-6.115, F.A.C., and 25-6.0343, F.A.C., 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 recommended revisions would not potentially have adverse impacts on small businesses, 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.

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 25-6.064, F.A.C., 25-6.078, F.A.C., 25-6.115, .A.C., 25-6.0343, F.A.C.

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

   Yes ☐ No ☒

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

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

   Yes ☐ No ☒

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

A. Whether the rule directly or indirectly:

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

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

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

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

1

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

Yes ☐ No ☒

Economic Analysis: In response to staff's data requests, the Florida Municipal Electric Association, Inc. (FMEA), and the Florida Electric Cooperatives Association, Inc. (FECA), stated that regulatory costs would not increase in excess of $200,000 annually or in excess of $1 million in the aggregate within 5 years after the implementation of the rules. FMEA and FECA stated that the proposed rule revisions are expected reduce regulatory costs due to the reduced number of reports to be filed with the Commission. The lowered costs would slightly reduce the cost burden for FMEA and FECA which would have a positive impact on their customers.

In response to staff's data requests, the five investor-owned electric utilities (IOUs) also stated that regulatory costs would not increase in excess of $200,000 annually or in excess of $1 million in the aggregate within 5 years after the implementation of the rules. Of the five IOUs, Florida Public Utilities Company stated that the Company does not anticipate any increases in regulatory costs associated with the specific rule changes identified. Duke Energy Florida, Inc. stated that it is already complying with the rule requirements and therefore, would not incur any incremental transactional costs.

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 33 municipal utilities that are members of the FMEA, 17 electric cooperatives that are members of the FECA, and five (5) IOUs will be required to comply with the rules.

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

Types of individuals likely to be affected by the rules will be the electric customers of FMEA, FECA, and IOUs.

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

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

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

☐ Minimal. Provide a brief explanation.

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

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

☒ None. The rule will only affect the Commission.

☐ Minimal. Provide a brief explanation.

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

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

☒ None.

☐ Minimal. Provide a brief explanation.

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

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

☐ None. The rule will only affect the Commission.

☒ Minimal. All responders stated that transactional costs will not increase as a result of the proposed rule revisions. DEF stated that since the utility is already complying with the requirements of these rules, there would be no incremental transactional costs incurred.

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

3

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:

4

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.

5

Item 2

State of Florida

Public Service Commission

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

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

DATE: September 28, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper, Kahn) SMC
Division of Accounting and Finance (Fletcher) ALM
Division of Economics (Coston, Guffey) JGH

RE: Docket No. 20200211-EI – Petition for temporary variance from or waiver of Rule 25-6.097(3), F.A.C., temporary waiver of Section 6.3 of tariff, and request for expedited ruling, by Florida Power & Light Company.

AGENDA: 10/06/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: 12/10/20 (Pursuant to Section 120.542(8), Florida Statutes, the Commission must grant or deny the petition by this date)

SPECIAL INSTRUCTIONS: None

Case Background

On September 11, 2020, Florida Power & Light Company (FPL) filed a petition for a temporary variance from or waiver of the requirements of Rule 25-6.097(3), Florida Administrative Code (F.A.C.), and from Section 6.3 of FPL's Tariff. Both Rule 25-6.097, F.A.C., and Section 6.3 of FPL's Tariff address the refund of customer deposits. By its petition, FPL requests that the temporary rule and tariff variance or waiver (variance)[1] be granted to allow FPL to provide a

[1] Section 120.542, F.S., and FPL's petition refer to variances and waivers in the alternative. 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

one-time accelerated residential customer deposit refund for qualifying customers to mitigate financial impacts caused by the COVID-19 pandemic. In addition, FPL requests that the petition be considered on an expedited basis so that qualifying residential customers may benefit as soon as possible.

Legal Standard for Rule Variances/Waivers

Section 120.542(1), Florida Statutes (F.S.), states that the purpose of a rule variance 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-pronged test for granting variances/waivers to rules. If the petitioner satisfies both prongs of the test, the agency must grant the variance.

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

Purpose of the Underlying Statutes

FPL identifies Sections 366.03, 366.041(1), 366.05(1), and 366.06(1), F.S., as the implementing authority for Rule 25-6.097, F.A.C. The purpose of these sections is to ensure that investor-owned utilities charge fair, just, reasonable, nondiscriminatory, and compensatory rates that are subject to Commission approval and oversight. FPL alleges that the purposes of these underlying statutes will still be met if the temporary variance is granted. FPL further alleges that its petition should be approved because it is not specifically prohibited by any of the underlying statutes.

Substantial Hardship

FPL states that it believes that the "unique and extraordinary nature of the impact of the COVID-19 pandemic" permits the Commission to consider this issue from the perspective of FPL's impacted qualifying residential customers. FPL observes that Florida has been in a state of public health emergency since early March[2] and that its qualifying residential customers are likely to have experienced adverse financial impacts caused by the COVID-19 pandemic.

person who is subject to the rule. Section 120.52(21), F.S. The same legal test applies to the Commission's decision to grant either a variance or a waiver. Section 120.524(2), F.S. To enhance readability, both variances and waivers will subsequently be referred to collectively as "variances."

[2] *See* Executive Order 20-51 and Executive Order 20-52.

Legal Standard for Tariff Waivers

Unlike rule variances and waivers, there is no set legal standard for tariff waivers.[3] Public utility tariffs are subject to review and approval by the Commission. Section 366.05(1)(e), F.S. The Commission has stated in past cases that the burden is on the utility to provide sufficient justification for a tariff modification.

In this instance, FPL has proposed a temporary tariff waiver/variance. FPL states that it will process deposit refunds for qualifying residential customers within the week after an order approving the petition becomes final. After processing the deposit refund, FPL proposes to immediately resume normal application under Section 6.3 of its Tariff.

Procedural Matters

Pursuant to Section 120.542(6), F.S., notice of FPL's petition was published in the September 14, 2020 edition of the Florida Administrative Register, Vol. 46, No. 180. On September 18, 2020, staff requested additional information from FPL regarding its petition. FPL provided its response to staff's request for additional information on September 22, 2020. As of the date of the filing of this recommendation, no comments have been submitted on the petition.

Pursuant to Section 120.542(8), F.S., a petition for variance must be granted or denied within 90 days of receipt by the agency or the petition is deemed approved. Accordingly, the Commission must approve or deny FPL's petition by December 10, 2020. Although the petition has not been filed as an emergency rule variance, FPL requests the Commission consider the petition on an expedited basis.

This recommendation addresses whether the Commission should grant FPL's petition. The Commission has jurisdiction under Sections 120.542, 366.03, 366.041(1), 366.05(1), and 366.06(1), F.S.

[3]*See* Order No. PSC-2012-0173-PAA-EI, issued April 12, 2012, in Docket No. 20120012-EI, *In Re: Petition for variance & waiver of certain contractual requirements in Rule 25-6.065, F.A.C., by Progress Energy Florida., Inc.*

Discussion of Issues

Issue 1: Should FPL's petition for temporary variance from or waiver of Rule 25-6.097(3), F.A.C., and Section 6.3 of FPL's Tariff be granted?

Recommendation: A rule waiver or variance is unnecessary under the plain language of Rule 25-6.097, F.A.C. The Commission should grant FPL's petition for a temporary variance from or waiver of Section 6.3 of FPL's Tariff. If FPL's petition is approved, the Commission should require FPL to file a notice in this docket when it begins and concludes implementing the deposit refund. (Harper, Kahn, Coston, Guffey, Fletcher)

Staff Analysis: FPL is asking the Commission for a temporary variance from or waiver of Rule 25-6.097(3), F.A.C., and Section 6.3 of the FPL Tariff, so that it can provide an accelerated refund of cash deposits to qualifying residential customers who may be experiencing economic hardships due to the ongoing COVID-19 pandemic and the associated economic impacts.

Rule Waiver or Variance is Unnecessary

Rule 25-6.097(2), F.A.C., gives investor-owned electric utilities the discretion to require any applicant for service to satisfactorily establish credit. Rule 25-6.097(2)(b), F.A.C., states that credit will be deemed so established if the applicant pays a cash deposit.

Rule 25-6.097(3), F.A.C., provides, in pertinent part, that after a customer has established a satisfactory payment record after continuous service for a period of 23 months, the utility must refund the residential customer's deposits, provided the customer has not in the preceding 12 months:

> (a) Made more than one late payment of a bill (after expiration of 20 days from the date of mailing or delivery by the utility).
> (b) Paid with a check refused by a bank.
> (c) Been disconnected for nonpayment, or at any time.
> (d) Tampered with the electric meter, or
> (e) Used service in a fraudulent or unauthorized manner.

The rule, therefore, contemplates a two element test for when an electrical utility *must* refund a deposit to a qualifying residential customer:

> (1) the residential customer must have maintained continuous service for 23 months; and
> (2) the residential customer has demonstrated what FPL characterizes as a "good payment history" by complying with paragraphs (3)(a)-(e) of Rule 25-6.097, F.A.C., for the preceding 12 months.

Nonetheless, Rule 25-6.097(5)(b), F.A.C., states that "[n]othing in this rule shall prohibit a utility from refunding at any time a deposit with any accrued interest."

FPL requests a temporary variance of the provisions of Rule 25-6.907(3), F.A.C., to allow the 23-month service period be abbreviated to a 12-month period, with no change to the provision requiring that the residential customer maintain a 12-month good payment history. Staff believes that it is unnecessary to determine whether FPL has carried its burdens under Section 120.542(2), F.S., for a temporary rule waiver or variance because the plain language of Rule 25-6.097(5)(b), F.A.C., expressly provides that a utility may refund cash deposits to residential customers at any time. Moreover, while Rule 25-6.097(3), F.A.C., requires that the utility must refund a customer's deposit after the customer has established a satisfactory payment record and has had continuous service for a period of 23 months, nothing in Rule 25-6.097(3), F.A.C., prohibits the utility from refunding a deposit prior to the 23-month time period in the rule.

Temporary Variance from or Waiver of Section 6.3 of FPL's Tariff

FPL also asks for a temporary variance from or waiver of the provisions in Section 6.3 of its Tariff. Section 6.3 of FPL's Tariff states, in pertinent part, that "[a]fter a residential [c]ustomer has established a prompt payment record and has had continuous service for a period of not less than 23 months, the Company will no longer require a [s]ecurity [d]eposit or guaranty for that account, provided the [c]ustomer has not, in the preceding twelve (12) months" violated any of the provisions in Rule 25-6.097(3)(a)-(e), F.A.C., as recited above. Once these conditions have been met, the Tariff further states that the deposit "will be refunded."

Under the terms of Section 6.1(1)(a)-(c) of FPL's Tariff, all "applicants" are required to provide a security deposit or guaranty or to satisfy FPL's application requirements to be exempted from the deposit requirement before FPL will begin to render service. The Tariff does not explicitly incorporate a provision analogous to Rule 25-6.097(5)(b), F.A.C., that would give FPL the discretion to return a residential customer's deposit prior to the customer's satisfaction of the aforementioned 23 month/12 month durational requirements. Consequentially, staff believes the Tariff provisions are mandatory, rather than permissive, in nature and that Commission approval of a tariff variance is required for FPL to issue the refund as set forth in its petition.

While there is no legal standard for tariff modifications analogous to the one included in Section 120.542, F.S., for rule variances and waivers, staff believes that FPL has provided sufficient justification for the Commission to approve FPL's request for a temporary variance of Section 6.3 of its Tariff. If the Commission approves the temporary variance, FPL estimates that approximately $9 million to $11 million worth of deposit funds plus statutory interest could be returned to approximately 50 to 60 thousand qualifying residential customers, or approximately 1 percent of FPL's total residential customer base.

In general, customer deposits are designed to minimize the exposure of bad debt expense for the utility, and ultimately, for the general body of ratepayers. However, FPL alleges that it will incur only a negligible effect on FPL's financial status if the tariff provision is temporarily changed. FPL estimates that once the deposit refund is processed, it may cause FPL's weighted average cost rate of customer deposits to decrease by less than one basis point, or approximately 0.0005 percent.[4] With respect to its total weighted average cost of capital, FPL estimates an increase of

[4]*See* FPL's Response to Staff's First Data Request at Request No. 1 (referencing Schedule 4, Page 1 of 2 of FPL's July 2020 earnings surveillance report.)

less than one basis point, or approximately 0.001 percent.[5] Further, FPL estimates that its cost of implementing the deposit refund will have zero associated program costs other than non-incremental analytical time and that any potential risks relating to a customer related default will be modest and contained due to the limited nature of its request.

FPL plans to implement the deposit refund by identifying all qualifying residential customers "as of a single date within the week following an order approving the petition becoming final." Once that happens, FPL states that those residential customers' accounts will be flagged as having qualified for the deposit refund. FPL's existing Customer Information System will then automatically calculate the applicable statutory interest rate and credit that amount to the customer's electric account. FPL expects the entire process to take no more than a week. Once the one-time accelerated deposit refund has been fully issued, the temporary tariff variance would expire and FPL would then revert back to the 23-month continuous service period specified in Section 6.3 of its Tariff.

Conclusion

Based on the above, staff believes that a temporary rule waiver or variance is unnecessary under the plain language of Rule 25-6.097, F.A.C. In addition, staff believes a temporary variance of or waiver of Section 6.3 of FPL's Tariff is justified. Therefore, staff recommends that the Commission grant FPL's petition for a temporary variance from or waiver of Section 6.3 of FPL's Tariff. If FPL's petition is approved, staff recommends that the Commission require FPL to file a notice in this docket when it begins and concludes implementing the deposit refund.

[5] *Id*.

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. (Harper, Kahn)

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: October 1, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (DuVal) SMC
Division of Accounting and Finance (Mouring) ALM
Division of Economics (Coston) JGH

RE: Docket No. 20200219-EI – Petition to initiate emergency rulemaking to prevent electric utility shutoffs, by League of United Latin American Citizens, Zoraida Santana, and Jesse Moody.

AGENDA: 10/06/20 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: 10/22/20 (Pursuant to Section 120.54(7), F.S., the Commission must initiate rulemaking or deny the petition with a written statement of its reasons for denial by this date)

SPECIAL INSTRUCTIONS: None

Case Background

On September 22, 2020, the League of United Latin American Citizens of Florida, also known as LULAC Florida Educational Fund, Inc. (LULAC), Zoraida Santana, and Jesse Moody (collectively referred to herein as "Petitioners") filed a petition to initiate emergency rulemaking (Petition). Petitioners request that the Commission initiate emergency rulemaking to amend Rule 25-6.105, Florida Administrative Code (F.A.C.), to prevent discontinuance of electric service to certain customers by public utilities for at least 90 days due to the COVID-19 pandemic.

Pursuant to Section 120.54(7)(a), Florida Statutes (F.S.), any person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. The section requires the Commission to either initiate rulemaking proceedings or deny the petition, with a written statement of its reasons for the denial, no later than 30 calendar days following the date of the filing of the petition.

The Commission has received a number of customer correspondences in this docket. On September 29, 2020, Representative Anna V. Eskamani submitted a letter to the Commission.

On September 29, 2020, Duke Energy Florida, LLC (DEF) and Tampa Electric Company (TECO) filed comments on the Petition. On the same day, Florida Power & Light Company (FPL) and Gulf Power Company (Gulf) filed joint comments on the Petition.

This recommendation addresses whether the Commission should grant the Petition. The Commission has jurisdiction pursuant to Sections 120.54(7), 350.127(2), F.S., and Chapter 366, F.S.

Discussion of Issues

Issue 1: Should the Commission grant the Petition to initiate emergency rulemaking?

Recommendation: No, the Petition should be denied because it is unnecessary at this time to initiate emergency rulemaking. (DuVal, Coston, Mouring)

Staff Analysis: Petitioners request that the Commission initiate emergency rulemaking to amend Rule 25-6.105, F.A.C. The rule addresses refusal or discontinuance of service by investor-owned electric utilities. Petitioners allege that emergency rulemaking is needed to prohibit utilities from refusing or discontinuing electric service to certain customers for at least 90 days due to the COVID-19 pandemic.

Applicable Law

Petitions to Initiate Rulemaking

Section 120.54(7)(a), F.S., states that "[a]ny person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule." The petitioner is required to specify the proposed rule and action requested. Petitioners' proposed amendments to Rule 25-6.105, F.A.C., are attached to this recommendation as Attachment A.

Emergency Rulemaking

Section 120.54(4), F.S., sets forth the requirements for emergency rulemaking. The pertinent parts of subsection (4) state:

> (4) EMERGENCY RULES. –
> (a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger. The agency may adopt a rule by any procedure which is fair under the circumstances if:
> 1. The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.
> 2. The agency takes only that action necessary to protect the public interest under the emergency procedure.
> 3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one or a part of one county, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Register and provided to the [Joint Administrative Procedures Committee] along with any material incorporated by reference in the rules. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.
>
> * * *

> (c) An emergency rule adopted under this subsection shall not be effective for a period longer than 90 days and shall not be renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule and either:
> 1. A challenge to the proposed rules has been filed and remains pending; or
> 2. The proposed rules are awaiting ratification by the Legislature pursuant to s. 120.541(3).
>
> Nothing in this paragraph prohibits the agency from adopting a rule or rules identical to the emergency rule through the rulemaking procedures specified in subsection (3).
> (d) Subject to applicable constitutional and statutory provisions, an emergency rule becomes effective immediately on filing, or on a date less than 20 days thereafter if specified in the rule, if the adopting agency finds that such effective date is necessary because of immediate danger to the public health, safety, or welfare.

To adopt an emergency rule, the Commission must first find, pursuant to Section 120.54(4)(a), F.S., that an immediate danger to the public health, safety, or welfare requires emergency action. "In order to utilize emergency rulemaking procedures, rather than employing standard rulemaking, an agency must express reasons at the time of promulgation of the rule for finding a genuine emergency." *Florida Health Care Association v. Agency for Health Care Administration,* 734 So. 2d 1052, 1053 (Fla. 1st DCA 1998). The agency's reasons must be "factually explicit and persuasive." *Florida Home Builders Association v. Florida Department of Commerce,* 355 So. 2d 1245, 1246 (Fla. 1st DCA 1978). In this regard, the agency must show how particular members of the public are actually faced with an immediate danger to their health, safety, or welfare. *Hartman-Tyner, Inc. v. Department of Business and Professional Regulation*, 923 So. 2d 559, 562 (Fla. 1st DCA 2006).

Adoption of any emergency rule does not relieve an agency from the requirement that the rule be a valid exercise of delegated legislative authority as set forth in Section 120.52(8), F.S. Thus, any rule adopted by the Commission must be based on an explicit power or duty identified in the enabling statute, or the rule is not a valid exercise of delegated legislative authority. *See Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594, 599 (Fla. 1st DCA 2000).

Rule 25-6.105, F.A.C., Refusal or Discontinuance of Service by Utility

Chapter 366, F.S., vests the Commission with the authority to require utilities to furnish reliable, reasonably sufficient, adequate, and efficient service within a coordinated electric power grid. The Commission also has authority to fix rates and charges that are just, reasonable, compensatory, and not unduly or unreasonably discriminatory.

> Section 366.03, F.S., General duties of public utility, states, in pertinent part:
>
> Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission. No public utility shall be required to furnish electricity or gas for

> resale except that a public utility may be required to furnish gas for containerized resale. All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

Section 366.04(2), F.S., states, in pertinent part:

> In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:
>
> (c) To require electric power conservation and reliability within a coordinated grid, for operational as well as emergency purposes.

Further, Section 366.05(1)(d), F.S., states, in pertinent part:

> The customer is responsible for charges for service provided under the selected rate.

Rule 25-6.105, F.A.C., sets forth the conditions under which utilities may refuse or discontinue electric service and the process the utilities must follow when refusing or discontinuing electric service. With regard to non-payment of bills, Rule 25-6.105(5), F.A.C., states, in pertinent part:

> If the utility refuses service for any reason specified in this subsection, the utility shall notify the applicant for service as soon as practicable, pursuant to subsection (7), of the reason for refusal of service. If the utility will discontinue service, the utility shall notify the customer at least 5 working days prior to discontinuance, that service will cease unless the deficiency is corrected in compliance with the utility's regulations, resolved through mutual agreement, or successfully disputed by the customer. The 5-day notice provision does not apply to paragraph (h), (i) or (j). In all instances involving refusal or discontinuance of service the utility shall advise in its notice that persons dissatisfied with the utility's decision to refuse or discontinue service may register their complaint with the utility's customer relations personnel and to the Florida Public Service Commission at 1(800)342-3552, which is a toll free number. As applicable, each utility may refuse or discontinue service under the following conditions:
>
> ***
>
> (g) For non-payment of bills or non-compliance with the utility's rules and regulations, and only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer, such notice being separate and apart from any bill for service, provided that those customers who so desire may designate a third party in the company's service area to receive a copy of such delinquent notice. For purposes of this subsection,

> "working day" means any day on which the utility's business office is open and the U.S. Mail is delivered. A utility shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the utility.

The Petition

Petitioners request that the Commission initiate emergency rulemaking to adopt their proposed language, appended as Attachment A, in order to prohibit utilities from refusing or discontinuing electric service to certain customers for at least 90 days due to the COVID-19 pandemic. Petitioners aver that, after a period of voluntary moratoriums on electric service disconnections, DEF, TECO, and FPL have resumed discontinuing Floridians' electric service due to non-payment.

Petitioners argue that discontinuation of electric service for non-payment is equivalent to eviction and should be construed as subject to the moratoriums on residential evictions issued by Governor DeSantis and the Centers for Disease Control and Prevention. Petitioners allege that their proposed language mirrors the Centers for Disease Control and Prevention's certification required to avoid eviction and clarifies that people who have the funds to pay their electric bill will not be relieved of their burden to do so and could still face disconnection. Petitioners further argue that other states have enacted moratoriums on utility and electricity disconnections and that other large utilities nationwide have announced voluntary refrainment from disconnections until 2021.

The proposed language submitted by the Petitioners requires that the utilities may not disconnect a customer or applicant for failure to pay if the customer or applicant certifies that they meet seven specific conditions. These seven conditions are more fully set out in Attachment A, but include criteria such as attempts to obtain government assistance, expectations of certain income caps or actual receipt of CARES Act stimulus payments, loss of income or extraordinary medical expenses, and an assertion that the customer's or applicant's only alternative access to electricity is through a homeless shelter or a residence shared by other people living in close quarters.

Commission Workshop and Data Gathering on Impacts of COVID-19 Pandemic

On July 29, 2020, the Commission held a workshop on the impacts of the COVID-19 pandemic on utility customers. The purpose of the workshop was to give electric, natural gas, and water and wastewater utilities an opportunity to provide information about the effect that the COVID-19 pandemic has had on utility customers. Specifically, the utilities were asked in the workshop notice to provide an overview of the following:

- Number of residential and commercial accounts in late or nonpayment status from April 1, 2020, through June 30, 2020, and the related incremental bad debt expense from unpaid balances.
- Utility policies and financial assistance available to directly assist customers impacted by COVID-19.
- Utility efforts to receive loans, grants, assistance, or benefits in connection with the COVID-19 pandemic, regardless of form or source, that could offset any COVID-19 related expenses.

FPL, Gulf, DEF, TECO, and Florida Public Utilities Company (each of Florida's five investor-owned electric utilities) provided presentations at the workshop, in addition to companies from the natural gas and water and wastewater industries. The Office of Public Counsel made a presentation at the workshop, and the Connected in Crisis Coalition and Vote Solar provided written comments prior to the workshop.

At the workshop, the utilities stated that, beginning in March 2020, they suspended disconnections for non-payment, waived late payment charges, and implemented payment extension plans. They also provided information about their various efforts to provide customers with financial assistance information and payment plan options. Some of the customer outreach methods referenced by the utilities included phone calls, text messages, emails, letters, advertisements, and social media communications. Moreover, the utilities stated that they contacted customers whose usage increased significantly to offer energy conservation tips.[1]

Specifically in regard to customer disconnections for non-payment of bills, all the utilities stated that they are committed to meeting the unique challenge caused by the COVID-19 pandemic and understand the hardships faced by some of their customers due to the pandemic. They overwhelmingly expressed a willingness to help their customers and assured the Commission that disconnection of service for non-payment of bills always has been and always will be a last resort.

The utilities further stated that they are currently taking customers at their word that they are having a hard time financially and have been very liberal in granting payment extensions and offering other assistance. They stated that they have stepped up their efforts to inform customers of programs that may assist them with paying their electric bills.

They stated that one of their biggest challenges is getting customers who have outstanding bills to engage with the utility. The utilities stated that customer engagement is needed in order for the utility to assist the customer with payment extensions or payment plans and to put the customer in contact with the resources that are available to assist with paying their bill.

At the September 1, 2020, Internal Affairs meeting, staff presented the Commission with a summary of the workshop. Additionally, staff proposed certain monthly data and information to be collected from the investor-owned utilities, with the first reports submitted on September 30, 2020, to include data for the month August 2020. This data and information will allow the Commission the opportunity to monitor and better understand the impact of the pandemic on customers' ability to maintain a positive payment history with their utility or utilities.

The investor-owned utilities have informed the Commission that their intent is to continue their customer outreach efforts and actively work to avoid discontinuation of electric service. Furthermore, the Commission began collecting and analyzing monthly data and information to

[1]*See* Document No. 04364-2020, Transcript of July 29, 2020 Commission Workshop, filed August 12, 2020, in Docket No. 20200000-OT.

monitor these efforts, along with any changes to the utilities' policies related to past-due accounts, payment arrangements, late payment waivers, disconnection, or reconnection.

Comments on the Petition

The Commission has received a number of customer correspondences in this docket, in which the customers state that they oppose electric power disconnections during the pandemic. The primary reason given by these customers for their opposition to disconnections is customer unemployment.

Representative Eskamani submitted a letter in support of the Petition, stating that the options and programs offered by the utilities are insufficient. She offers eight additional recommendations for the Commission's consideration.

FPL, Gulf, TECO, and DEF filed comments on the Petition. Their comments are summarized below.

FPL and Gulf's Joint Comments

FPL and Gulf state that the relief requested in the Petition is not necessary and "falls far short of meeting the criteria for an emergency rule under Section 120.54(4)(a), [F.S.]." Consistent with their presentation at the July 29 workshop, they list the proactive measures they have taken to assist their customers in response to the COVID-19 pandemic, including suspending all disconnections, increasing customer outreach, making available longer and more flexible payment plans, waiving late payment fees for customers who reach out and express hardship, and offering energy conservation tips and education. In addition, the companies state that they have filed for a mid-course correction to accelerate refunding fuel savings.

They state that they have donated more than $4.5 million to non-profits and other organizations working to help Floridians affected by the pandemic. FPL points to a recently announced program to provide bill relief to certain qualifying customers experiencing hardship.

FPL and Gulf also detail their outreach campaigns to educate customers on the availability of assistance in their area. They further state, however, that "[i]n order for customers to take advantage of the assistance funds and the utilities' support measures, customers must contact FPL and Gulf to request the assistance and relief." They assert that despite all of the outreach efforts detailed in their comments, "approximately 85 percent of customers who are more than 30 days behind on their electric bills have not contacted the utilities to make payment arrangements for their accounts."

They state that it has been their experience that most customers experiencing hardship do not engage the utility or seek assistance until the customer receives a final notice in advance of disconnection. They note that 90 percent of customers who are disconnected for nonpayment are reconnected within one day. Additionally, the companies state that they "remain mindful of the need to calibrate and, to the extent possible, mitigate arrearages and bad debt." FPL states that it has resumed sending final notices for non-payment, while Gulf states that it has not begun issuing final notices. They both state that they remain committed to working with and assisting

their customers, but they further state that "it is critical for customers to contact their respective company to request that help."

In regard to the Petitioners' proposed emergency rule, they state that "even if the Commission were to approve the emergency rule that the Petitioners have requested, customers would still have to contact their utility to begin the complex certification process that the proposed rule contemplates, and the unfortunate fact remains that the threat of disconnection is the only way to prompt most customers who are behind on their bills to take action to get help."

They also point out that they "already do the two most important things the Petitioners' proposed emergency rule calls for: (1) the Companies work to get those customers in contact with assistance agencies; and (2) the Companies work to get them on payment arrangements so that the customers can avoid disconnection." They state that "[t]hese efforts are undertaken with the related goal of preventing past due balances from growing to the point of becoming unmanageable."

FPL and Gulf provide a table in their comments, showing how Petitioners' proposed emergency rule compares to the processes the companies have already implemented to address the situation. They state that the table shows that "the proposed emergency rule would actually make it much harder and burdensome for customers to deal with the Companies by requiring a complex certification process that simply is not needed."

TECO's Comments

TECO states that emergency rulemaking to modify Rule 25-6.105, F.A.C., is not necessary at this time. In its comments, TECO reiterates and expounds on its presentation from the July 29 workshop.

TECO provides an extensive explanation of its efforts to work with its customers, including placing a moratorium on disconnections from March until September 14; modifying payment arrangements to assist customers with past due balances; increasing the frequency of customer communications; and expanding its outreach efforts. It also states that it obtained a mid-course correction to its fuel and capacity cost recovery factors, which resulted in bill credits in June, July, and August and lower fuel charges through December of 2020. In addition to putting customers in contact with government agencies and non-profit organizations that offer bill payment assistance, TECO states that it has partnered with nonprofit organizations, governments, and local businesses to provide aid and donated, with its sister company Peoples Gas, $1 million to local organizations providing pandemic relief.

It further states that despite its response efforts, the number of customers with past-due balances increased over the period of March through July 2020. TECO states that its incremental bad debt expense for 2020 is estimated to result in write-offs of $3 to $4 million.

Pointing to paragraph (5)(g) of Rule 25-6.105, F.A.C., which requires the utility to (1) make a diligent attempt to have customers comply and (2) provide at least 5 working days' notice prior to disconnecting service for non-payment, TECO provides examples of the ways it "went above and beyond" the minimum notice requirement of Rule 25-6.105, F.A.C. TECO states that

"[d]espite all of these attempts at communication, many past due customers did not contact [TECO] to resolve their past due balances until they received a final notice of disconnection or were actually disconnected." TECO states that it has been their experience that "final notices of disconnection and actual disconnections are effective at prompting customers to address their past due balances, and that the vast majority of customers are ultimately reconnected."

TECO states that under Petitioners' proposed rule language, utilities would be required to contact all customers that are scheduled for disconnection and provide them "an opportunity" to make the certification under the rule. Because the proposed rule language does not specify the length of this "opportunity," TECO states that the time period could presumably last as long as the rule remains in effect. TECO points out that "all final notices of disconnection and actual disconnections could be suspended for up to 90 days."

TECO states that it can almost always work with customers to avoid disconnection when past-due customers contact the company. While it acknowledges that disconnections may be seen as punitive to some, it states that "resumption of disconnections has substantially increased the number of customers who are contacting the company, thereby enabling the company to work with customers to manage or eliminate past due balances." It further states that it is concerned that the Petitioners' proposed emergency rule will result in fewer customers calling for and receiving assistance and "would actually result in more disconnections in the long run, not fewer," as customers unnecessarily fall further behind in their bills in the absence of readily available assistance. TECO is also concerned that the Petitioners' proposed emergency rule may limit its flexibility to assist customers with past due balances in both the short and long term.

TECO states that it does not believe emergency rulemaking to modify Rule 25-6.105, F.A.C., is necessary at this time. It states that the company's data illustrates that final disconnection notices and actual disconnections are effective at prompting customers to contact the company, with the vast majority of customers reconnecting the same or next day through the payment of past due balances, alternative payment arrangements, or assistance from third-parties.

TECO further states that it is concerned that the Petitioners' proposed emergency rule may result in more disconnections than under the current rule. It raises concerns about third party billing assistance funds being exhausted and government programs expiring by the time past-due bills come due under the proposed emergency rule. It also points out that as past due balances continue to grow for an additional 90 days, these past due balances may ultimately become unmanageable for customers. It concludes that "[w]hile the proposed Rule amendment would expire after 90 days, [TECO] will continue its assistance efforts as long as the pandemic persists and even beyond."

DEF's Comments

DEF states that it has already voluntarily put into practice a number of the suggested provisions in the Petitioners' proposed emergency rule and that the Petitioners' other suggested provisions would provide less flexibility than what the company is already offering to customers in need.

Updating the Commission on its experience since the July 29 workshop, DEF provides a number of efforts it has engaged in to assist customers in response to the pandemic, including voluntarily

suspending disconnections for non-payment on March 13, 2020; obtaining approval from the Commission for emergency authority to waive late-payment and returned check fees; and waiving discretionary fees. It also states that it applied for and was granted a mid-course correction to flow back the fuel cost over-recovery as a one-month reduction in bills, despite DEF's over-recovery not being great enough to trigger the mandatory mid-course correction filing. In addition, it states that it has contributed $450,000 in COVID-19-related grants to address immediate social service and hunger relief needs resulting from the pandemic.

DEF also highlights its extensive efforts to communicate with its customers, including providing customers with content on ways to manage cost through energy efficiency. It states that it has further increased its efforts to communicate with its customers based on feedback from the July workshop.

DEF emphasizes that its goal has always been to make disconnections for non-payment a last resort for its customers. DEF states that it resumed its standard billing practices on July 14, 2020, and provides examples of its customer outreach efforts since that time.

It states that its first customers were subject to disconnection on September 2, 2020. It further states that its experience thus far is that a vast majority of its customers are paying their past due bills, with many paying in full.

DEF states that its recent data indicates that the majority of its residential customers who were subject to disconnection have acted on opportunities to avoid a service disruption and that "the Petitioners claim that 'over 1 million people' may have their electricity shut-off vastly over-estimates the current situation." It further states that DEF continues to encourage customers to engage with the company to prevent service disruptions by establishing payment arrangements and offering extended payment plans to allow customers to catch up on any balance that built up during the suspension of disconnections.

In regard to Petitioners Mr. Moody and Ms. Santana, DEF sets forth a timeline and explanation of its efforts to assist these customers. These efforts included an offer to Mr. Moody of a restructured payment arrangement, which he accepted, and putting Mr. Moody in contact with Mid-Florida Community Action in Pasco County to assist him with paying his bill.

DEF states that it has been its experience that the greater the amount a customer is in arrears, the harder it will be for the customer to pay off the debt. DEF further states:

> By being proactive with our customers by helping them come up with flexible payment arrangements, connecting them with agencies that can help, but starting to resume our standard billing and payment practices, we are focused on balancing customer accommodations and financial stewardship – getting those customers who can pay to pay, stopping the accumulation of more debt, and connecting customers with agencies who can help before CARES Act funding may in fact start running out.

DEF asserts that Petitioners' requested relief would put customers in a worse situation than DEF's current flexible approach. As an example of this, DEF states that it is giving customers up

to 12 months to pay off their past due amounts; whereas, the Petitioners' proposed rule requires full payment when the 90-day halt is lifted.

Conclusion

Both the Commission and the investor-owned electric utilities have been actively engaged in meeting the unique challenges caused by the COVID-19 pandemic, including the issue of disconnection of customers for non-payment of bills. Staff believes that Petitioners' proposed emergency rule is unnecessary and could result in unintended, detrimental consequences to customers.

First, staff believes that the certification required by the Petitioners' proposed emergency rule is too onerous. The utilities do not currently require detailed customer certifications to avoid disconnection of service for non-payment of bills, and the utilities are very liberally applying their disconnection policies. Staff agrees with the utilities that the Petitioners' proposed emergency rule may place an additional burden on customers by requiring them to certify that they meet seven specific conditions in order to avoid discontinuation of electric service. Moreover, such a requirement may hinder customers' ability or desire to discuss with the utility the potential options available to them with regard to their electric service. Further, a strict reading of the certification required under the Petitioners' proposed rule may compel otherwise avoidable disconnections for those customers who may not meet the criteria.

Second, the Petitioners' proposed emergency rule may remove any incentive for customers in need to contact the utility. The issue that runs parallel to customer disconnections for non-payment of electric service is past-due balances continuing to grow for some customers while disconnections are halted. Under the Petitioners' proposed emergency rule, past-due balances could continue to grow for an additional 90 days. After the 90-day period expires, the utility may require payment in full, and failure to pay outstanding bills will make the customer subject to disconnection. As the utilities commented, this could potentially put customers in a worse position than the flexible approaches currently being used by the utilities to assist customers with handling outstanding bill amounts.

One of the overwhelming themes of the utilities' comments is that customers who are struggling to pay their electric bills need to reach out to the utility. This customer contact is critical for the utility to work with the customer to avoid disconnection and to manage and eliminate past-due balances. The disconnection notice currently required by Rule 25-6.105(5)(g), F.A.C., appears to be a useful tool to spur customer contact with the utility. As TECO points out, Rule 25-6.105(5)(g), F.A.C., currently states that the utility may only disconnect service after the utility provides at least 5 working days' notice and has made a diligent attempt to have the customer comply. It appears from their comments at the July 29 workshop and their written comments filed on September 29 that all the utilities are committed to dealing with their customers fairly, and each utility has tailored procedures to address their customers' needs. Moreover, all utilities have emphasized that disconnection for non-payment of electric service is a last resort.

Staff also notes that the conditions under which utilities may refuse or discontinue electric service and the process the utilities must follow when refusing or discontinuing electric service set forth in Rule 25-6.105, F.A.C., are applicable to both residential and non-residential

customers. Staff believes the Petitioners' proposed emergency rule is unclear as to whether it should be applicable to both residential and non-residential customers. Further, if the Petitioners' proposed rule is intended to apply only to residential customers, staff believes that its adoption, as proposed, could possibly lead to inconsistent application of Rule 25-6.105, F.A.C., and create an internal conflict in the rule.

For the reasons discussed above and based upon the information contained in this docket, staff believes that the Petitioners' proposed emergency rule is neither necessary nor the best course of action at this time. Moreover, staff believes that the Petitioners' proposed emergency rule not only fails to meet the high standard for the promulgation of an emergency rule under Section 120.54(4)(a), F.S., but also would be counter-productive to the best interest of customers as compared to what appear to be effective and ongoing proactive measures currently being undertaken by utilities to avoid permanent disconnections. Instead, each utility should retain the flexibility to address the individual circumstances of their customers. Thus, staff recommends that the Petition be denied.

Nonetheless, staff acknowledges that the impacts of the COVID-19 pandemic on utility customers are still evolving. Staff wants to make clear that denial of the Petition does not foreclose the Commission from initiating rulemaking at any time on its own motion, either through the emergency rulemaking procedures, if warranted, or the normal rulemaking process, as this situation progresses and more data is gathered and monitored by the Commission.

Issue 2: Should this docket be closed?

Recommendation: Yes. If the Commission approves staff's recommendation in Issue 1, this docket should be closed. (DuVal)

Staff Analysis: If the Commission approves staff's recommendation in Issue 1, this docket should be closed.

25-6.105 Refusal or Discontinuance of Service by Utility.

(1) Until adequate facilities can be provided, each utility may refuse to serve an applicant if, in the best judgment of the utility, it does not have adequate facilities to render the service applied for.

(2) Each utility may refuse to serve any person whose service requirements or equipment is of a character that is likely to affect unfavorably service to other customers.

(3) Each utility may refuse to render any service other than that character of service which is normally furnished, unless such service is readily available.

(4) Each utility shall not be required to furnish service under conditions requiring operation in parallel with generating equipment connected to the customer's system if, in the opinion of the utility, such operation is hazardous or may interfere with its own operations or service to other customers or with service furnished by others. Each utility may specify requirements as to connection and operation as a condition of rendering service under such circumstances.

(5) If the utility refuses service for any reason specified in this subsection, the utility shall notify the applicant for service as soon as practicable, pursuant to subsection (7), of the reason for refusal of service. If the utility will discontinue service, the utility shall notify the customer at least 5 working days prior to discontinuance, that service will cease unless the deficiency is corrected in compliance with the utility's regulations, resolved through mutual agreement, or successfully disputed by the customer. The 5-day notice provision does not apply to paragraph (h), (i) or (j). In all instances involving refusal or discontinuance of service the utility shall advise in its notice that persons dissatisfied with the utility's decision to refuse or discontinue service may register their complaint with the utility's customer relations personnel and to the Florida Public Service Commission at 1(800) 342-3552, which is a toll free number. As applicable, each utility may refuse or discontinue service under the following conditions:

(a) For non-compliance with or violation of any state or municipal law or regulation governing electric service.

(b) For failure or refusal of the customer to correct any deficiencies or defects in his wiring or equipment which are reported to him by the utility.

(c) For the use of energy for any other property or purpose than that described in the application.

(d) For failure or refusal to provide adequate space for the meter and service equipment of the utility.

(e) For failure or refusal to provide the utility with a deposit to insure payment of bills in accordance with the utility's regulation, provided that written notice, separate and apart from any bill for service, be given the customer.

(f) For neglect or refusal to provide safe and reasonable access to the utility for the purpose of reading meters or inspection and maintenance of equipment owned by the utility, provided that written notice, separate and apart from any bill for service, be given the customer.

(g) For non-payment of bills or non-compliance with the utility's rules and regulations, and only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer, such notice being separate and apart from any bill for service, provided that those customers who so desire may designate a third party in the company's service area to receive a copy of such delinquent notice. For purposes of this subsection, "working day" means any day on which the utility's business office is open and the U.S. Mail is delivered. A utility shall not, however, refuse or discontinue service for nonpayment of a dishonored check service charge imposed by the utility.

(h) Without notice in the event of a condition known to the utility to be hazardous.

(i) Without notice in the event of tampering with meters or other facilities furnished and

owned by the utility.

(j) Without notice in the event of unauthorized or fraudulent use of service. Whenever service is discontinued for fraudulent use of service, the utility may, before restoring service, require the customer to make at his own expense all changes in facilities or equipment necessary to eliminate illegal use and to pay an amount reasonably estimated as the loss in revenue resulting from such fraudulent use.

(6) Service shall be restored when cause for discontinuance has been satisfactorily adjusted.

(7) In case of refusal to establish service, or whenever service is intentionally discontinued by the utility for other than routine maintenance, the utility shall notify the applicant or customer in writing of the reason for such refusal or discontinuance.

(8) The following shall not constitute sufficient cause for refusal or discontinuance of service to an applicant or customer:

(a) Delinquency in payment for service by a previous occupant of the premises unless the current applicant or customer occupied the premises at the time the delinquency occurred and the previous customer continues to occupy the premises and such previous customer shall benefit from such service.

(b) Failure to pay for merchandise purchased from the utility.

(c) Failure to pay for a service rendered by the utility which is non-regulated.

(d) Failure to pay for a different type of utility service, such as gas or water.

(e) Failure to pay for a different class of service.

(f) Failure to pay the bill of another customer as guarantor thereof.

(g) Failure to pay a dishonored check service charge imposed by the utility.

(h) Failure to pay when a customer of applicant certifies that 1) they have used their best efforts to obtain all available government assistance for their utility bill; 2) that they expect to

earn no more than $99,000 in annual income for Calendar Year 2020 (or no more than $198,000 if filing a joint tax return), were not required to report any income in 2019 to the U.S. Internal Revenue Service, or received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act; 3) that they are unable to pay their full electric bill due to substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out-of-pocket medical expenses; 4) that they are using their best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; 5) that their only alternative to have access to electricity is to move into a homeless shelter or move into a new residence shared by other people who live in close quarters; 6) that they understand that they must still make utility payments and that fees, penalties, or interest for not making payments may still be charged or collected, and 7) that they understand that at the end of this temporary halt on utility disconnections 90 days after this emergency rule goes into effect, that their utility may require payment in full for all payments not made prior to and during the temporary halt and that failure to pay may make them subject to utility disconnection. Before refusing service to an applicant or discontinuing service to a customer, a utility must document that they gave the applicant or customer an opportunity to make this certification and that the applicant or customer was unable or refused to make such certification.

(9) When service has been discontinued for proper cause, each utility may charge a reasonable fee to defray the cost of restoring service, provided such fee is included in its filed tariff.

(10) No utility shall discontinue service to any non-commercial customer between 12:00 noon on a Friday and 8:00 a.m. the following Monday or between 12:00 noon on the day preceding a holiday and 8:00 a.m. the next working day. Provided, however, this prohibition shall not apply when:

(a) Discontinuance is requested by or agreed to by the customer; or

(b) A hazardous condition exists; or

(c) Meters or other utility owned facilities have been tampered with or

(d) Service is being obtained fraudulently or is being used for unlawful purposes.

Holiday as used in this subsection shall mean New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day.

(11) Each utility shall submit, as a tariff item, a procedure for discontinuance of service when that service is medically essential.

Rulemaking Authority 366.05 FS. Law Implemented 366.03, 366.04(2)(c), (5), 366.041(1), 366.05(1), 366.06(1) FS. History–New 2-25-76, Amended 2-3-77, 2-6-79, 4-13-80, 11-26-80, 1-1-91, 1-7-93, _____.

Item 4

State of Florida

Public Service Commission

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

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

DATE: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

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

RE: Docket No. 20200151-EI – Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Gulf Power Company.

AGENDA: 10/06/20 – Regular Agenda – Motion for Reconsideration – Oral argument has not been requested; participation is at the Commission's Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Please place this item on the Agenda to be followed in order by items for Docket Nos. 20200178-GU, 20200194-PU, and 20200189-WS

Case Background

On May 22, 2020, Gulf Power Company (Gulf or Company) filed a petition (Petition) for approval to establish a regulatory asset to record costs incurred due to Coronavirus Disease 2019 (COVID-19). Approval of the Petition would allow Gulf to place incremental bad debt expense and safety-related costs attributable to COVID-19 into the regulatory asset for deferred accounting treatment. The Office of Public Counsel (OPC or Citizens) intervened and became a party to this docket.[1] Vote Solar, the Southern Alliance for Clean Energy, AARP, and the CLEO Institute appeared in this docket as interested persons.

[1] Order No. PSC-2020-0173-PCO-EI, issued June 1, 2020.

Staff filed its recommendation regarding Gulf's Petition on June 24, 2020, recommending approval of the requested regulatory asset, noting that the approval would issue as a procedural order. The Commission considered the Petition at it its July 7, 2020, Agenda Conference. OPC addressed the Commission at that Conference and raised several objections to the relief sought in the Petition. OPC did not provide specific argument at the Agenda Conference that the Commission's decision should issue as a proposed agency action (PAA) order, rather than as a procedural order. The Commission approved staff's recommendation and Gulf's Petition by Order PSC-2020-0262-PCO-EI (Order), issued July 27, 2020, which allowed Gulf to establish a regulatory asset to record costs incurred due to COVID-19. The Order was entered as a procedural order, not as PAA, and contained the following language:

> A substantially affected party's point of entry to request an evidentiary hearing before this Commission will be afforded in such a future proceeding addressing cost recovery of the regulatory asset.

Order at 2.

The Notice of Further Proceedings or Judicial Review attached to the Order did not provide the opportunity for substantially affected persons to request a hearing. It did advise parties who are adversely affected by the Order of the opportunity to request reconsideration under Rule 25-22.0376, Florida Administrative Code (F.A.C.).

On August 6, 2020, OPC timely filed a Motion for Reconsideration (Motion) and, in the Alternative, Petition for Evidentiary Hearing (Petition). In the Motion, OPC avers that the Commission overlooked the requirements of Rule 25-22.029, F.A.C., and precedent and policy relating to deferred accounting methods when it entered the Order. OPC argues that the Commission's decision to approve the petition and allow Gulf to establish a regulatory asset affects the substantial interests of Citizens and, accordingly, the Order should have been issued as PAA with the opportunity for substantially affected persons to request a full evidentiary hearing.

Along with the Motion, as an alternative, OPC submitted the Petition requesting formal proceedings under Sections 120.569 and 120.57, Florida Statutes (F.S.). OPC filed the Petition on the alternative legal theory that the Order is PAA notwithstanding being labelled as procedural. In the Petition, OPC forwards its substantive arguments in opposition to establishment of the regulatory asset. OPC makes the policy argument that the Commission has in the past limited the recovery of analogous expenses to situations where the utility is not earning within its range. OPC also argues on the facts that the Order fails to sufficiently define and limit the cost categories that may be considered eligible for recovery. OPC requests the opportunity to conduct discovery and that the Commission conduct an evidentiary hearing.

Gulf timely filed a Response in Opposition to the Motion (Response) on August 13, 2020, and objected to the relief requested by OPC. Gulf also argues that because OPC is not adversely affected by the Order, the Commission need not reach the merits of the Motion. Gulf supports Commission confirmation of the Order as procedural, not PAA, and does not believe a hearing on the Petition is required or appropriate.

On August 26, 2020, OPC filed notice with the Commission that it had filed a Notice of Administrative Appeal of the Order to the Florida Supreme Court. The Court acknowledged the Notice and assigned a case number (SC20-2171), but has taken no further action.

Neither OPC nor Gulf requested oral argument regarding OPC's Motion for Reconsideration.[2] Pursuant to Rule 25-22-0022, F.A.C., the Commission may hear argument from the parties at its discretion.

The Commission has jurisdiction pursuant to Sections 366.04 and 366.06, F.S.

[2] Rule 25-22.0022(1), F.A.C., provides, in pertinent part, "[f]ailure to timely file a request for oral argument shall constitute waiver thereof." Staff notes that waiver does not limit the Commission's discretion to grant or deny oral argument. Rule 25-22.0022(3), F.A.C. If the Commission decides that oral argument would aid in its understanding and disposition of the underlying matter, staff recommends that the Commission allow three minutes per side.

Discussion of Issues

Issue 1: Should the Motion for Reconsideration be granted?

Recommendation: Yes, the Motion should be granted. OPC has demonstrated that a point of law was overlooked regarding the point of entry for a substantially affected person to challenge the establishment of a regulatory asset. Order No. PSC-2020-0262-PCO-EI should be vacated and reissued as proposed agency action (PAA). (Stiller, Crawford)

Staff Analysis: The authority for a party to request reconsideration is found in two Commission rules: Rule 25-22.0376(1), F.A.C., regarding reconsideration of non-final orders, and Rule 25-22.060, F.A.C., regarding reconsideration of final orders. OPC filed the Motion alternatively under both rules, contending that "the true nature of the order is unknown." However, the standard for review under either rule is the same.

Standard of Review

The appropriate standard of review in a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Order. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that the Commission has already considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3d DCA 1959), citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958).

OPC Motion for Reconsideration

OPC's argument for reconsideration begins with the premise that the Order "is the functional and legal equivalent of a PAA Order." Motion at 3. OPC contends that because it bears the hallmarks of a PAA, yet was issued as a procedural order, the Order improperly provided no opportunity for substantially affected persons to request an evidentiary hearing. As the basis for reconsideration on this issue, OPC asserts that the Commission overlooked the point of law in Rule 25-22.029, F.A.C., regarding when it is appropriate to enter a PAA Order and, specifically, the requirement to afford persons the right to request an evidentiary hearing when a decision may affect their substantial interests.

OPC argues that the establishment of the regulatory asset affects the substantial interests of Citizens because it provides for the immediate accounting treatment of certain expenses and the related accrual of carrying costs. OPC argues that it should have the present opportunity to challenge the establishment of this accounting treatment and the definition of its terms. To the extent expenses are deemed eligible and are allowed to be placed in the regulatory asset consistent with this initial approval, OPC argues that applicable accounting standards makes future recovery "probable," which is further defined as "likely to occur," and such treatment underscores the impact to substantial interests realized by this initial approval.

OPC argues that although these interests are immediately affected and Citizens have numerous facts and legal arguments to present,[3] the establishment of the regulatory asset essentially became dispositive and final upon entry of the Order with no prior hearing and no right to request one to present these matters and create a record for full consideration. Motion at 4. OPC notes that the Commission docket was closed upon entry of the Order. OPC further notes the notice of rights attached to the Order advised of only appellate review of final agency action, and not the right to file a petition and request an evidentiary hearing.

Gulf Response to Motion

Gulf first argues that the OPC Motion improperly presents arguments on the PAA issue for the first time in seeking reconsideration. Gulf argues that Commission precedent expressly disallows this practice and that the Motion should be summarily denied on this basis.

Gulf next argues that OPC has not demonstrated that it is "adversely affected" as is required under Rule 25-22.0376, F.A.C., for a party to request reconsideration. Gulf takes the position that the following language in the Order belies any claim that OPC is immediately affected:

> This approval to establish a regulatory asset, for accounting purposes, does not limit our 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. A substantially affected party's point of entry to request an evidentiary hearing before this Commission will be afforded in such a future proceeding addressing cost recovery of the regulatory asset.

Order at 2. Gulf also asserts that the Commission is not bound by the accounting principles upon which OPC relies to makes its arguments regarding recovery of the regulatory asset being "probable" or "likely to occur." Finally, Gulf argues that the regulatory asset will have no rate impact until reviewed and approved by the Commission in a rate proceeding, and that OPC will be afforded its full opportunity to examine the regulatory asset costs during that proceeding.

Analysis

Gulf is correct that the specific issue of the Order being treated as PAA or procedural was not raised by OPC in its oral comments to the Commission at the July 7, 2020, Agenda Conference. However, the very factors that are pivotal in making such a determination were the subject of robust discussion among the Commissioners and counsel. For example, counsel for OPC noted in her opening remarks that establishment of a regulatory asset "virtually assures recovery from customers."[4] One commissioner asked staff about "the cost impacts from any action today that would arise to the customer."[5] Another commissioner followed with a question to staff about whether the requested approval "is not really a preliminary step."[6] Staff responded, as OPC has quoted in its Motion, that the requested Commission action was "closer to approval than disapproval, [in] the creation of a regulatory asset, but by no means constitutes a guarantee [of

[3] OPC sets forth these preliminary arguments in the Petition.
[4] TR. at 7, lns. 23-24.
[5] *Id.* at 24, lns. 20-21.
[6] *Id.* at 26, ln. 12.

recovery]."[7] While it was not couched in literal terms of a procedural versus PAA order, this discussion makes clear to staff that the appropriate classification of the Order was discussed at the Agenda Conference, and is not being raised for the first time in the Motion.

The purpose of reconsideration is to bring to the Commission's attention a specific point that, had it been considered when presented in the first instance, would have required a different decision. *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817, 819 (Fla. 1st DCA 1958) (Wigginton, J., concurring); *Sherwood v. State*, 111 So. 2d 96 (Fla. 3rd DCA 1959). Because the Commission's discussion of and questions regarding the nature of approval of a regulatory asset focused generally on whether that approval was preliminary, staff believes that the kind of order issuing from the Commission's decision might have been different, if the specific PAA vs. procedural issue had been squarely presented.

Staff does not read the holdings in the orders cited by Gulf for the blanket proposition that an issue not specifically raised by a party may never be raised on reconsideration. The most recent order cited by Gulf involves an unusual situation where a non-party filed an untimely motion to intervene and for reconsideration of a Commission order dismissing a request to intervene filed by a completely unrelated entity.[8] The Commission summarily denied the motion on the ground that the non-party's attempt to cure the deficiencies in another entity's pleading by injecting entirely new issues into the proceeding was beyond the scope of reconsideration.[9] The relevant holding in the second most recent of those orders is very similar and summed up in the following sentence: "A motion for reconsideration is not the appropriate vehicle for bolstering allegations and making new arguments to cure an earlier, deficient pleading."[10] The two other orders cited by Gulf are slight fact variations of the same theme with the same outcome.

OPC has not been a party or putative party to a proceeding, unsuccessfully filed a pleading or motion, and then sought reconsideration by injecting a new issue, all of which are common facts in the orders cited by Gulf. The general principle in those orders – that reconsideration may not be used as a vehicle to resurrect or save a prior pleading by raising an entirely new issue – remains accurate but does not preclude the Commission from considering OPC's Motion. As discussed more fully above, the transcript demonstrates that Commissioners and counsel discussed the relevant facts but overlooked the threshold point of procedural law.

That question of whether the Order is PAA or procedural depends on the nature of the action taken by the Commission. "[A]n agency must grant affected parties a clear point of entry, within a specified time after some recognizable event in investigatory or other free-form proceedings, to formal or informal proceedings under Section 120.57." *Capelletti Bros., Inc. v. Dept. of Transp.*, 362 So.2d 346, 348 (Fla. 1st DCA 1978). This point of entry is case and agency specific. "An agency normally has some discretion in determining at what point 'the necessary or convenient

[7] *Id.* at 26, lns. 18-20.
[8] Order PSC-2017-0430-FOF-DI, issued November 9, 2017, in Docket No. 20170122-EI, *In re: Petition for exemption under Rule 25-22.082(18), F.A.C., from issuing a request for proposals (RFPs) for modernization of the Lauderdale Plant, by Florida Power & Light Company.*
[9] *Id.*
[10] Order PSC-2011-0097-FOF-WS, issued February 2, 2011, in Docket No. 100318-WS, *In re: Petition for order to show cause against Service Management Systems, Inc. in Brevard County for failure to properly operate and manage water and wastewater system.*

procedures, unknown to the APA, by which an agency transacts its day-to-day business' crystallize into 'agency action' and so necessitate the offering of a point of entry." *Global Tel Link Corp. v. Dept. of Corrections*, 2013 WL 5955693, *13 (DOAH Recommended Order Nov. 1, 2013) (citing and quoting *Capeletti Bros.*, 362 So. 2d at 348)).

When previously presented with petitions seeking approval of regulatory assets, the Commission has addressed them by entering PAA orders.[11] These prior regulatory asset orders are similar in many respects to the Order. All of them contain an express reservation of the right for future Commission review of the reasonableness of expenses similar to the one included in the Order.[12] While those prior orders were considered on more detailed requests than the one made in the limited petition that commenced this docket, the underlying request to establish a regulatory asset is the same and staff believes the precedent of treating approval as PAA applies equally.

The phrase in the Order here under reconsideration that expressly allows a future challenge by a substantially affected person ("A party's point of entry to request an evidentiary hearing before this Commission will be afforded in such a future proceeding addressing cost recovery of the regulatory asset") is substantively different from prior Commission orders on regulatory assets ("Approval of a regulatory asset does not prohibit the Commission from reviewing the amount for reasonableness in future rate proceedings"). Gulf contends that OPC is not adversely affected because of this phrase and because the Commission is expressly allowing substantially affected persons to challenge any future cost recovery request made by Gulf associated with the regulatory asset. Gulf argues that OPC is, therefore, ineligible to file for reconsideration.[13] However, litigation in the future over amounts, recovery method, or the scope, period, types, or subsets of allowable expenses does not address the appropriateness of the creation of the regulatory asset in the first instance, which is the subject of this proceeding.

For example, in *General Development Utilities, Inc. v. Department of Environmental Regulation*, the First District considered whether a letter that informed its recipient of an agency "decision" to establish a zero waste load allocation provided a point of entry even though the letter stated that a challenge could be brought to this issue in a later permit proceeding. 417 So. 2d 1068 (Fla. 1st DCA 1982). The court wrote as follows:

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[11] *See, e.g.,* Order PSC-13-0381-PAA-EI, issued August 15, 2013, in Docket No. 130091-EI, *In re: Petition of Progress Energy Florida, Inc. to approve establishment of a regulatory asset and associated three-year amortization schedule for costs associated with PEFs previously approved thermal discharge compliance project*; Order PSC-12-0600-PAA-EI, issued November 5, 2012, in Docket No. 120227-EI, *In re: Petition for approval of recognition of a regulatory asset and associated amortization schedule by Florida Public Utilities Company*; *and* Order PSC-08-1616-PAA-GU, issued November 23, 2008, in Docket No. 080152, *In Re: Petition for Approval of Recognition of a Regulatory Asset under Provisions of Statement of Financial Accounting Standard (SFAS) No. 71, by Florida City Gas.*

[12] Order PSC-13-0381-PAA-EI ("The approval to record the regulatory asset for accounting purposes does not limit our ability to review the amounts for reasonableness in the ECRC."); Order PSC-12-0600-PAA-EI ("Further, we find that the approval to record the regulatory asset for accounting purposes does not limit our ability to review the amounts for reasonableness in future proceedings in which the regulatory asset is included."); Order PSC-08-1616-PAA-GU ("Finally, we find that the approval to record the regulatory asset for accounting purposes does not limit the our ability to review the amount for reasonableness in future rate proceedings.").

[13] "Any party who is adversely affected by a non-final order may seek reconsideration . . . ." Rule 25-22.0376, F.A.C.

> We pointed out in *Capeletti Brothers, Inc. v. State Department of Transportation*, 362 So. 2d 346, 348, (Fla. 1st DCA 1978) that "an agency must grant affected parties a clear point of entry, within a specified time after some recognizable event in investigatory or other free-form proceedings, to formal or informal proceedings under section 120.57." Now we find it necessary to add a postscript: simply providing a point of entry is not enough if the point of entry is so remote from the agency action as to be ineffectual as a vehicle for affording a party whose substantial interests are or will be affected by agency action a prompt opportunity to challenge disputed issues of material fact in a 120.57 hearing. The opportunity afforded GDU in this instance does not meet this standard.

Id. at 1070. Because the letter stated that "the Department has conducted water quality studies and adopted the results of those studies," the court found the agency had "taken a position, reduced it to writing, and disseminated it to the affected party who must now submit a proposed schedule for compliance, or hazard nonrenewal of its permits." *Id.* Staff finds the facts of this case and its holding persuasive in recommending that the Commission not accept Gulf's argument.

Conclusion

Staff recommends that OPC's Motion for Reconsideration should be granted because it identifies a point of law the Commission overlooked or failed to consider by issuing Order No. PSC-2020-0262-PCO-EI as a procedural, rather than PAA, order. Staff agrees that the decision, to allow Gulf to create and book certain costs in a regulatory asset for the purposes of potential future cost recovery, is a decision which affects substantial interests pursuant to Section 120.569, F.S. The ability to participate in a future cost recovery proceeding for costs booked in the regulatory asset would not afford an adequate point of entry to contest the appropriateness of the regulatory asset itself.

As relief for the alleged error in overlooking the PAA requirements in Rule 25-22.029, F.A.C., OPC requests that the Commission "verify the proposed agency action nature of [the] Order." Motion at 10. Staff recommends that the Commission afford this relief by vacating the Order and reentering it as PAA. *See Sclease v. Constr. Indus. Licensing Bd.*, 881 So. 2d 98, 98 (Fla. 1st DCA 2004) ("an agency has authority to vacate and reenter otherwise final orders in order to avoid due process problems"). Staff believes that vacating and reentering the Order as PAA will require only two, non-substantive modifications to the Order. First, the appropriate PAA Notice of Further Proceedings or Judicial Review should be substituted for the Notice applicable to procedural orders that was attached to the Order. Second, the phrase on page 2 regarding the ability for substantially affected persons to bring a later administrative challenge[14] should be omitted.

If the Commission vacates the Order, the OPC's Alternative Petition for an Evidentiary Hearing will be rendered moot. *See Curless v. Clay Cty.*, 395 So. 2d 255, 258 (Fla. 1st DCA 1981)

[14] "A substantially affected party's point of entry to request an evidentiary hearing before this Commission will be afforded in such a future proceeding addressing cost recovery of the regulatory asset." Order at 2.

(challenge to government action rendered moot when that action is repealed or replaced). The Petition will not serve as a placeholder challenge to a not-yet-issued PAA. *See S. Fla. Cargo Carriers Ass'n, Inc. v. State Bd. of Pilot Comm'rs*, 627 So. 2d 597, 599 (Fla. 1st DCA 1993) (a petition filed prior to the agency formulating preliminary agency action and giving notice of the point of entry is premature).

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, a Consummating Order should be issued and the docket should remain open for the purpose of filing monthly status reports. (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, a Consummating Order should be issued. The docket should remain open for the Company to file its monthly reports.

Item 5

State of Florida

Public Service Commission

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

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

DATE: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

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

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: 10/06/20 – Regular Agenda – Proposed Agency Action – Reconsideration requested on the Commission's own motion – Participation is at the Commission's discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Polmann

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Please place this recommendation to follow the recommendation in Docket No. 20200151-EI on the Agenda.

Case Background

On July 2, 2020, Peoples Gas System (Peoples or Company) filed a petition (Petition) for approval to track, record as a regulatory asset, and defer incremental costs resulting from the COVID-19 pandemic. 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. The Office of Public Counsel (OPC) filed a notice of intervention, which was acknowledged by Order PSC-2020-0229-PCO-GU on July 9, 2020.

Staff filed its recommendation regarding Peoples' Petition on August 6, 2020, recommending approval of the requested regulatory asset and noting that the approval would issue as a procedural order. The Commission considered the Petition at its August 19, 2020, Agenda Conference and approved staff's recommendation. The Commission memorialized its approval in Order PSC-2020-0305-PCO-GU (Order), entered on September 4, 2020, which allowed Peoples to establish a regulatory asset to record costs incurred due to COVID-19. The Order was entered as a procedural order, not as proposed agency action (PAA), and contained the following language:

> A substantially affected party's point of entry to request an evidentiary hearing before this Commission will be afforded in such a future proceeding addressing cost recovery of the regulatory asset.

Order at 2.

The Notice of Further Proceedings or Judicial Review attached to the Order did not provide the opportunity for substantially affected persons to request a hearing. It did advise parties who are adversely affected by the Order of the opportunity to request reconsideration under Rule 25-22.0376, Florida Administrative Code (F.A.C.). No reconsideration was timely requested with respect to the Order issued in this docket.

The action taken with respect to the regulatory asset requested in this docket was substantially identical to the action taken with respect to a similar request for a COVID-19 related regulatory asset by Gulf Power Company (Gulf) in Docket No. 20200151-EI, *In re: Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Gulf Power Company*. OPC timely filed a motion for reconsideration and appeal with respect to the procedural order that issued in the Gulf regulatory asset docket.[1] Staff's recommendation regarding OPC's motion for reconsideration in the Gulf docket is also scheduled to be heard at the October 6, 2020 Agenda Conference. Consistent with staff's recommendation in Docket No. 20200151-EI to grant reconsideration and reissue Order No. PSC-2020-0262-PCO-EI as a PAA order, staff is recommending that the Commission reconsider on its own motion the issuance of Order No. 2020-0305-PCO-GU in this docket, vacate the procedural Order, and reissue the Order as proposed agency action.

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

[1] Order No. PSC-2020-0262-PCO-EI (Order), issued July 27, 2020, in Docket No. 20200151-EI, *In re: Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Gulf Power Company.*

Discussion of Issues

Issue 1: Should the Commission reconsider, on its own motion, the issuance of Order No. PSC-2020-0305-PCO-GU as a procedural order?

Recommendation: Yes. The Order overlooked a point of law affecting notice and the point of entry for a substantially affected person to challenge the establishment of a regulatory asset. On its own motion, the Commission should vacate Order No. PSC-2020-0229-PCO-GU and reissue it as proposed agency action (PAA). (Stiller, Crawford)

Staff Analysis:

Standard of Review

The appropriate standard of review for reconsideration is whether a point of fact or law was overlooked or that the Commission failed to consider in rendering its Order. *Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance,* 394 So. 2d 161 (Fla. 1st DCA 1981).

The doctrine of administrative finality provides that there must be a terminal point in every proceeding both administrative and judicial, at which the parties and the public may rely on a decision as being final and dispositive of the rights and issues involved therein. A decision, once final, may only be modified if there is a significant change in circumstances or if modification is required in the public interest. *Florida Power Corp. v. Garcia,* 780 So. 2d 34 (Fla. 2001); *Peoples Gas System, Inc. v. Mason*, 187 So. 2d 335 (Fla. 1966).

However, the Florida Supreme Court has also found that the Commission has the inherent power and the statutory duty to correct errors in its orders to protect the interests of the public. *Reedy Creek Utilities Co. v. FPSC,* 418 So. 2d 249 (Fla. 1982). For example, in *Reedy Creek*, the Court affirmed that the Commission correctly amended an erroneous order, two and half months after its issuance, where the appellant did not change its position during the lapse of time between orders, and suffered no prejudice as a consequence. *Reedy Creek*, 418 So.2d at 253; *see also Peoples Gas System, Inc. v. Mason*, 187 So. 2d 335 (Fla. 1966) ("We have no doubt that such powers [to regulate public utilities] may, in proper instances, be exercised on the initiative of the commission.").

Analysis

The question of whether the Order is PAA or procedural depends on the nature of the action taken by the Commission. "[A]n agency must grant affected parties a clear point of entry, within a specified time after some recognizable event in investigatory or other free-form proceedings, to formal or informal proceedings under Section 120.57." *Capelletti Bros., Inc. v. Dept. of Transp.*, 362 So.2d 346, 348 (Fla. 1st DCA 1978). This point of entry is case and agency specific. "An agency normally has some discretion in determining at what point 'the necessary or convenient procedures, unknown to the APA, by which an agency transacts its day-to-day business' crystallize into 'agency action' and so necessitate the offering of a point of entry." *Global Tel*

Link Corp. v. Dept. of Corrections, 2013 WL 5955693, *13 (DOAH Recommended Order Nov. 1, 2013) (citing and quoting *Capeletti Bros.*, 362 So. 2d at 348)).

When previously presented with petitions seeking approval of regulatory assets, the Commission has addressed them by entering PAA orders.[2] These prior regulatory asset orders are similar in many respects to the Order. All of them contain an express reservation of the right for future Commission review of the reasonableness of expenses similar to the one included in the Order.[3] While those prior orders were considered on more detailed requests than the one made in the limited petition that commenced this docket, the underlying request to establish a regulatory asset is the same and staff believes the precedent of treating approval as PAA applies equally.

The phrase in the Order here for which staff urges reconsideration expressly allows a future challenge by a substantially affected person ("A party's point of entry to request an evidentiary hearing before this Commission will be afforded in such a future proceeding addressing cost recovery of the regulatory asset") and is substantively different from prior Commission orders on regulatory assets ("Approval of a regulatory asset does not prohibit the Commission from reviewing the amount for reasonableness in future rate proceedings"). In previous PAA orders establishing regulatory assets, parties were not foreclosed from challenging the creation of the regulatory asset itself, as was the case in this Order and the Gulf regulatory asset in Docket No. 20200151-EI.

Importantly, litigation in the future over amounts, recovery method, or the scope, period, types, or subsets of allowable expenses does not address the appropriateness of the creation of the regulatory asset in the first instance, which is the subject of this proceeding. For example, in *General Development Utilities, Inc. v. Department of Environmental Regulation*, the First District considered whether a letter that informed its recipient of an agency "decision" to establish a zero waste load allocation provided a point of entry even though the letter stated that a challenge could be brought to this issue in a later permit proceeding. 417 So. 2d 1068 (Fla. 1st DCA 1982). The court wrote as follows:

> We pointed out in *Capeletti Brothers, Inc. v. State Department of Transportation*, 362 So. 2d 346, 348, (Fla. 1st DCA 1978) that "an agency must grant affected parties a clear point of entry, within a specified time after some recognizable event in investigatory or other free-form proceedings, to formal or informal

[2] *See, e.g.*, Order PSC-13-0381-PAA-EI, issued August 15, 2013, in Docket No. 130091-EI, *In re: Petition of Progress Energy Florida, Inc. to approve establishment of a regulatory asset and associated three-year amortization schedule for costs associated with PEFs previously approved thermal discharge compliance project*; Order PSC-12-0600-PAA-EI, issued November 5, 2012, in Docket No. 120227-EI, *In re: Petition for approval of recognition of a regulatory asset and associated amortization schedule by Florida Public Utilities Company*; *and* Order PSC-08-1616-PAA-GU, issued November 23, 2008, in Docket No. 080152, *In Re: Petition for Approval of Recognition of a Regulatory Asset under Provisions of Statement of Financial Accounting Standard (SFAS) No. 71, by Florida City Gas.*

[3] Order PSC-13-0381-PAA-EI ("The approval to record the regulatory asset for accounting purposes does not limit our ability to review the amounts for reasonableness in the ECRC."); Order PSC-12-0600-PAA-EI ("Further, we find that the approval to record the regulatory asset for accounting purposes does not limit our ability to review the amounts for reasonableness in future proceedings in which the regulatory asset is included."); Order PSC-08-1616-PAA-GU ("Finally, we find that the approval to record the regulatory asset for accounting purposes does not limit the our ability to review the amount for reasonableness in future rate proceedings.").

> proceedings under section 120.57." Now we find it necessary to add a postscript: simply providing a point of entry is not enough if the point of entry is so remote from the agency action as to be ineffectual as a vehicle for affording a party whose substantial interests are or will be affected by agency action a prompt opportunity to challenge disputed issues of material fact in a 120.57 hearing. The opportunity afforded GDU in this instance does not meet this standard.

Id. at 1070. Because the letter stated that "the Department has conducted water quality studies and adopted the results of those studies," the court found the agency had "taken a position, reduced it to writing, and disseminated it to the affected party who must now submit a proposed schedule for compliance, or hazard nonrenewal of its permits." *Id.*

Conclusion

As discussed in staff's recommendation in Docket No. 20200151-EI, OPC persuasively argues that the establishment of a regulatory asset may affect a person's substantial interests because it provides for the immediate accounting treatment of certain expenses and the related accrual of carrying costs. A person adversely affected by such a decision should have the present opportunity to challenge the establishment of this accounting treatment and the definition of its terms. Being able to address the subsequent cost recovery requested pursuant to an established regulatory asset does not afford an adequate opportunity to address the appropriateness of the regulatory asset itself. By issuing as a procedural, rather than PAA, order, the Commission inadvertently overlooked a point of law in making its decision: to afford an opportunity for an adversely affected person the opportunity to request an administrative hearing regarding the creation of the Peoples' regulatory asset, consistent with the requirements of Section 120.569, F.S., *Decisions which affect substantial interests.* Accordingly, staff recommends that the Commission should reconsider, on its own motion, the issuance of Order No. PSC-2020-0305-PCO-GU as a procedural order.

Staff recommends that appropriate action the Commission should take on reconsideration is that the Commission vacate the procedural Order and reissue it as PAA. *See Sclease v. Constr. Indus. Licensing Bd.*, 881 So. 2d 98, 98 (Fla. 1st DCA 2004) ("an agency has authority to vacate and reenter otherwise final orders in order to avoid due process problems"). Staff believes that vacating and reentering the Order as PAA will require only two, non-substantive modifications to the Order. First, the appropriate PAA Notice of Further Proceedings or Judicial Review should be substituted for the Notice applicable to procedural orders that was attached to the Order. Second, the phrase on page 2 regarding the ability for substantially affected persons to bring a later administrative challenge[4] should be omitted.

[4] "A substantially affected party's point of entry to request an evidentiary hearing before this Commission will be afforded in such a future proceeding addressing cost recovery of the regulatory asset." Order at 2.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a person whose substantial interests are affected within 21 days of the issuance of the Order, a Consummating Order should be issued and the docket should remain open for the purpose of filing monthly status reports. (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, a Consummating Order should be issued. The docket should remain open for the Company to file its monthly reports.

Item 6

State of Florida

Public Service Commission

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

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

DATE: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

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

RE: Docket No. 20200194-PU – Petition for approval of regulatory assets to record costs incurred due to COVID-19, by Florida Public Utilities Company, Florida Public Utilities Company - Indiantown Division, Florida Public Utilities Company - Fort Meade, Florida Division of Chesapeake Utilities Corporation.

AGENDA: 10/06/2020 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED:

PREHEARING OFFICER: Fay

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Please place this item on the Agenda after the items for Docket Nos. 20200151-EI and 20200178-GU, but before the item for Docket No. 20200189-WS.

Case Background

On August 11, 2020, Florida Public Utilities Company, Florida Public Utilities Company – Indiantown Division, Florida Public Utilities Company – Fort Meade, and Florida Public Utilities Company – Electric Division (jointly, FPUC), as well as the Florida Division of Chesapeake Utilities Corporation (CFG) filed a petition for approval to establish regulatory assets for each entity listed above to record costs incurred due to Coronavirus Disease 2019 (COVID-19).[1] The Companies have requested deferral of incremental bad debt expense,

[1] All FPUC divisions and CFG are collectively referred to as "Companies" within this recommendation.

incremental operating expenses, and safety-related costs attributable to COVID-19. Given the ongoing nature of the COVID-19 pandemic, the total extent of the Companies' COVID-19-related costs is not known at this time. Commission consideration of the potential recovery of the regulatory assets will be addressed in a future proceeding.

This recommendation addresses the creation of regulatory assets for each entity listed above 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 the Companies' request for approval to establish regulatory assets for recording the deferral of certain costs attributable to COVID-19?

Recommendation: The Commission should approve the Companies' request to establish regulatory assets for the accounting purpose of recording the deferral of costs associated with (1) incremental bad debt expense incurred due to COVID-19, and (2) safety-related costs incurred due to COVID-19; however, the Commission should expressly limit the inclusion of safety-related costs to those expenses that are directly and solely attributable to the health and safety of the Companies' employees and customers during the COVID-19 pandemic. Additionally, the Commission should deny the Companies' request to establish regulatory assets for recording the deferral of lost revenue. The approval to establish the regulatory assets, for accounting purposes, does not limit the Commission's ability to review the amounts, recovery method, scope of financial impact, recovery period, specific types or subsets of proposed costs within an approved category of costs, and other related matters for reasonableness in a future proceeding in which the regulatory assets are included.

The Companies should be required to track any assistance or benefits received in connection with COVID-19, regardless of form or source, 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 as a result of the pandemic. 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, FPUC and CFG should be prepared to explain what actions and efforts they have undertaken to reduce or minimize these costs and to maximize the receipt of any available COVID-19 assistance or benefits. Finally, the Companies should be required to file monthly reports identifying the amounts of the costs incurred, any assistance or benefits received, and any cost savings realized that have been recorded in the regulatory assets. The first set of COVID-19 regulatory asset reports should be filed on December 1, 2020, and every month thereafter until the Companies present the regulatory assets 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 August 11, 2020, the Companies filed a joint petition for approval to establish regulatory assets for each entity included in the joint petition to defer certain costs incurred due to COVID-19. Specifically, the Companies have requested approval to record and defer the following categories of costs in the regulatory assets: incremental bad debt expense, lost revenue, specifically the type attributable to the suspension of charging late fees, and safety-related costs, all of which are claimed to be attributable to the COVID-19 pandemic.

The Companies state they have seen an increase in customer account arrearages as a result of the COVID-19 pandemic. As of June 2020, aged accounts receivable of 61 days or more are approximately 243 percent, or $1.2 million higher than normal levels. The Companies anticipate that the COVID-19-related bad debt expense will continue to increase as the levels of write-offs for uncollectible accounts increase. In addition to the increase in bad debt expense, the Companies expect to experience a loss of revenue attributable to the suspension of customer disconnects and the charging of late fees that would have coincided with those disconnections.

FPUC and CFG state they have incurred additional costs associated with the actions to preserve the health and safety of its employees, contractors, and customers. The Companies' actions include, but are not limited to, the following types or subsets of safety-related costs: COVID-19 testing for at-risk employees, the purchase of personal protective equipment, the purchase of other materials and supplies to protect employees' and customers' health and safety, the purchase of additional cleaning and sanitation supplies, as well as incurring other miscellaneous safety-related expenses. Additionally, the Companies state that as they provide essential services, they have found it necessary to compensate employees that are forced into harm's way to perform their jobs. As such, FPUC and CFG have incurred additional expense for hazard pay to compensate these employees.

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, staff believes that it is not possible to fully anticipate the scope or timeframe of the financial impact on FPUC and CFG and their customers related to COVID-19. Because of the unique circumstances resulting from the global pandemic, staff recommends that the Commission approve the Companies' request to establish regulatory assets for each entity included in the joint petition for recording costs incurred due to COVID-19 and defer Commission consideration of the potential recovery of the amounts recorded in the regulatory assets to a future proceeding. For the same reasons, it is too early to determine if the total amount and/or all types or subsets of proposed costs within an approved category of costs will be permissible for recovery Therefore, it is staff's recommendation the Commission approve the recording of incremental bad debt expense associated with COVID-19, and safety related costs that are limited to those expenses that are directly and solely attributable to the health and safety of the Companies' employees and its customers during the COVID-19 pandemic. By way of example, staff believes that safety-related costs could consist of expenditures associated with testing and monitoring employees, purchase of personal protective equipment, and incremental amounts related to sanitization efforts and other safety protocols.

On the other hand, staff recommends that the category of lost revenue is not an appropriate category to be included within a regulatory asset. This is because an inherent risk for any company is the loss of revenue due to reasons such as economic downturns, competition, conservation, alternative suppliers, and other events. The return on equity includes a component to compensate equity investors for business risks such as lost revenue. It would be unreasonable for customers to potentially be charged extra to make a company whole for lost revenue. As such, staff recommends that lost revenue not be permissible for inclusion in the regulatory assets.

The approval to establish the regulatory assets, for accounting purposes, does not limit the Commission's ability to review the amounts, recovery method, scope of financial impact, recovery period, specific types or subsets of proposed costs within an approved category of costs, and other related matters for reasonableness in a future proceeding in which the regulatory assets are included.

In addition, staff recommends that FPUC and CFG be required to track any assistance or benefits received by the Companies in connection with COVID-19, regardless of form or source, 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 as a result of the pandemic. 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, the Companies should be prepared to explain what actions and efforts they have undertaken to reduce or minimize these costs and to maximize the receipt of any available COVID-19 assistance or benefits. Finally, the Companies should be required to file monthly reports identifying the amounts of the costs incurred, any assistance or benefits received, and any cost savings realized that have been recorded in the regulatory assets. The first set of COVID-19 regulatory asset reports should be filed on December 1, 2020, and every month thereafter until the Companies present the regulatory assets for Commission consideration.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a substantially affected person within 21 days of the issuance of the order, a consummating order should be issued. If the Commission approves the staff recommendation in Issue 1, the docket should remain open for the filing of the required monthly reports. (Stiller)

Staff Analysis: If no protest is filed by a substantially affected person within 21 days of the issuance of the order, a consummating order should be issued. If the Commission approves the staff recommendation in Issue 1, the docket should remain open for the filing of the required monthly reports.

Item 7

FILED 9/24/2020
DOCUMENT NO. 09218-2020
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: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (D. Andrews, Norris) BF ALM
Office of the General Counsel (Trierweiler, Crawford, Stiller) JSC

RE: Docket No. 20200189-WS – Petition for approval of a regulatory asset to record costs incurred due to COVID-19, by Utilities, Inc. of Florida.

AGENDA: 10/06/20 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Please place this item on the Agenda after the items for Docket Nos. 20200151-EI, 20200178-GU, and 20200194-PU.

Case Background

On August 3, 2020, Utilities Inc. of Florida (UIF or Utility) filed a petition for approval to establish a regulatory asset to record costs incurred due to Coronavirus Disease 2019 (COVID-19). UIF has requested deferral of incremental bad debt expense, assorted operating expenses, and safety-related costs attributable to COVID-19. Given the ongoing nature of the COVID-19 pandemic, the total extent of the Utility's 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 367.011, 367.081, and 367.121, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve UIF's request for approval to establish a regulatory asset for recording the deferral of certain costs attributable to COVID-19?

Recommendation: The Commission should approve UIF's request to establish a regulatory asset for the accounting purpose of recording the deferral of costs associated with (1) incremental bad debt expense incurred due to COVID-19, and (2) safety-related costs incurred due to COVID-19; however, the Commission should expressly limit the inclusion of safety-related costs to those expenses that are directly and solely attributable to the health and safety of UIF's employees and its customers during the COVID-19 pandemic. Additionally, the Commission should deny the deferral of lost revenue for inclusion in the regulatory asset. The approval to establish a regulatory asset, for accounting purposes, does not limit the Commission's ability to review the amounts, recovery method, scope of financial impact, recovery period, specific types or subsets of proposed costs within an approved category of costs, and other related matters for reasonableness in a future proceeding in which the regulatory asset is included.

UIF should be required to track any assistance or benefits received by the Utility in connection with COVID-19, regardless of form or source, 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 as a result of the pandemic. 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, UIF 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, UIF should be required to file monthly reports identifying the amounts of the costs incurred, any assistance or benefits received, and any cost savings realized that have been recorded in the regulatory asset. The first COVID-19 regulatory asset report should be filed on December 1, 2020, and every month thereafter until the Utility presents the regulatory asset for Commission consideration. (D. Andrews)

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 August 3, 2020, UIF filed a petition for approval to establish a regulatory asset to defer certain costs incurred due to COVID-19. UIF has requested approval to record and defer categories of costs in the regulatory asset including incremental bad debt expense and safety-related costs attributable to COVID-19. UIF has also requested approval to record a wide range of other costs, all of which are claimed to be attributable to the COVID-19 pandemic.

UIF states that it receives approximately $39,045 less in monthly customer payments due to foregone late payment fees and customer reconnection fees. UIF anticipates that COVID-related bad debt expense will continue to increase due to higher levels of write-offs for uncollectable

accounts. UIF estimates that its bad debt expense attributable to COVID-19 will continue to increase over the coming months.

The Utility states that it has incurred additional costs associated with actions to preserve the health and safety of its employees, contractors, and customers. UIF states its actions have included the following types or subsets of safety-related costs: monitoring the health of employees and contractors at its facilities, testing for COVID-19 and antibodies, modifying facilities to ensure clean access, obtaining personal protective equipment, and adding signage on buildings to encourage COVID-related safety protocols. UIF also suggests it be allowed to record costs associated with servers, software, computer equipment, and communications equipment.

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, staff believes that it is not possible to fully anticipate the scope or timeframe of the financial impact on UIF and its customers related to COVID-19. Because of the unique circumstances resulting from the global pandemic, staff recommends that the Commission approve the Utility's 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 or subsets of proposed costs within an approved category of costs will be permissible for recovery. Therefore, it is staff's recommendation the Commission approve the recording of incremental bad debt expense associated with COVID-19, and safety related costs that are limited to those expenses that are directly and solely attributable to the health and safety of UIF's employees and its customers during the COVID-19 pandemic. By way of example, staff believes that safety-related costs could consist of expenditures associated with testing and monitoring employees, purchase of personal protective equipment, and incremental amounts related to sanitization efforts and other safety protocols.

On the other hand, staff recommends that the category of lost revenue is not an appropriate category to be included within a regulatory asset. This is because an inherent risk for any company is the loss of revenue due to reasons such as economic downturns, competition, conservation, alternative suppliers, and other events. The return on equity includes a component to compensate equity investors for business risks such as lost revenue. It would be unreasonable for customers to potentially be charged extra to make a company whole for lost revenue. As such, staff recommends that lost revenue not be permissible for inclusion in the regulatory asset. The approval to establish the regulatory asset, for accounting purposes, does not limit the Commission's ability to review the amounts, recovery method, scope of financial impact, recovery period, specific types or subsets of proposed costs within an approved category of costs, and other related matters for reasonableness in a future proceeding in which the regulatory asset is included.

In addition, staff recommends that UIF be required to track any assistance or benefits received by the Utility in connection with COVID-19, regardless of form or source, that would offset any COVID-19-related expenses. This would include, but is not limited to, any costs savings directly attributable to the suspension of disconnections or other activities as a result of the pandemic. 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, the Utility 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, the Utility should be required to file monthly reports identifying the amounts of the costs incurred, any assistance or benefits received, and any cost savings realized that have been recorded in the regulatory asset. The first COVID-19 regulatory asset report should be filed on December 1, 2020, and every month thereafter until UIF presents the regulatory asset for Commission consideration.

Issue 2: Should this docket be closed?

Recommendation: If no protest is filed by a substantially affected person within 21 days of the issuance of the order, a consummating order should be issued. If the Commission approves the staff recommendation in Issue 1, the docket should remain open for the filing of the required monthly reports. (Trierweiler)

Staff Analysis: If no protest is filed by a substantially affected person within 21 days of the issuance of the order, a consummating order should be issued. If the Commission approves the staff recommendation in Issue 1, the docket should remain open for the filing of the required monthly reports.

Item 8

State of Florida

Public Service Commission

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

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

DATE: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Eichler, Breman, Clark, Crawford, Hinton) CH
Division of Accounting and Finance (Fletcher, Maurey, Mouring) ALM
Division of Economics (Coston, Galloway) JH
Office of the General Counsel (Stiller, Crawford) JSC

RE: Docket No. 20200092-EI – Storm protection plan cost recovery clause.

AGENDA: 09/24/20 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On September 1, 2020, the Florida Public Service Commission (Commission) conducted an administrative hearing to consider two Motions for Approval of Settlement Agreement. Both Motions were filed by Duke Energy Florida, LLC (Duke or Company) in Docket No. 20200069-EI (Storm Protection Plan or SPP) and Docket No. 20200092-EI (Storm Protection Plan Cost Recovery Clause or SPPCRC). The first Motion was filed July 17, 2020, and requested approval of the "2020 SPP/SPPCRC Agreement" (July Agreement). The second Motion was filed August

10, 2020, and requested approval of the "SPPCRC Stipulation and Settlement Agreement" (August Agreement), attached hereto.[1]

The signatories to both Agreements are Duke, the Office of Public Counsel (OPC), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate (PCS). The Florida Industrial Power Users Group (FIPUG) is a party to both dockets but did not sign and takes no position regarding either Agreement. Walmart, Inc. (Walmart) is a party to both dockets, takes no position regarding the July Agreement, and objects to the August Agreement.

The July Agreement contains a series of stipulations regarding the reasonable costs Duke should be permitted to recover through the SPPCRC in 2021. The Commission approved the July Agreement at the conclusion of the September 1, 2020 hearing, without objection from any party.

The August Agreement also contains a series of stipulations. Specifically, the signatories agree that the prefiled testimony provides the Commission with a record basis to approve the reasonableness of Duke's 2021 SPPCRC costs and revenue requirements. The signatories further agree that the SPPCRC rate factors should be approved, but that such rates should not have precedential value in future SPPCRC proceedings. Finally, the signatories agree that Duke should be permitted to seek recovery of its initial 2020-2029 SPP development costs through the SPPCRC, where Duke will bear the burden of proving reasonableness and prudence.

At the September 1, 2020 public hearing, counsel for Duke, OPC, and PCS made presentations in favor of the August Agreement. Duke also introduced into evidence the testimony of witnesses Jay W. Oliver and Thomas G. Foster. Counsel for Walmart presented argument in opposition to the August Agreement. Walmart also introduced into evidence the testimony of its witness Steve W. Chriss and conducted cross examination of Duke witness Geoff Foster. Exhibits 1 through 8 on the Comprehensive Exhibit List were admitted without objection. At the conclusion of the hearing, the Commission established September 11, 2020, as the deadline for any party wishing to file a brief to do so. Duke, PCS, and Walmart timely filed post-hearing briefs.

Walmart made one argument at the September 1st hearing and in its post-hearing brief: to wit, Duke's proposal to recover SPP costs from demand-metered customers through a $/kWh energy charge is not appropriate. Walmart notes that this portion of Duke's proposal is inconsistent with the approach taken by the other utilities in Docket No. 20200092-EI, and contends that it will result in costs being recovered differently from how they are incurred and allocated, which is further alleged to violate cost causation principles.

In its brief, Duke counters that focusing on this one provision is not consistent with the law governing consideration of settlement agreements, which directs the Commission to examine such agreements as a whole to determine whether they are in the public interest. Looking to the

[1] On August 10, 2020, after these Settlement Agreements were executed and filed, the Commission approved a Settlement in Docket No. 20200069-EI. Based on that approval, that docket was closed August 28, 2020. The closing of that docket was a ministerial act and does not affect the substance of the two Agreements, which were both properly considered by the Commission at the public hearing as part of Docket No. 20200092-EI.

other numerous negotiated provisions that can serve to avoid a full evidentiary hearing, Duke asserts that Commission approval of the August Agreement is in the public interest.

On the issue specifically contested by Walmart, Duke points out that the billing methodology will be in place for 2021 only, with it being revisited when the 2022 SPPCRC factors are set. Duke continues that $10 million in revenue requirements it is seeking to recover through the SPPCRC in 2021 is a relatively modest amount. Finally, Duke notes that the Commission has previously approved storm cost recovery on both an energy and demand basis, and that Duke's choice of one for 2021 only should not override the public interest served by the August Agreement in its entirety.

In its brief, PCS supports Duke and approval of the August Agreement. PCS also argues that because a hearing in this matter would involve litigating complex legal and factual issues relating to a comprehensive 2017 settlement agreement, and that the opportunity for those issues to be fully vetted is anticipated in a base rate proceeding involving Duke in 2022, the one year bridge on the billing issue crafted into the August Agreement as part of an overall negotiated settlement serves the public interest.

The Commission should vote on whether or not to grant the Motion filed August 10, 2020, requesting approval of the SPPCRC Stipulation and Settlement Agreement (August Agreement).

The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.05, and 366.06, Florida Statutes.

FILED 8/10/2020
DOCUMENT NO. 04332-2020
FPSC - COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm Protection Plan Cost Recovery Clause

Docket No. 20200092-EI

Dated: August 10, 2020

_____/

JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT

Pursuant to Rule 28-106.204(1), Florida Administrative Code ("F.A.C."), Duke Energy Florida, LLC ("DEF" or the "Company"), the Office of Public Counsel ("OPC" or "Citizens"), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate ("PCS Phosphate"),by and through their respective undersigned counsel, hereby file this Joint Motion and request that the Florida Public Service Commission ("Commission") review and approve the Stipulation and Settlement Agreement ("Agreement"), provided as Attachment A to this Joint Motion, as a full and complete resolution of all matters pertaining to DEF in Docket No. 20200092-EI, in accordance with Section 120.57(4), Florida Statutes ("F.S."), and enter a final order reflecting such approval to effectuate implementation of the Agreements. In support of this motion, the Parties state as follows:

1. On June 27, 2019, the Governor of Florida signed CS/CS/CS/SB 796 addressing Storm Protection Plan Cost Recovery, which was codified in Section 366.96, F.S. Therein, the Florida Legislature directed each utility to file a ten-year Storm Protection Plan ("SPP") that explains the storm hardening programs and projects the utility will implement to achieve the legislative objectives of reducing restoration costs and outage times associated with extreme weather events and enhancing reliability. *See* Section 366.96(3), F.S. The Florida Legislature also directed the Commission to conduct an annual proceeding to

determine the utility's prudently incurred SPP costs and to allow the utility to recover such costs through a charge separate and apart from its base rates, to be referenced as the Storm Protection Plan Cost Recovery Clause ("SPPCRC"). *See* Section 366.96(7), F.S.

2. Rule 25-6.030, F.A.C., requires each utility to file an updated SPP at least every three years that covers the utility's immediate ten-year planning period. Rule 25-6.031(2), F.A.C., provides that after a utility has filed its SPP it may petition the Commission for recovery of the costs associated with the SPP and implementation activities through the SPPCRC.

3. On July 17, 2020, the Prehearing Officer issued the Order Establishing Procedure ("OEP") in Docket No. 20200092-EI.

4. Pursuant to the schedule established in the OEP, on July 24, 2020, DEF filed its 2021 projection petition and supporting testimonies and exhibits of Thomas G. Foster (Exhibit No. TGF-1) and Jay Oliver ("SPPCRC Petition").

5. The SPPCRC Petition requests recovery of approximately $10 million in revenue requirements through the SPPCRC during the period January – December 2021, which is the revenue requirements for its projected SPP related costs that are being passed through the SPPCRC in 2021 of approximately $100.9M (capital) and $4.6M (O&M).

6. As a direct result of the extensive discovery performed in DEF's SPP docket,[1] the Parties[2] initially entered into the 2020 SPP/SPPCRC Agreement on July 17, 2020 that resolved several SPP and SPPCRC issues. Subsequently, on July 31, 2020, the Parties[3] entered into a Stipulation and Settlement Agreement in the SPP Docket ("SPP Settlement") that, if approved by this Commission, will resolve all issues in the SPP Docket.

[1] Docket No. 20200069-EI.
[2] With the exception of FIPUG, which did not respond with a position prior to the time of filing.
[3] Walmart, Inc., was also a party to the SPP Stipulation and Settlement Agreement.

7. The Agreement entered into today is intended to resolve all remaining DEF-specific issues raised in the SPPCRC docket (Docket No. 20200069 – EI). This Agreement is premised on approval of the SPP Settlement. The Parties hereby jointly request that the Commission review and approve this Agreement in its entirety and without modification.

8. The Commission has a "long history of encouraging settlements, giving great weight and deference to settlements, and enforcing them in the spirit in which they were reached by the parties." *Re Florida Power & Light Co.*, Docket No. 20050045-EI, Order No. PSC-2005-0902-S-EI (FPSC Sept. 14, 2005). The proper standard for the Commission's approval of a settlement agreement is whether it is in the public interest. *Sierra Club v. Brown*, 243 So. 3d 903, 910-913 (Fla. 2018) (citing *Citizens of State v. FPSC*, 146 So. 3d 1143, 1164 (Fla. 2014)); *see also Gulf Coast Elec. Coop., Inc. v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999) ("[I]n the final analysis, the public interest is the ultimate measuring stick to guide the PSC in its decisions").

9. The proposed Agreement represents a reasonable compromise of competing positions and is a full and complete resolution of all matters in Docket No. 20200092-EI. If approved by the Commission, the Agreement will establish a series of stipulations that will eliminate all issues to be litigated in this docket as pertaining to the Parties.

10. The terms of the proposed Agreements reflect the Parties' assessments of their respective litigation positions, as well as their efforts to reach a reasonable and mutually acceptable compromise. The respective Parties entered into the proposed Agreements, each for their own reasons, but all in recognition that the cumulative total of the regulatory activity before the Commission—now and for the rest of 2020 and through 2021—is anticipated to be greater than normal. To maximize the administrative and regulatory efficiency benefits

inherent in the proposed Agreement for the Parties and the Commission, the Parties ask that the Commission consider this Agreement as soon as its schedule permits, but in any event prior to the need to conduct extensive discovery in this docket.

11. Considered as a whole, the Agreements fairly and reasonably balances the interests of customers and the utilities, and is consistent with the stated purpose and intent of Section 366.96, F.S. Approving the Agreement is consistent with the Commission's long-standing policy of encouraging the settlement of contested proceedings in a manner that benefits the customers of utilities subject to the Commission's regulatory jurisdiction. Accordingly, the Agreement is in the public interest and should be approved.

12. DEF has consulted with counsel for FIPUG, which take no position on the relief sought by this motion, and Walmart Inc., which objects to the relief sought by this motion.

WHEREFORE, for all the reasons stated above, the Parties jointly and respectfully request that the Florida Public Service Commission expeditiously approve both the Settlement Agreement provided as Attachment A to this Joint Motion.

Respectfully submitted this 10th day of August, 2020,

By: */s/Matthew R. Bernier*

Matthew R. Bernier
Associate General Counsel
106 East College Avenue, Suite 800
Tallahassee, Florida 32301
FOR DUKE ENERGY FLORIDA, LLC

By: */s/ Charles J. Rehwinkel*
Charles J. Rehwinkel
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FOR OFFICE OF PUBLIC COUNSEL

By: */s/ James Brew*
James W. Brew
Stone Mattheis Xenopoulos & Brew
1025 Thomas Jefferson St., NW, Suite 800 West
Washington DC 20007-5201

FOR WHITE SPRINGS AGRICULTURAL CHEMICAL CO. dba PCS PHOSPHATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail to the following this 10th day of August, 2020.

s/ Matthew R. Bernier
Attorney

Jennifer Crawford / Shaw Stiller Office of General Counsel FL Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 jcrawfor@psc.state.fl.us sstiller@psc.state.fl.us Ken Hoffman / Mark Bubriski 134 West Jefferson St. Tallahassee, FL 32301-1713 ken.hoffman@fpl.com mark.bubriski@nexteraenergy.com John T. Burnett / Christopher T. Wright / Jason A. Higginbotham Florida Power & Light Company 700 Universe Blvd. Juno Beach, FL 33408-0420 john.t.burnett@fpl.com christopher.wright@fpl.com jason.higginbotham@fpl.com Stephanie Eaton 110 Oakwood Dr., Ste. 500 Winston-Salem, NC 27013 seaton@spilmanlaw.com Derrick Price Williamson / Barry Naum 1100 Bent Creek Blvd., Ste. 101 Mechanicsburg, PA 17050 dwilliamson@spilmanlaw.com bnaum@spilmanlaw.com	J.R. Kelly / Charles Rehwinkel Office of Public Counsel c/o The Florida Legislature 111 W. Madison St., Room 812 Tallahassee, FL 32399-1400 kelly.jr@leg.state.fl.us rehwinkel.charles@leg.state.fl.us Russell A. Badders Gulf Power Company One Energy Place Pensacola, FL 32520 russell.badders@nexteraenergy.com Mike Cassel 208 Wildlight Ave. Yulee, FL 32097 mcassel@fpuc.com Paula K. Brown Regulatory Affairs P.O. Box 11 Tampa, FL 33601-0111 regdept@tecoenergy.com James A. Brew / Laura Wynn Baker 1025 Thomas Jefferson St., N.W., Ste. 800W Washington, DC 20007 jbrew@smxblaw.com lwb@smxblaw.com

ATTACHMENT A

STIPULATION AND SETTLEMENT AGREEMENT

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Storm Protection Plan Cost Recovery Clause

Docket No. 20200092-EI

Dated: August 10, 2020

_____/

SPPCRC STIPULATION AND SETTLEMENT AGREEMENT

WHEREAS, Duke Energy Florida, LLC ("DEF"), Citizens through the Office of Public Counsel ("OPC"), White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate ("PCS Phosphate"), and the Florida Industrial Power Users Group ("FIPUG") (collectively, the "Parties) have signed this SPPCRC Stipulation and Settlement Agreement (the "Agreement"); unless the context clearly requires otherwise, the term "Party" or "Parties" means a signatory to this Agreement;

WHEREAS, On June 27, 2019, the Governor of Florida signed CS/CS/CS/SB 796 addressing Storm Protection Plan Cost Recovery, which was codified in Section 366.96, F.S.;

WHEREAS, the Florida Legislature found in Section 366.96(1)(c), F.S., that it was in the State's interest to "strengthen electric utility infrastructure to withstand extreme weather conditions by promoting the overhead hardening of electrical transmission and distribution facilities, the undergrounding of certain electrical distribution lines, and vegetation management," and for each electric utility to "mitigate restoration costs and outage times to utility customers when developing transmission and distribution storm protection plans." Section 366.96(1)(e), F.S.;

WHEREAS, the Florida Legislature directed each utility to file a ten-year Storm Protection Plan ("SPP") that explains the storm hardening programs and projects the utility will implement to achieve the legislative objectives of reducing restoration costs and outage times associated with

extreme weather events and enhancing reliability. *See* Section 366.96(3), F.S.;

WHEREAS, The Florida Legislature directed the Florida Public Service Commission ("Commission") to conduct an annual proceeding to determine the utility's prudently incurred SPP costs and to allow the utility to recover such costs through a charge separate and apart from its base rates, to be referenced as the Storm Protection Plan Cost Recovery Clause ("SPPCRC"). *See* Section 366.96(7), F.S.;

WHEREAS, Section 366.96(8), F.S., and Rule 25-6.031(6)(b), F.A.C., provide that the SPP costs to be recovered through the SPPCRC may not include costs recovered through the utility's base rates or any other cost recovery mechanism;

WHEREAS, Rule 25-6.030, F.A.C., requires each utility to file an updated SPP at least every three years that covers the utility's immediate ten-year planning period and specifies the information to be included in each utility's SPP;

WHEREAS, Rule 25-6.031, F.A.C., provides that after a utility has filed its SPP it may petition the Commission for recovery of the costs associated with the SPP and implementation activities and specifies the information to be included in each utility's SPPCRC filings;

WHEREAS, on July 24, 2020, DEF filed its 2021 SPPCRC projection petition, supported by the testimonies and exhibits of Thomas G. Foster (Exhibit No. __ (TGF-1) and Jay Oliver;

WHEREAS, the Parties engaged in significant discovery in the SPP docket, and have thoroughly reviewed and evaluated DEF's 2020-2029 SPP and;

WHEREAS, the Parties have entered into this Agreement in compromise of positions taken in accord with their rights and interests under Chapters 350, 366, and 120, Florida Statutes, as applicable, and as a part of the negotiated exchange of consideration among the Parties to this Agreement each has agreed to concessions to the others with the expectation that all provisions of

the Agreement will be enforced by the Commission as to all matters addressed herein with respect to all Parties regardless of whether a court ultimately determines such matters to reflect Commission policy, upon acceptance of the Agreement as provided herein and upon approval as in the public interest;

WHEREAS, the Parties have entered into a Stipulation and Settlement Agreement that, if approved, resolves all issues in the Docket No. 20200069-EI;

WHEREAS; the Parties have entered into this SPPCRC Stipulation and Settlement with the intent of resolving all issues in Docket No. 20200092-EI should the Commission approve the Stipulation and Settlement Agreement in the SPP Docket; and

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

DEF 2021 PROJECTED SPPCRC FILING

(Docket No. 20200092-EI)

1. The Parties agree that the Commission has a record basis to approve the reasonableness of costs presented in DEF's Petition and testimonies in Docket No. 20200092-EI for cost recovery in 2021.
2. The Parties agree that the Commission has a record basis presented in DEF's Petition and testimonies in Docket No. 20200092-EI to approve the reasonableness of the revenue requirements to be collected by DEF through the SPPCRC in 2021.
3. The Parties agree that DEF should implement the SPPCRC rate factors as shown on DEF exhibit TGF-1, page 14, for 2021, but that such rates shall not be deemed precedential for future SPPCRC purposes. The Parties further agree that the recovery of SPP costs through the SPPCRC may be affected by DEF's next base rate case if SPP-related expenditures (both capital and operating) shift from base rates to SPPCRC

recovery. The OPC takes no position with regard to this provision, and the other signatories agree that this issue should be addressed in the 2021 SPPCRC docket, consistent with any SPP related base rate changes, and with any changes to be implemented in the 2022 SPPCRC billings.

4. The Parties agree that DEF should be permitted to seek recovery of the development of its initial2020-2029 SPP development costs through the SPPCRC, provided that DEF has the burden of proving the reasonableness and prudence of those costs, and all intervenor parties retain their right to challenge the reasonableness and prudence thereof, in the applicable SPPCRC proceeding. The Parties agree that to the extent this provision is construed to conflict with either the 2020 SPP/SPPCRC Settlement (filed July 17, 2020 in Docket Nos. 20200069-EI and 20200092-EI) or the 2020 SPP Settlement Agreement (filed July 31, 2020 in Docket No. 20200069-EI), this paragraph controls over the conflicting provision(s) in those Agreements.
5. OPC and PCS Phosphate retain the right to challenge the prudence of any project or costs submitted by DEF for recovery through the SPPCRC in 2021 at the appropriate time.
6. The Parties stipulate to enter into the record the testimonies and exhibits of Thomas G. Foster and Jay Oliver. If this Agreement is approved in its entirety, the Parties likewise waive cross-examination of any and all witnesses and waive the filing of post-hearing briefs.
7. Nothing in the Agreement will have precedential value.
8. The provisions of the Agreement are contingent upon approval by the Commission in its entirety without modification. Except as expressly set out herein, no Party agrees, concedes, or waives any position with respect to any of the issues identified in the

Prehearing Order, and this Agreement does not expressly address any specific issue, or any position taken thereon. The Parties will support approval of the Agreement and will not request or support any order, relief, outcome, or result in conflict with it. No Party to the Agreement will request, support, or seek to impose a change to any provision of the Agreement. Approval of the Agreement in its entirety will resolve all matters and issues in this docket. This docket will be closed effective on the date that the Commission Order approving this Agreement is final, and no Party to the Agreement will seek appellate review of any order issued in this docket.

9. The Parties agree that approval of the Agreement is in the public interest.

10. This Agreement may be executed in counterpart originals, and a scanned .pdf copy of an original signature shall be deemed an original, or via electronic signature. Any person or entity that executes a signature page to this Agreement shall become and be deemed a Party with the full range of rights and responsibilities provided hereunder, notwithstanding that such person or entity is not listed in the first recital above and executes the signature page subsequent to the date of this Agreement, it being expressly understood that the addition of any such additional Party(ies) shall not disturb or diminish the benefits of this Agreement to any current Party.

Executed this 10th day of August, 2020.

By: */s/Matthew R. Bernier*

Matthew R. Bernier
Associate General Counsel
106 East College Avenue, Suite 800
Tallahassee, Florida 32301

FOR DUKE ENERGY FLORIDA, LLC

By: */s/ Charles J. Rehwinkel*
Charles J. Rehwinkel
Office of Public Counsel c/o The Florida Legislature
111 West Madison Street, Rm. 812
Tallahassee, FL 32399-1400

FOR OFFICE OF PUBLIC COUNSEL

By: */s/ James Brew*
James W. Brew
Stone Mattheis Xenopoulos & Brew
1025 Thomas Jefferson St., NW, Suite 800 West
Washington DC 20007-5201

FOR WHITE SPRINGS AGRICULTURAL CHEMICAL CO. dba PCS PHOSPHATE

Item 9

State of Florida

Public Service Commission

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

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

DATE: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Hightower, D. Buys, Cicchetti) MC ALM
Office of the General Counsel (Lherisson, Schrader) JSC

RE: Docket No. 20200187-EI – Application for authority to issue and sell securities during calendar year 2021, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Gulf Power Company.

AGENDA: 10/06/20 – Regular Agenda – Final Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Please place this item before the item for Docket No. 20200188-EI on the Agenda

Case Background

Gulf Power Company (Gulf or Company) seeks authority to issue and sell and/or exchange any combination of long-term debt and equities; and issue and sell short-term debt securities during 2021. Gulf and its affiliate, Florida Power & Light Company (FPL), currently have a merger application pending before the Federal Energy Regulatory Commission (FERC). Contingent upon the closing of the merger, the regulated activities and operations of Gulf acquired by FPL as a result of the merger will be financed by FPL.[1, 2] Gulf is herein submitting this Application to

[1]Document No. 04180-2020, Docket No. 20200188-EI, *Application for authority to issue and sell securities during calendar years 2020 and 2021, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company and Florida City Gas.*

[2]The companion securities docket for FPL and Florida City Gas, Docket No. 20200188-EI, *In re: Application for authority to issue and sell securities during calendar years 2020 and 2021, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company and Florida City Gas*, is scheduled to be presented at the October 6, 2020, Agenda Conference along with this docket.

ensure it has the requisite authority to finance its regulated operations in 2021 in the event FERC approval of the pending merger application is denied and/or the merger is delayed and does not occur by January 1, 2021.

This recommendation addresses the authorization to issue and sell securities. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes.

Issue 1: Should the Gulf application for authority to issue and sell securities be approved?

Recommendation: Yes, Gulf's application for authority to issue and sell securities during calendar year 2021 should be approved. (Hightower)

Staff Analysis: Gulf seeks authority to issue and sell and/or exchange any combination of long-term debt and equities; and issue and sell short-term debt securities during 2021. The amount of equity securities issued and the maximum principal amount of long-term debt securities issued, will not, in aggregate, exceed more than $1.5 billion during the calendar year 2021. The maximum aggregate principal amount of short-term debt at any one time will total not more than $800 million during the calendar year 2021.

Gulf confirms that the capital raised pursuant to this application will be used in connection with the regulated electric operations of Gulf and not the unregulated activities of the Company or its affiliates. Staff has reviewed Gulf's projected capital expenditures. The amount requested by the Company ($2.3 billion) exceeds its expected capital expenditures ($1.14 billion). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility for unexpected events such as hurricanes, financial market disruptions and other unforeseen circumstances. Staff believes the requested amounts are reasonable. Staff recommends Gulf's application for authority to issue and sell securities during calendar year 2021 be approved.

Gulf and FPL currently have a merger application pending before the FERC. Upon approval of the merger, Gulf will cease to exist as a separate legal entity and therefore there will be no remaining authority under this Gulf Securities Application and the Gulf regulated activities and operations will be financed by FPL. Staff recommends that if and when the merger of Gulf with and into FPL occurs, Gulf should provide the Commission with prompt notice of the effective date of closing of the merger and, upon such notice, the authority granted herein should terminate as of the effective date of the closing of the merger. As addressed in staff's recommendation for Docket No. 20200188-EI, in the event of such termination, Gulf's liabilities or obligations, provided for in this docket, should be assumed by FPL.

Issue 2: Should this docket be closed?

Recommendation: No, this docket should remain open. (Lherisson, Schrader)

Staff Analysis: For monitoring purposes, this docket should remain open until May 7, 2022, to allow the Company or its successor entity, as of the effective date of the closing of the merger, time to file the required prompt notice and/or Consummation Report.

Staff recommends to the extent that the effective date of closing of the merger occurs on or before January 1, 2021, this docket should be administratively closed upon receipt of Gulf's prompt notice of the merger.

Staff recommends to the extent that Gulf issues securities in 2021 pursuant to the authority granted herein, Gulf, or its successor entity, should file a Consummation Report in accordance with Rule 25-8.009, F.A.C., no later than ninety (90) days after the end of the fiscal year and, upon submission of such consummation report, this docket should be closed.

Item 10

State of Florida

Public Service Commission

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

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

DATE: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Hightower, D. Buys, Cicchetti) *MC* *ALM*
Office of the General Counsel (Lherisson, Schrader) *JSC*

RE: Docket No. 20200188-EI – Application for authority to issue and sell securities during calendar years 2020 and 2021, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company and Florida City Gas.

AGENDA: 10/06/20 – Regular Agenda – Final Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: Please place this item after the item for Docket No. 20200187-EI on the Agenda

Case Background

Florida Power & Light Company (FPL or Company) seeks authority to issue and sell and/or exchange any combination of long-term debt and equities; and issue and sell short-term debt securities during 2021. As part of this application, Florida City Gas (FCG) requests authorization to make long-term and short-term borrowings from FPL. In addition, FPL and its affiliate, Gulf Power Company (Gulf), currently have a merger application pending before the Federal Energy Regulatory Commission (FERC). Contingent upon the closing of the merger, the regulated activities and operations of Gulf acquired by FPL as a result the merger will be financed by FPL.[1]

[1] The companion securities docket for Gulf, Docket No. 20200187-EI, *In re: Application for authority to issue and sell securities during calendar year 2021, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Gulf Power Company*, is scheduled to be presented at the October 6, 2020, Agenda Conference along with this docket.

This recommendation addresses the authorization to issue and sell securities. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes.

Discussion of Issues

Issue 1: Should the FPL application for authority to issue and sell securities be approved?

Recommendation: Yes, FPL's application for authority to issue and sell securities during calendar year 2021 should be approved. (Hightower)

Staff Analysis: FPL seeks authority to issue and sell and/or exchange any combination of long-term debt and equities; and issue and sell short-term debt securities during 2021. The amount of equity securities issued and the maximum principal amount of long-term debt securities issued, will not, in aggregate, exceed more than $6.35 billion during the calendar year 2021. The maximum aggregate principal amount of short-term debt at any one time will total not more than $4.1 million during the calendar year 2021.

FCG seeks Commission approval to make long-term borrowings from FPL in an aggregate amount not to exceed $300 million in principal at any one time during 2021 and make short-term borrowings from FPL in an aggregate amount not to exceed $150 million in principal at any one time during calendar years 2021. These amounts are included in the long-term and short-term amount totals requested by FPL discussed above.

Only FPL is actually issuing securities to the public. FCG is not issuing any securities but instead is borrowing directly from FPL. The authority FPL is requesting, the aggregate amount of equity and debt securities, is inclusive of the amount it will lend to FCG.

Contingent upon the FERC's approval of the merger of Gulf and FPL, as discussed below, FPL requests to (i) issue and sell and/or exchange any combination of the long-term debt and equity securities described below and/or to assume liabilities or obligations as guarantor, endorser or surety, together with the aggregate principal amount of long-term debt and equity securities issued by Gulf and liabilities and obligations assumed by Gulf as guarantor, endorser or surety, in each case issued or assumed by Gulf during calendar year 2021 prior to the effectiveness of the merger, in an aggregate principal amount not to exceed $1.50 billion, and (ii) issue and sell short-term securities during calendar year 2021 in an amount or amounts such that the aggregate principal amount of short-term securities outstanding at the time of and including any such sale should not exceed $800 million. If approved, these amounts would be incremental to the long-term and short-term amount totals requested by FPL discussed in the first paragraph.

Table 1.1
Proposed Transactions:

	FPL, including FCG	**Florida City Gas, stand alone**	**Gulf, stand alone**	**FPL, contingent upon FPL/Gulf merger (01/01/2021)**
Long-term securities	$6.35 billion	$300 million	$ 1.50 billion	$7.85 billion
Short-term securities	$4.1 billion	$150 million	$ 800 million	$4.9 billion

Subject to FERC approval, on January 1, 2021, Gulf will cease to exist as a separate legal entity and therefore there will be no remaining authority under the Gulf Securities Application and the Gulf regulated activities would be financed by FPL as set forth in this Securities Application. Upon the effectiveness of the merger, the Utility should provide prompt notice to the Commission that the authority granted under the Gulf Order in Docket No. 20200187-EI should be terminated as of the effective date of the merger.

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

Staff has reviewed the Company's projected capital expenditures. The amount requested by the Company, contingent upon the merger, ($12.8 billion, of which $450 million is for FCG) exceeds its expected capital expenditures ($8.25 billion in 2021). The additional amount requested exceeding the projected capital expenditures allows for financial flexibility for unexpected events such as hurricanes, financial market disruptions and other unforeseen circumstances. Staff believes the requested amounts are reasonable. Staff recommends FPL's application for authority to issue and sell securities during calendar year 2021 be approved.

For monitoring purposes, this docket should remain open until May 7, 2022, to allow the Company time to file the required Consummation Report.

Issue 2: Should this docket be closed?

Recommendation: No, this docket should remain open. (Lherisson, Schrader)

Staff Analysis: For monitoring purposes, this docket should remain open until May 7, 2022, to allow the Company time to file the required Consummation Report.

Item 11

State of Florida

Public Service Commission

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

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

DATE: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (D. Phillips) TB
Office of the General Counsel (Weisenfeld) TLT

RE: Docket No. 20190125-WS – Application for staff-assisted rate case in Sumter County by The Woods Utility Company.

AGENDA: 10/06/20 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 11/14/20 (Due date for Action Plan and Status Report per Order No. PSC-2020-0087-PAA-WS)

SPECIAL INSTRUCTIONS: None

Case Background

The Woods Utility (The Woods or Utility) is a Class C utility serving approximately 58 residential water customers, one general service water customer, and 52 residential wastewater customers in Sumter County. On June 6, 2019, The Woods filed a petition for a staff-assisted rate case. On January 6, 2020, the Utility was notified by the Florida Department of Environmental Protection (DEP) that tap water samples taken from customers' premises exceeded the allowable lead action level twice in 2019. In the first half of 2019, three samples exceeded lead levels, and in the second half of 2019, six samples exceeded lead levels and three exceeded copper levels. As a result, the DEP has mandated that additional actions are required to address lead and copper levels.

On March 25, 2020, the Commission issued Order No. PSC-2020-0087-PAA-WS (PAA Order), which found the quality of the Utility's service to be unsatisfactory and imposed a 100 basis point penalty.[1] The PAA Order requires the Utility to file status reports every six months detailing the actions it has taken to address the DEP's concerns, engage with customers and the Office of Public Counsel (OPC), and also to submit an action plan detailing how it will address the lead and copper levels. Both the status report and action plan are due six months after the issuance of the Final Order. The Final Order, issued on May 14, 2020,[2] set November 14, 2020, as the due date for the Utility's action plan and first status report. On July 24, 2020, the Utility filed a request for an extension of time to comply with the reporting requirements of the PAA Order.

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

[1] Order No. PSC-2020-0087-PAA-WS, issued on March 25, 2020, in Docket No 20190125-WS, *In re: Application for staff-assisted rate care in Sumter Country by The Woods Utility.*
[2] Order No. PSC-2020-0151-CO-WS, issued on May 14, 2020, in Docket No 20190125-WS, *In re: Application for staff-assisted rate care in Sumter Country by The Woods Utility.*

Discussion of Issues

Issue 1: Should The Woods' request for an extension of time to comply with Order No. PSC-2020-0087-PAA-WS be granted?

Recommendation: Yes. The Woods' request for an additional six months to comply with the PAA Order's filing requirements, including an action plan and first status report, should be granted due to the impacts of the COVID-19 pandemic. Furthermore, staff recommends that it be given administrative authority to grant one additional time extension if good cause is shown. (D. Phillips)

Staff Analysis: In relevant part, the Commission's PAA Order states:

> The DEP has mandated that the Utility take action to address lead and copper exceedances. We therefore find that the quality of the Utility's product is unsatisfactory. Accordingly, a 100 basis point reduction shall be applied, as further discussed in Section 5. The Utility shall file an action plan with this Commission detailing how it will address excessive lead and copper levels six months after the Final Order is issued in this docket. Additionally, the Utility shall engage with its customers and with the Office of Public Counsel on its efforts to ameliorate the quality of its product. The Utility shall file status reports with this Commission detailing the actions it has taken to meet the DEP's requirements and its engagement efforts with its customers and with the Office of Public Counsel. The first status report shall be filed six months after the Final Order is issued in this Docket and every six months thereafter, until the additional monitoring is rescinded by the DEP.[3]

As the PAA Order was made final on May 14, 2020, the required filing date for the action plan and the first status report is November 14, 2020.

On July 24, 2020, the Utility filed a petition requesting, at a minimum, an additional six months to comply with the PAA Order's reporting requirements. This would move the required filing date to May 14, 2021. The petition states that the Utility had planned to begin to collect lead and copper water samples from inside customers' homes as required by the DEP, conduct surveys of customer plumbing, and further distribution sampling. Per the Utility, the DEP has granted permission to delay these activities due to the COVID-19 pandemic to reduce in-person contact with customers.

Staff notes that although the Utility has requested a delay in filing its action plan and status report, its operator has met with a representative of their chemical supplier on site to assist in finding an appropriate dosage of the sequestrant (Aquagold) used in the water system. The Utility also advised that a decline in the lead exceedances has occurred. In August 2019, there were six lead exceedances and in samples taken in June 2020 there were two lead exceedances.

[3] Order No. PSC-2020-0087-PAA-WS, issued on March 25, 2020, in Docket No 20190125-WS, *In re: Application for staff-assisted rate care in Sumter Country by The Woods Utility.*

Of the six residences that exceeded allowable lead levels in August 2019, four were re-tested in June 2020 and none exceeded allowable levels.

It appears that the Utility is working toward resolving the lead and copper exceedances; but, due to the pandemic, it cannot meet all requirements of the Commission's PAA Order at this time. Staff believes the proposed delay in the action plan filing and status reporting appears reasonable and is consistent with the DEP's approval of a delay to minimize in-person contact.

Conclusion

Staff recommends that The Woods' request for an additional six months to comply with the PAA Order's filing requirements, including an action plan and first status report, should be granted due to the impacts of the COVID-19 pandemic. Furthermore, staff recommends that it be given administrative authority to grant one additional time extension if good cause is shown.

Issue 2: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, a Consummating Order should be issued. The docket should remain open for staff's verification of the Utility's required biannual status reports until additional monitoring is rescinded by the DEP. Once these actions are complete, this docket should be closed administratively if no adjustments are necessary.

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, a Consummating Order should be issued. The docket should remain open for staff's verification of the Utility's required biannual status reports until additional monitoring is rescinded by the DEP. Once these actions are complete, this docket should be closed administratively if no adjustments are necessary.

Item 12

State of Florida

Public Service Commission

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

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

DATE: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (M. Watts, Doehling) TB
Division of Accounting and Finance (Blocker, Norris) ALM
Division of Economics (Bethea, Hudson) JGH
Office of the General Counsel (Schrader) JSC

RE: Docket No. 20200155-WU – Application for certificate to operate water utility in Okaloosa County and application for pass through increase of regulatory assessment fees, by Okaloosa Waterworks, Inc.

AGENDA: 10/06/20 – Regular Agenda – Proposed Agency Action for Issues 3 through 7 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 10/19/20 (Expiration of 90-day statutory deadline for Commission to grant or deny application for water certificate)

SPECIAL INSTRUCTIONS: None

Case Background

Okaloosa Waterworks, Inc. (OWI or Utility) is in Okaloosa County, Florida. Based on its application, the Utility provides water service to approximately 228 residential customers and nine general service customers in the Blackman community in Okaloosa County (County). The residential customers consist of single-family residences, and the general service customers consist of churches, a country store, a fire station, a community center, and a sportsman club. The water system was put into service in 2012.

The Blackman community is a rural community in the extreme northwestern corner of the County. Prior to 2012, it was the only area in the County that did not have access to a public water system, and all of the residences and businesses were supplied by private potable wells. These wells had exhibited a history of testing positive for coliform bacteria, a known health risk. In 2004, a group of concerned citizens met with an engineering firm with the goal of building a community water system and incorporating a non-profit entity to run it. The resulting co-op, Blackman Community Water System, Inc. (BCWS), was incorporated on December 13, 2004.

Because more than half of the prospective BCWS customers lived at or below the poverty level at the time, BCWS qualified for and pursued grants and low-income loan financing to build the water system. The engineering firm had estimated that the water system could potentially provide water service to more than 300 customers. The County granted BCWS authority to provide water service in March 2007, and the water system was completed in February 2012 and put into service in March 2012. The system initially had 291 active accounts at the end of 2012, and the number of active accounts declined each year through 2017.

Because the water system had fewer customers than projected by the engineering firm, BCWS was unable to generate the expected revenue to make timely loan payments to the United States Department of Agriculture (USDA). After attempting to work with BCWS for over a year regarding repayment of the loan, the USDA accelerated the loan in August 2015. BCWS subsequently filed for bankruptcy.

The United States District Court for the Northern District of Florida appointed the National Rural Water Association (NWRA) as the receiver for the system. A final Judgment of Foreclosure was rendered on December 5, 2019. On February 12, 2020, the United States Marshall sold the utility to U.S. Water Services Corporation (U.S. Water). The system was subsequently transferred to OWI.

On June 2, 2020, OWI filed its application for an original water certificate and for approval of initial rates and charges. Additionally, on June 8, 2020, the Utility filed a request to revise its existing miscellaneous service charges, customer deposits, and initial meter installation charge, along with cost justification in accordance with Section 367.091(6), Florida Statutes (F.S.). Staff found the application to be deficient and issued a deficiency letter on June 30, 2020. The Utility cured the deficiencies on July 20, 2020.

On June 10, 2020, the Utility filed a letter in the docket, which petitioned for a partial variance or waiver of a requirement of Rule 25-30.120, Florida Administrative Code (F.A.C.). The Commission approved the Utility's request, by Order No. PSC-2020-0316-PAA-WU, issued September 21, 2020, and temporarily waived the Utility's requirement to remit regulatory assessment fees (RAFs) until 1) such time as the Commission established approved rates for OWI and Commission staff administratively approves a pass through of RAFs pursuant to Section 367.081(4)(b), F.S., or 2) December 3, 2020, whichever occurs first.[1]

[1] OWI has expressed to Commission staff that it plans to, once the Commission establishes approved rates for the Utility and this docket closes, file its notice to administratively approve RAFs.

Pursuant to Section 367.031, F.S., the Commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application. Commission staff deemed the application complete on July 20, 2020, which is considered the official filing date.

This recommendation addresses the application for an original water certificate and the appropriate rates and charges for the Utility. The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, F.S.

Discussion of Issues

Issue 1: Should the application for a water certificate by OWI be approved?

Recommendation: Yes. OWI should be granted Certificate No. 676-W to serve the territory described in Attachment A, which is appended to this recommendation, effective the date of the Commission's vote. The resultant order should serve as OWI's water certificate and it should be retained by the Utility. (Doehling, M. Watts, Blocker)

Staff Analysis: On June 2, 2020, OWI filed its application for an original water certificate in Okaloosa County. Upon review, staff determined the original filing was deficient and issued a deficiency letter on June 30, 2020. The Utility cured the deficiencies on July 20, 2020, which is considered the official filing date for the application. The Utility's application is in compliance with the governing statutes, Sections 367.031 and 367.045, F.S.

Notice

On July 17, 2020, OWI filed proof of compliance with the noticing provisions set forth in Rule 25-30.030, F.A.C. No entity filed a protest during the protest period and the time for filing objections has expired.

Land Ownership and Service Territory

OWI provided adequate service territory and system maps and a territory description as required by Rule 25-30.034, F.A.C. The legal description of the service territory is appended to this recommendation as Attachment A. The application contains warranty deeds for the land where the water treatment facilities are located pursuant to Rule 25-30.034(1)(m), F.A.C.

Financial and Technical Ability

Pursuant to Rule 25-30.034(1)(i) and (j), F.A.C., the application contains statements describing the technical and financial ability of the Buyer to provide service to the proposed service area. OWI's application states that its President, Gary Deremer, has over 30 years of Florida-related water and wastewater industry experience and has previous private utility ownership of five utility systems. Also, Mr. Deremer is a major shareholder in 17 water and wastewater utilities regulated by the Commission. Further, the application indicates that Mr. Deremer has secured the services of U.S. Water to provide contract operating service, as well as billing and collection services. Staff has reviewed the financial ability of the current owner and believes the owner has documented adequate resources to support the Utility's water operations.[2] Based on the above, OWI has demonstrated the technical and financial ability to provide service to the existing service territory.

Conclusion

Staff recommends that it is in the public interest to grant OWI Certificate No. 676-W to serve the territory described in Attachment A, effective the date of the Commission's vote. The resultant order should serve as OWI's water certificate and it should be retained by the Utility.

[2] Document No. 03621-2020

Issue 2: What are the appropriate rates and charges for OWI?

Recommendation: The appropriate rates and charges, as shown on Schedule 1, should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved rates and charges until authorized to change them by the Commission in a subsequent proceeding. (Bethea)

Staff Analysis: According to its application, OWI's current rates and charges were established August 8, 2016, by BCWS's Board of Directors, and OWI has been charging the same rates since acquisition. The Utility's current monthly service rates include a base facility charge that includes 1,000 gallons and six tier inclining block gallonage charges. OWI is requesting that customers within the service area that it is seeking to be certificated remain at the BCWS's established service rates and a service availability charge for customer service line installations (tap in charge). Rule 25-9.044(1), F.A.C, states, in part, that:

> In case of change of ownership or control of a utility which places the operation under a different or new utility, or when its name is changed, the company which will thereafter operate the utility business must adopt and use the rates, classification and regulations of the former operating company (unless authorized to change by the commission). . .

The Utility indicated that it currently has miscellaneous service, late payment, and non-sufficient funds (NSF) charges in place, as well as customer deposits. However, the Utility is requesting a change in the aforementioned charges and customer deposits. Some of these charges and deposits do not appear to be based on cost or customer usage consistent with Commission practice. Additionally, the Utility is requesting to establish a meter installation charge. Staff's recommendations with respect to these charges and deposits are discussed in Issues 3 through 7.

Based on the above, the appropriate rates and charges, as shown on Schedule 1, should be effective for services rendered on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. The Utility should be required to charge the approved rates and charges until authorized to change them by this Commission in a subsequent proceeding.

Issue 3: Should OWI's request to revise miscellaneous service charges be approved?

Recommendation: Yes. The miscellaneous service charges identified in Table 3-5 are appropriate and should be approved. OWI should be required to file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. OWI should provide proof of the date notice was given no less than 10 days after the date of the notice. (Bethea)

Staff Analysis: Section 367.091, F.S., authorizes the Commission to change miscellaneous service charges. The Utility's request to revise its miscellaneous charges was accompanied by its reason for requesting the charges, as well as the cost justification required by Section 367.091(6), F.S. The requested charges are consistent with those recently approved for its sister companies LP, Country Walk, and Gator Waterworks.[3] The calculations for charges for miscellaneous service charges, shown in the tables below, are rounded up to the nearest tenth. The Utility's current and staff's recommended miscellaneous service charges are shown in Table 3-5.

Initial Connection Charge

The Utility's existing initial connection charge is $250.00 ($200 for account set up and $50 for meter deposit). The initial connection charge is levied for service initiation at a location where service did not exist previously. An OWI representative makes one trip when performing the service of an initial connection. Based on labor and transportation to and from the service territory, staff recommends initial connection charges for OWI's water system of $31.10 for normal hours and $36.20 for after hours. Staff's calculations are shown below in Table 3-1.

Table 3-1
Initial Connection Charge Calculation

Activity	Normal Hours Cost	Activity	After Hours Cost
Labor (Administrative) ($28/hr x1/4hr)	$7.00	Labor (Administrative) ($28/hr x1/4hr)	$7.00
Labor (Field) ($30.42/hr x 1/3 hr)	$10.14	Labor (Field) ($45.63/hr x 1/3 hr)	$15.21
Transportation ($0.535/mile x 26 miles-to/from)	$13.91	Transportation ($0.535/mile x 26 miles-to/from)	$13.91
Total	$31.05	Total	$36.12

[3] Order Nos. PSC-2018-0553-PAA-WU, issued November 19, 2018, in Docket No. 20180021-WU, *In re: Application for staff-assisted rate case in Highlands County by Country Walk Utilities, Inc.*; PSC-2017-0334-PAA-WS, issued August 23, 2017, in Docket No. 20160222-WS, *In re: Application for staff-assisted rate case in Highlands County by LP Waterworks, Inc.*; and PSC-2020-0086-PAA-WU, issued March 24, 2020, in Docket No. 20190114-WU, *In re: Application for staff-assisted rate case in Alachua County, and request for interim rate increase by Gator Waterworks, Inc.*

Normal Reconnection Charge

The Utility's existing normal reconnection charge is $25.00. A normal reconnection charge is levied for the transfer of service after a customer requested disconnection. A normal reconnection requires two trips, which includes one to turn service on and the other to turn service off. Based on labor and transportation to and from the service territory, staff recommends normal reconnection charges for OWI's water system of $57.10 for normal hours and $64.70 for after hours. Staff's calculations are shown in Table 3-2.

Table 3-2
Normal Reconnection Charge Calculation

Activity	Normal Hours Cost	Activity	After Hours Cost
Labor (Administrative) ($28/hr x1/4hr x 2)	$14.00	Labor (Administrative) ($28/hr x1/4hr x 2)	$14.00
Labor (Field) ($30.42/hr x 1/4 hr x 2)	$15.21	Labor (Field) ($45.63/hr x 1/4hr x 2)	$22.82
Transportation ($0.535/mile x 26 miles-to/from x 2)	$27.82	Transportation ($0.535/mile x 26 miles-to/from x 2)	$27.82
Total	$57.03	Total	$64.64

Violation Reconnection Charge

The Utility's existing violation reconnection charge is $50.00 ($25 for lock meter and $25 for meter pull). The violation reconnection charge is levied prior to reconnection of an existing customer after discontinuance of service for cause. The service performed for violation reconnection requires two trips, which includes one trip to turn off service and a subsequent trip to turn on service once the violation has been remedied. Based on labor and transportation to and from the service territory, staff recommends violation reconnection charges for OWI's water system of $57.10 for normal hours and $64.70 for after hours. Staff's calculations are shown in Table 3-3.

Table 3-3
Violation Reconnection Charge Calculation

Activity	Normal Hours Cost	Activity	After Hours Cost
Labor (Administrative) ($28/hr x1/4hr x 2)	$14.00	Labor (Administrative) ($28/hr x1/4hr x 2)	$14.00
Labor (Field) ($30.42/hr x 1/4 hr x 2)	$15.21	Labor (Field) ($45.63hr x 1/4 hr x 2)	$22.82
Transportation ($0.535/mile x 26 miles-to/from) x 2	$27.82	Transportation ($0.535/mile x 26 miles-to/from) x 2	$27.82
Total	$57.03	Total	$64.64

Premises Visit Charge

The Utility currently does not have a premises visit charge. The premises visit charge is levied when a service representative visits premises at the customer's request for complaint resolution and the problem is found to be the customer's responsibility. In addition, the premises visit charge can be levied when a service representative visits a premises for the purpose of discontinuing service for nonpayment of a due and collectible bill, and does not discontinue service because the customer pays the service representative or otherwise makes satisfactory arrangements to pay the bill. A premises visit requires one trip.

Based on labor and transportation to and from the service territory, staff recommends a premises visit charges of $31.10 for normal hours and $36.20 for after hours. Staff's calculations are shown in Table 3-4.

Table 3-4
Premises Visit Charge Calculation

Activity	Normal Hours Cost	Activity	After Hours Cost
Labor (Administrative) ($28.00/hr x1/4hr)	$7.00	Labor (Administrative) ($28.00/hr x1/4hr)	$7.00
Labor (Field) ($30.42/hr x 1/3 hr)	$10.14	Labor (Field) ($45.63/hr x 1/3 hr)	$15.21
Transportation ($0.535/mile x 26 miles-to/from)	$13.91	Transportation ($0.535/mile x 26 miles-to/from)	$13.91
Total	$31.05	Total	$36.12

Table 3-5
Summary of Staff Recommended Miscellaneous Service Charges

	Current	Staff Recommended	
	Normal and After Hours	Normal Hours	After Hours
Initial Connection Charge	$250.00	$31.10	$36.20
Normal Reconnection Charge	$25.00	$57.10	$64.70
Violation Reconnection Charge	$50.00	$57.10	$64.70
Premises Visit Charge	N/A	$31.10	$36.20

Conclusion

Based on the above, the miscellaneous service charges identified in Table 3-5 are appropriate and should be approved. The charges should be effective on or after the stamped approval date on the tariff pursuant to Rule 25-30.475, F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 4: Should OWI's request to implement a late payment charge of $6.50 be approved?

Recommendation: Yes. OWI's request to implement a late payment charge of $6.50 should be approved. OWI should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. OWI should provide proof of the date notice was given no less than 10 days after the date of the notice. (Bethea)

Staff Analysis: OWI is requesting a $6.50 late payment charge to recover the cost of labor, supplies, postage, and RAFs associated with processing late payment notices. OWI's current late payment charge is 10 percent of the total balance due. OWI is requesting $6.50 for its late payment charge, which is consistent with recent Commission practice and the charge is consistent with that charged by other utilities managed by U.S. Water.[4] The purpose of this charge is not only to provide an incentive for customers to make timely payment, thereby reducing the number of delinquent accounts, but also to place the cost burden of processing delinquent accounts solely upon those who are cost causers. Section 367.091, F.S., authorizes the Commission to establish, increase, or change a rate or charge other than monthly rates or service availability charges.

OWI calculated the actual costs for its late payment charges to be $8.07. OWI indicated that it will take approximately 15 minutes per account to research, compile, and produce late notices. The delinquent customer accounts will be processed by the administrative contract employee, which results in labor cost of $7.00 ($28.00 x 0.25hr). This is consistent with prior Commission decisions where the Commission has allowed 10-15 minutes per account per month for the administrative labor associated with processing delinquent customer accounts.[5] However, $8.07 would be the highest late payment charge amongst all other water and wastewater utilities regulated by the Commission.[6] Therefore, OWI is requesting a charge of $6.50, consistent with

[4] Order Nos. PSC-2020-0267-PAA-WS, issued July 27, 2020, in Docket No. 20190195-WS, *In re: Application for transfer of water and wastewater systems of Regency Utilities, Inc., and transfer of Certificate Nos. 641-W and 551-S to Duval Waterworks, Inc., in Duval County*; PSC-2020-0086-PAA-WU, issued March 24, 2020, in Docket No. 20190114-WU, *In re: Application for staff-assisted rate case in Alachua County, and request for interim rate increase by Gator Waterworks, Inc.*; PSC-2018-0334-PAA-WU, issued June 28, 2018, in Docket No. 20170155-WU, *In re: Application for grandfather water certificate in Leon County and application for pass through increase of regulatory assessment fees, by Seminole Waterworks, Inc.*

[5] Order Nos. PSC-2020-0267-PAA-WS, issued July 27, 2020, in Docket No. 20190195-WS, *In re: Application for transfer of water and wastewater systems of Regency Utilities, Inc., and transfer of Certificate Nos. 641-W and 551-S to Duval Waterworks, Inc., in Duval County*; PSC-2020-0086-PAA-WU, issued March 24, 2020, in Docket No. 20190114-WU, *In re: Application for staff-assisted rate case in Alachua County, and request for interim rate increase by Gator Waterworks, Inc.;* PSC-16-0041-TRF-WU, issued January 25, 2016, in Docket No. 20150215-WU, *In re: Request for approval of tariff amendment to include miscellaneous service charges for the Earlene and Ray Keen Subdivisions, the Ellison Park Subdivision and the Lake Region Paradise Island Subdivision in Polk County, by Keen Sales, Rentals and Utilities, Inc.* and PSC-15-0569-PAA-WS, issued December 16, 2015, in Docket No. 20140239-WS, *In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation*.

[6] *See, for comparison,* Order Nos. PSC-2020-0267-PAA-WS, issued July 27, 2020, in Docket No. 20190195-WS, *In re: Application for transfer of water and wastewater systems of Regency Utilities, Inc., and transfer of Certificate Nos. 641-W and 551-S to Duval Waterworks, Inc., in Duval County*; PSC-14-0105-TRF-WS, issued February 20,

these recent Commission decisions. OWI's calculation for its actual costs associated with a late payment charge is shown in Table 4-1.

Table 4-1
Late Payment Charge Cost Justification

Activity	Cost
Labor	$7.00
Supplies	$0.22
Postage	$0.49
Markup for RAFs	$0.36
Total Cost	$8.07

Source: Utility's cost justification documentation

Conclusion

Based on the above, OWI's request to implement a $6.50 late payment charge should be approved. OWI should be required to file a proposed customer notice to reflect the Commission-approved charge. The approved charge should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charge should not be implemented until after staff has approved the proposed customer notice and the notice has been received by customers. OWI should provide proof of the date notice was given no less than 10 days after the date of the notice.

2014, in Docket No. 20130288-WS, *In re: Request for approval of late payment charge in Brevard County by Aquarina Utilities, Inc.*; PSC-15-0535-PAA-WU, issued November 19, 2015, in Docket No. 20140217-WU, *In re: Application for staff-assisted rate case in Sumter County by Cedar Acres, Inc.;* and PSC-15-0569-PAA-WS, issued December 16, 2015, in Docket No. 20140239-WS*, In re: Application for staff-assisted rate case in Polk County by Orchid Springs Development Corporation.*

Issue 5: Should OWI's request to revise the existing initial customer deposits be approved?

Recommendation: Yes. OWI's request to revise the existing initial customer deposits should be approved. The appropriate initial customer deposit for water should be $73.30 for the residential 5/8 inch x 3/4 inch meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding. (Bethea)

Staff Analysis: Rule 25-30.311, F.A.C., provides criteria for collecting, administering, and refunding customer deposits. Rule 25-30.311(1), F.A.C., requires that each company's tariff contain its specific criteria for determining the amount of initial deposits. Currently, the Utility's initial customer deposits are $50 for homeowners, $200 for renters, and $100 for general service. The Utility requested an initial customer deposit of $73.30 for water which is based on two months of average residential monthly bills and the Utility's service rates. Customer deposits are designed to minimize the exposure of bad debt expense for the Utility and, ultimately, the general body of ratepayers. In addition, collection of customer deposits is consistent with one of the fundamental principles of rate making—ensuring that the cost of providing service is recovered from the cost-causer.

Rule 25-30.311(7), F.A.C., authorizes utilities to collect new or additional deposits from existing customers if such additional deposits do not exceed an amount equal to the average actual charge for water service for two billing periods for the 12-month period immediately prior to the date of notice. The two billing periods reflect the lag time between the customer's usage and the Utility's collection of the revenues associated with that usage. Commission practice has been to set initial customer deposits equal to two months of bills, based on the average consumption for a 12-month period for each class of customers.

Based on the above, OWI's request to revise the existing initial customer deposits should be approved. The appropriate initial customer deposit for water should be $73.30 for the residential 5/8 inch x 3/4 inch meter size. The initial customer deposit for all other residential meter sizes and all general service meter sizes should be two times the average estimated bill. The approved customer deposits should be effective for connections made on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. The Utility should be required to collect the approved initial customer deposits until authorized to change them by the Commission in a subsequent proceeding.

Issue 6: Should OWI be authorized to collect Non-Sufficient Funds (NSF) Charges?

Recommendation: Yes. OWI should be authorized to collect NSF charges. OWI should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved NSF charges. The approved charges should be effective for service rendered on or after the stamped approval date on the tariff sheets provided customers have received notice pursuant to Rule 25-30.475, F.A.C. OWI should provide proof of the date notice was given no less than 10 days after the date of the notice. (Bethea)

Staff Analysis: Currently, OWI has a $35 NSF charge. Section 367.091, F.S., requires that rates, charges, and customer service policies be approved by the Commission. Staff recommends that OWI should be authorized to collect NSF charges consistent with Section 68.065, F.S., which allows for the assessment of charges for the collection of worthless checks, drafts, or orders of payment. As currently set forth in Section 68.065(2), F.S., the following NSF charges may be assessed:

(1) $25, if the face value does not exceed $50;
(2) $30, if the face value exceeds $50 but does not exceed $300;
(3) $40, if the face value exceeds $300; or
(4) 5 percent of the face amount of the check, whichever is greater.

Conclusion

Approval of NSF charges is consistent with prior Commission decisions.[7] Furthermore, NSF charges place the cost on the cost-causer, rather than requiring that the costs associated with the return of the NSF checks be spread across the general body of the ratepayers. As such, OWI should be authorized to collect NSF charges. OWI should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved NSF charges. The approved charges should be effective for service rendered on or after the stamped approval date on the tariff sheets provided customers have received notice pursuant to Rule 25-30.475, F.A.C. OWI should provide proof of the date notice was given no less than 10 days after the date of the notice.

[7] Order Nos. PSC-2020-0086-PAA-WU, issued March 24, 2020, in Docket No. 20190114-WU, *In re: Application for staff-assisted rate case in Alachua County, and request for interim rate increase by Gator Waterworks, Inc.*; PSC-2018-0334-PAA-WU, issued June 28, 2018, in Docket No. 20170155-WU, *In re: Application for grandfather water certificate in Leon County and application for pass through increase of regulatory fees, by Seminole Waterworks, Inc.*; PSC-14-0198-TRF-SU, issued May 2, 2014, in Docket No. 20140030-SU, *In re: Request for approval to amend Miscellaneous Service charges to include all NSF charges by Environmental Protection Systems of Pine Island, Inc.*; and PSC-13-0646-PAA-WU, issued December 5, 2013, in Docket No. 20130025-WU, *In re: Application for increase in water rates in Highlands County by Placid Lakes Utilities, Inc.*

Issue 7: Should OWI's requested meter installation charge be approved?

Recommendation: Yes. The Utility's requested meter installation charge of $353 for the 5/8 inch x 3/4 inch meter size should be approved. The Utility should file a tariff sheet and a proposed customer notice. OWI should provide notice to potential customers who have requested service within 12 calendar months prior to the month the application was filed and up until this Order becomes final.[8] The approved charge should be effective for connections made on or after the stamped approval date on the tariff sheet. The Utility should provide proof of the date notice was given within 10 days of the date of notice. (Bethea, Hudson)

Staff Analysis: Currently, the Utility does not have a meter installation charge. OWI requested a meter installation charge of $353 for 5/8 inch x 3/4 inch meters. The proposed meter installation charge of $353 is based on the cost of labor and parts for installing electronic transmitting meters. The existing customers have electronic transmitting meters. The Commission has recognized that the higher costs for electronic transmitting meters have offsetting cost efficiencies because the utility is able to remotely read the meters and download the information directly into its billing systems.[9] Staff has reviewed the information provided by OWI and recommends that the Utility's proposed meter installation charge of $353 for 5/8 inch x 3/4 inch meters is reasonable and should be approved.

Based on the above, the Utility's requested meter installation charge of $353 for the 5/8 inch x 3/4 inch meter size should be approved. The Utility should file a tariff sheet and a proposed customer notice. OWI should provide notice to potential customers who have requested service within 12 calendar months prior to the month the application was filed and up until this Order becomes final. The approved charge should be effective for connections made on or after the stamped approval date on the tariff sheet. The Utility should provide proof of the date notice was given within 10 days of the date of notice.

[8] Order No. PSC-2019-0223-PAA-SU, issued June 3, 2019, in Docket No. 20190075-SU, *In re: Revision of wastewater service availability charges for Ni Florida in Pasco County*.
[9] Order Nos. PSC-11-0478-PAA-WU, issued October 24, 2011, in Docket No. 20100085-WU, *In re: Application for certificate to operate water utility in Lake County by Black Bear Reserve Water Corporation;* PSC-07-0983-PAA-WS, issued December 10, 2007, in Docket No. 060726-WS, *In re: Application for certificates to provide water and wastewater service in Glades County and water service in Highlands County for Silver Lake Utilities, Inc.;* and Order No. PSC-03-1474-TRF-WU, issued December 31, 2003, in Docket No. 030956-WU, *In re: Application for approval of revised service availability charges to increase meter installation fees in Osceola County by O&S Water Company, Inc.*

Issue 8: Should this docket be closed?

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

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

Water Service Territory
Okaloosa County, Florida

All of Section 26, Township 6 North, Range 25 West, Section 25, Township 6 North, Range 25 West, Section 30, Township 6 North, Range 24 West, Section 29, Township 6 North, Range 24 West, Section 28, Township 6 North, Range 24 West, Section 27, Township 6 North, Range 24 West, Section 26, Township 6 North, Range 24 West, Section 25, Township 6 North, Range 24 West, the Northwest ¼ of the Northwest ¼, the Southwest ¼ of the Northwest ¼, the Northwest ¼ of the Southwest ¼ and the Southwest ¼ of the Southwest ¼ of Section 30, Township 6 North, Range 23 West.

All of Section 35, Township 6 North, Range 25 West, Section 36, Township 6 North, Range 25 West, Section 31, Township 6 North, Range 24 West, Section 32, Township 6 North, Range 24 West, Section 33, Township 6 North, Range 24 West, Section 34, Township 6 North, Range 24 West, Section 35, Township 6 North, Range 24 West, Section 36, Township 6 North, Range 24 West, the Northwest ¼ of the Northwest ¼, the Southwest ¼ of the Northwest ¼, the Northwest ¼ of the Southwest ¼ and the Southwest ¼ of the Southwest ¼ of Section 31, Township 6 North, Range 23 West.

All of Section 02, Township 5 North, Range 25 West, Section 01, Township 5 North, Range 25 West, Section 06, Township 5 North, Range 24 West, Section 05, Township 5 North, Range 24 West, Section 04, Township 5 North, Range 24 West, Section 03, Township 5 North, Range 24 West, Section 02, Township 5 North, Range 24 West, Section 01, Township 5 North, Range 24 West, the Northwest ¼ of the Northwest ¼, the Southwest ¼ of the Northwest ¼, the Northwest ¼ of the Southwest ¼ and the Southwest ¼ of the Southwest ¼ of Section 06, Township 5 North, Range 23 West.

All of Section 11, Township 5 North, Range 25 West, Section 12, Township 5 North, Range 25 West, Section 07, Township 5 North, Range 24 West, Section 08, Township 5 North, Range 24 West, Section 09, Township 5 North, Range 24 West, Section 10, Township 5 North, Range 24 West, Section 11, Township 5 North, Range 24 West, Section 12, Township 5 North, Range 24 West, the Northwest ¼ of the Northwest ¼, the Southwest ¼ of the Northwest ¼, the Northwest ¼ of the Southwest ¼ and the Southwest ¼ of the Southwest ¼ of Section 07, Township 5 North, Range 23 West.

All of Section 14, Township 5 North, Range 25 West, Section 13, Township 5 North, Range 25 West, Section 18, Township 5 North, Range 24 West, Section 17, Township 5 North, Range 24 West, Section 16, Township 5 North, Range 24 West, Section 15, Township 5 North, Range 24 West, Section 14, Township 5 North, Range 24 West, Section 13, Township 5 North, Range 24 West, the Northwest ¼ of the Northwest ¼, the Southwest ¼ of the Northwest ¼, the Northwest ¼ of the Southwest ¼ and the Southwest ¼ of the Southwest ¼ of Section 18, Township 5 North, Range 23 West.

All of Section 23, Township 5 North, Range 25 West, Section 24, Township 5 North, Range 25 West, Section 19, Township 5 North, Range 24 West, Section 20, Township 5 North, Range 24 West, Section 21, Township 5 North, Range 24 West, Section 22, Township 5 North, Range 24 West, Section 23, Township 5 North, Range 24 West, Section 24, Township 5 North, Range 24 West, the Northwest ¼ of the Northwest ¼, the Southwest ¼ of the Northwest ¼, the Northwest ¼ of the Southwest ¼ and the Southwest ¼ of the Southwest ¼ of Section 19, Township 5 North, Range 23 West.

All of Section 26, Township 5 North, Range 25 West, Section 25, Township 5 North, Range 25 West, Section 30, Township 5 North, Range 24 West, Section 29, Township 5 North, Range 24 West, Section 28, Township 5 North, Range 24 West, Section 27, Township 5 North, Range 24 West, Section 26, Township 5 North, Range 24 West, Section 25, Township 5 North, Range 24 West, the Northwest ¼ of the Northwest ¼, the Southwest ¼ of the Northwest ¼, the Northwest ¼ of the Southwest ¼ and the Southwest ¼ of the Southwest ¼ of Section 30, Township 5 North, Range 23 West, Okaloosa County, Florida.

FLORIDA PUBLIC SERVICE COMMISSION

Authorizes

Okaloosa Waterworks, Inc.

pursuant to

Certificate Number 676 –W

to provide water service in Okaloosa County in accordance with the provisions of Chapter 367, Florida Statutes, and the Rule, regulations, and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

Order Number	Date Issued	Docket Number	Filing Type
*	*	20200155-WU	Original Certificate

* Order Number and date to be provided at time of issuance.

Okaloosa Waterworks, Inc.
Monthly Water Rates

Residential Service

Base Facility Charge	
5/8" x 3/4"	$30.00
Gallonage Charge	
0 – 1,000 gallons	$0.00
1,001 – 2,000 gallons	$2.00
2,001 – 3,000 gallons	$3.00
3,001 – 4,000 gallons	$4.50
4,001 – 5,000 gallons	$8.00
5,001 – 6,000 gallons	$8.50
Over 6,000 gallons	$9.00

General Service

Base Facility Charge	
5/8" x 3/4"	$50.00
Gallonage Charge	
0 – 6,000 gallons	$0.00
Over 6,000 gallons	$8.00

General Service - Bulk Service

Base Facility Charge	$0.00
Gallonage Charge per 1,000 gallons	$5.00

Service Availability Charges

Customer Service Line Installation (Tap In) Charge

Tap In with Road Bore	$2,000.00
Tap In without Road Bore	$1,500.00

Item 13

FILED 9/24/2020
DOCUMENT NO. 09246-2020
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: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Bruce, Bethea, Sibley, Hudson) JJH
Division of Accounting and Finance (D. Brown, Richards) ALM
Division of Engineering (Maloy, Knoblauch, Ramos) TB
Office of the General Counsel (Passidomo, Weisenfeld) LCT

RE: Docket No. 20200152-WS – Application for a limited alternative rate increase proceeding in Polk and Marion Counties, by Alturas Water, LLC, Sunrise Water, LLC, Pinecrest Utilities, LLC, and East Marion Utilities, LLC.

AGENDA: 10/06/20 – Regular Agenda – Proposed Agency Action – Except Issue Nos. 3 and 4 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Brown

CRITICAL DATES: 10/12/20 – 90 day deadline Pursuant to Rule 25 - 30.457(11), F.A.C.

SPECIAL INSTRUCTIONS: None

Case Background

On May 28, 2020, Florida Utility Services 1, LLC (FUS1) filed an application for a limited alternative rate increase (LARI) for Alturas Water, LLC. (Alturas); Charlie Creek Utilities, LLC (Charlie Creek); Crestridge Utilities, LLC (Crestridge); East Marion Utilities, LLC (East Marion); Holiday Gardens Utilities, LLC (Holiday Gardens); Lake Yale Utilities, LLC (Lake Yale); McLeod Gardens Utilities, LLC (McLeod Gardens); Orange Land Utilities, LLC (Orange Land); Pinecrest Utilities, LLC (Pinecrest); and Sunrise Water, LLC (Sunrise). However, on June 12, 2020, in accordance with Rule 25-30.457(2)(1), Florida Administrative Code, (F.A.C.), staff determined that McLeod Gardens was ineligible for a LARI due to its last rate case being in 2002, and that Lake Yale was ineligible due to never having had a rate proceeding before the Commission.[1] Subsequently, on June 19, 2020, McLeod Gardens and Lake Yale each filed for a staff-assisted rate case (SARC). [2]

After the withdrawal of McLeod Gardens and Lake Yale, the applications met the initial requirements of the Rule, and staff established July 13, 2020, as the official filing date. However, following the establishment of the official filing date, staff's review of the 2019 Annual Report for Charlie Creek, Crestridge, Holiday Gardens, and Orange Land showed that they may be overearning and are not eligible for a LARI. Therefore, on August 20, 2020, FUS1 withdrew the LARI applications for Charlie Creek, Crestridge, Holiday Gardens, and Orange Land and requested a refund of the appropriate filing fees. As a result, only Alturas, East Marion, Pinecrest, and Sunrise (utilities) remain in this proceeding. The following table reflects the number of customers, 2019 Annual Report gross revenues and operating expenses, and the rate proceedings in which rates were last established for the remaining utilities.

Customers, Revenues, Operating Expenses and Last Proceedings Establishing Rates

Utility	Customers	Gross Revenues	Operating Expenses	Order	Issuance Date
Alturas	55	$23,880	$28,893	PSC-2016-0128-PAA-WU	03/29/16
East Marion – w	106	$32,799	$38,844	PSC-2017-0107-PAA-WS	03/24/17
East Marion - ww	94	$43,310	$46,671	PSC-2017-0107-PAA-WS	03/24/17
Pinecrest	142	$62,864	$60,120	PSC-2013-0320-PAA-WU	07/15/13
Sunrise	257	$62,700	$75,966	PSC-2016-0126-PAA-WU	03/28/16

Source: 2019 Annual Report and Commission Orders

By Order No. PSC-2019-0503-PAA-SU, issued November 25, 2019, in Docket No. 20180202-SU, the Commission approved an allocation of common costs from FUS1 to West Lakeland Wastewater, LLC, a sister utility. The utilities' purpose for filing this request is to recover an allocated portion of common costs based on the Commission-approved FUS1 common costs in the aforementioned Order. Furthermore, the request is for the utilities' recovery of their allocated portion of increased FUS1 common costs and the inclusion of a Compliance Technician position.

[1] Document No. 03165-2020, filed June 18, 2020.
[2] Docket No. 20200168-WU, *In re: Application for staff-assisted rate case in Polk County, and request for interim rate increase, by McLeod Gardens Utilities, LLC.*; and Docket No. 20200169-WS, *In re: Application for staff-assisted rate case in Lake County, and request for interim rate increase, by Lake Yale Utilities, LLC.*

FUS1 selected the test year ended December 31, 2019, for this proceeding. The Commission has jurisdiction pursuant to Sections 367.0814(9) and 367.121(1), Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve FUS1's application for a limited alternative rate increase for Alturas, East Marion, Pinecrest, and Sunrise?

Recommendation: Yes. The Commission should approve the aforementioned utilities' application for a limited alternative rate increase with staff's modifications. The increase for each utility is listed in the table below. Pursuant to Rule 25-30.457(7), F.A.C., the utilities are required to hold any revenue increase granted subject to refund with interest. To ensure overearnings will not occur because of these rate increases, Commission staff will conduct earning reviews of the twelve-month period following the implementation of the revenue increase. If overearnings occur, such overearnings, up to the amount held subject to refund, with interest, must be disposed of for the benefit of the customers. If Commission staff determines that a utility did not exceed the range of its last authorized return on equity, the revenue increase will no longer be held subject to refund.

System Name	Percent Increase	Revenue Increase
Alturas Water	14.05%	$3,466
East Marion (water)	8.71%	$2,717
East Marion (wastewater)	5.88%	$2,586
Pinecrest	6.67%	$4,046
Sunrise Water	20.00%	$11,731

(Richards, D. Brown, Knoblauch, Maloy)

Staff Analysis: Pursuant to Rule 25-30.457, F.A.C., any utility eligible to file for a SARC may petition the Commission for a rate increase of up to 20 percent applied to metered or flat recurring rates as an alternative to a rate case. This Rule was designed to stream-line the rate increase process for qualifying water or wastewater companies, by establishing an abbreviated procedure for a limited rate increase that is less time consuming and thus less costly for utilities, their customers, and the Commission. This Rule is similar to the rules governing price index and pass-through increases, in that neither an engineering review nor a financial audit of the utility's books and records is required.

As discussed in the case background, only Alturas, East Marion, Pinecrest, and Sunrise remain in this proceeding. Staff reviewed the filing regarding the remaining utilities pursuant to the criteria listed in Rule 25-30.457(5), F.A.C., and recommends that they qualify for staff assistance pursuant to subsection (1) of this Rule. Staff also verified that the utilities are current on their filing of regulatory assessment fees and annual reports. Each of the four utilities have had rates established within the last seven years, pursuant to Rule 25-30.457(2)(l), F.A.C., and are under earning based on information provided in their 2019 Annual Reports. Additionally, the utilities' books and records appear to be organized consistent with Rule 25-30.110, F.A.C. The filing

contained additional relevant information in support of their application. This information is detailed below.

Secondary Water Standards

Pursuant to Section 367.0812(1), F.S., "in fixing rates that are just, reasonable, compensatory, and not unfairly discriminatory, the commission shall consider the extent to which the utility provides water service that meets secondary water quality standards as established by the Department of Environmental Protection (DEP)." As such, staff analyzed the current compliance with secondary standards and other quality of service items for the utilities.

In their last rate cases, the Commission determined the overall quality of service to be satisfactory for both East Marion[3] (2015, water and wastewater) and Pinecrest[4] (2012, water). In the last rate cases of Alturas[5] (2014, water) and Sunrise[6] (2014, water), the Commission found the overall quality of service to be unsatisfactory and ordered a 25 percent penalty be applied to the officers' salaries. Subsequent to its last rate case, Sunrise and Alturas were transferred to the current owner in June 2018, whereas, the East Marion and Pinecrest systems were transferred to the current owner, prior to their last rate cases, in 2015 and 2011, respectively.

Based on the DEP's most recent Sanitary Survey for the East Marion water treatment plant (WTP), conducted on October 2, 2019, the DEP determined the system was out of compliance with the DEP's rules and regulations. This was due to inadequate chlorine levels, a leaking valve, missing a monthly operating report, no security for the tank system, and lack of a flushing plan on site. In addition, the utility is required to submit annual and biannual testing of certain contaminants. The DEP issued the utility a consent order for failure to monitor contaminant levels in 2019. Subsequently, the utility entered into a settlement agreement with the DEP on July 31, 2020. Secondary standards were last tested, on November 29, 2018. East Marion passed all 14 secondary standards and will next be tested for secondary standards in 2021. On July 24, 2019, the DEP conducted a compliance inspection on the East Marion wastewater treatment plant (WWTP) and determined it to be out of compliance with the DEP's rules and regulations due to permitting and monitoring violations. Since the compliance inspection, the utility has worked to correct the issues for its WWTP and on March 9, 2020, the DEP determined the facility resolved its issues and is now in compliance.

Based on the DEP's most recent Sanitary Surveys for Sunrise, conducted on June 22, 2020, the DEP determined the system was in compliance with the DEP's rules and regulations. The last secondary standards testing for Sunrise was performed on August 2, 2018, and reported excess

[3] Order No. PSC-2015-0576-PAA-WS, issued December 21, 2015, in Docket No. 20150091-WS, *In re: Application for approval of transfer of Certificate Nos. 490-W and 425-S from East Marion Sanitary Systems, Inc. to East Marion Utilities, LLC. in Marion County*.
[4] Order No. PSC-2012-0475-PAA-WU, issued September 18, 2012, in Docket No. 20110311-WU, *In re: Application for staff-assisted rate case in Polk County by Pinecrest Utilities, LLC*.
[5] Order No. PSC-2019-0304-PAA-WU, issued July 29, 2019, in Docket No. 20180175-WU, *In re: Application to transfer facilities and Certificate No. 628-W in Polk County from Alturas Utilities, L.L.C. to Alturas Water, LLC.*
[6] Order No. PSC-2019-0303-PAA-WU, issued July 29, 2019, in Docket No. 20180174-WU, *In re: Application to transfer facilities and Certificate No. 627-W in Polk County from Sunrise Utilities, L.L.C. to Sunrise Water, LLC.*

foaming agent levels. The next secondary standards testing will occur in 2021. The DEP conducted a sanitary survey for the Pinecrest system on September 19, 2017, and deemed the system out of compliance due to the utility's failure to obtain the proper permit before beginning a project. Additionally, Pinecrest was tested for secondary standards on July 17, 2018, and passed all secondary standards. The next test for this system will occur in 2021. The DEP conducted a sanitary survey for the Alturas system on July 30, 2018. The DEP determined the system to be out of compliance due to an expired tank inspection. On August 29, 2018, the Alturas system had its secondary standards tested, which indicated excess iron levels.

Staff analyzed the complaint records of the Commission, the DEP, and the utility for each of the systems since 2015. The results are shown in Table 1-1.

Table 1-1
Quality of Service Complaints by System (2015-2020)

System	Commission	DEP	Utility
East Marion	32 (water) 0 (wastewater)	8 (water) 1 (wastewater)	5 (water) 0 (wastewater)
Pinecrest	0	0	6
Sunrise	10	7	1
Alturas	0	0	0

Source: Complaint records of the Commission's Consumer Activity Tracking System, the DEP, and the utility

Since the transfer of Sunrise and East Marion to the current owner, the complaints filed with the DEP and the Commission have decreased. Specifically, for the Sunrise system, post-transfer, two complaints were filed with the DEP and zero complaints were filed with the Commission. For the East Marion system, post-transfer, zero complaints were filed with the DEP and two complaints were filed with the Commission.

Due to travel restrictions implemented by the Department of Management Services, a customer meeting was not held.[7] However, all customers received a Notice for the Solicitation of Comments (Notice) that provided a summary of the rate case, the current and proposed rates, detailed instructions on how comments may be filed with the Commission prior to the Commission Conference, and instructions if a customer wished to comment at the Commission Conference. Also, attached to the Notice was a customer comment card that customers could complete and mail to the Commission. As of September 21, 2020, 14 customers submitted comments. Two customers (one from Sunrise and one from East Marion) expressed concern regarding the proposed rate increase and 12 expressed concern regarding water quality issues (two customers for Sunrise, seven customers for East Marion, and three customers for Pinecrest).

[7] Department of Management Services, Travel Guidance for Employees of the State Personnel System, posted March 1, 2020, https://www.dms.myflorida.com/content/download/148251/989599/Travel_Guidance_for_Employees_of_the_State_Personnel_System.pdf

East Marion and Pinecrest are currently in compliance with secondary standards. Sunrise and Alturas are not currently meeting secondary standards based upon tests taken within a few months of the systems being transferred to the current owner. The rates of Sunrise and Alturas currently include a financial penalty, which will remain in place until their next SARCs, at which time quality of service will be evaluated. Additionally, as a part of this proceeding, FUS1 requested a new Compliance Technician position, which is discussed in greater detail below. This position will assist in permitting and regulatory reporting for the utilities, which appears to be a contributing factor as to why the utilities are not compliant with the DEP. Therefore, staff does not believe any additional action is necessary at this time.

FUS1 Allocation

The utilities' application requested recovery of FUS1's allocated common costs for each of the systems referenced above, based on the allocated common costs approved in Docket No. 20180202-SU.[8] The operations and maintenance (O&M) common costs are allocated among all of the utilities in the FUS1 system based on number of customers. Table 1-2 below shows the allocation used for the four utilities in the present docket.

Table 1-2
FUS1 Utility Allocation

	Alturas	East Marion[9]	Pinecrest	Sunrise	Non-LARI Utilities	FUS1 Total
Customers	55	106	142	257	2,826	3,386
Allocation	2%	3%	4%	8%	83%	100%

Source: Document No. 02809-2020, Exhibit E.

The O&M common costs allocated to each FUS1 utility include:

- Salaries and Wages – Employees (601/701)
- Salaries and Wages – Officers (603/703)
- Employee Benefits (604/704)
- Materials and Supplies (620/720)
- Contractual Services – Professional (631/731)
- Contractual Services – Other (636/736)
- Rents (640/740)
- Transportation (650/750)
- Insurance (655/755)
- Miscellaneous Expenses (675/775)

Table 1-3 illustrates the adjustments made to the reported amounts for 2019 in order to achieve the Commission-approved FUS1 O&M common costs.

[8] Order No. PSC-2019-0503-PAA-SU, filed on November 25, 2019, in Docket No. 20180202-SU, *In re: Application for staff-assisted rate case in Polk County by West Lakeland Wastewater, LLC.*
[9] The allocation is shared equally between the water and wastewater systems for East Marion.

Table 1-3
Allocated O&M Common Costs

Utility	2019 Amount	Adjustment To Meet Allocation	Approved Allocation
Alturas	$10,274	$986	$11,260
East Marion	$15,412	$1,478	$16,890
Pinecrest	$23,090	($571)	$22,519
Sunrise	$41,097	$3,941	$45,038
Non-LARI Systems	$423,841	$43,427	$467,268
Total FUS1	$513,714	$49,261	$562,975

Source: Document 02809-2020, Exhibit F.

Payroll Taxes

In addition to O&M common costs, the Commission approved payroll taxes of $23,910 for the FUS1 utilities in Docket No. 20180202-SU. Table 1-4 illustrates the adjustments made to the reported payroll tax amounts for 2019 in order to achieve the amount approved by the Commission.

Table 1-4
Allocated Payroll Taxes

Utility	2019 Amount	Adjustment To Meet Allocation	Approved Allocation
Alturas	$402	$76	$478
East Marion	$602	$114	$716
Pinecrest	$905	$51	$956
Sunrise	$1,608	$305	$1,913
Non-LARI Systems	$16,579	$3,268	$19,847
Total FUS1	$20,096	$3,814	$23,910

Source: Document No. 02809-2020, Exhibit F.

Pro Forma Expenses

As part of their application, the utilities also requested the recovery of pro forma FUS1 common costs that have increased significantly since FUS1 allocated common costs were approved in the West Lakeland Water proceeding, and include the addition of a Compliance Technician position. These items are discussed in additional detail below.

Salaries and Wages – Employees (601/701)

As shown in Table 1-5 below, the Commission approved $301,366 for FUS1 employee salaries and wages in 2018. In their application, the utilities requested additional salaries and wages of

$83,502. This amount included salary increases for eight positions and the addition of one new position. In support of their request, the utilities provided an explanation for the increase associated with each position and referenced the 2018 American Water Works Association (AWWA) Compensation Survey.

A portion of the utilities' requested salary increases reflect index increases of $7,112 and $5,522 for 2019 and 2020, respectively.[10] Staff notes that all four utilities seeking increases in this docket implemented 2019 index increases between June and December 2019. Additionally, three of the four have implemented 2020 index increases.[11] Only Pinecrest has not filed for a 2020 index increase.[12] Because FUS1's common costs are allocated to each of the utilities, allocated common costs such as salaries are already included in the O&M expense used to calculate the index increase applicable to each utility. While the amount allocated to each utility would have been determined during each utility's last rate case, some allocation for FUS1 salaries is currently imbedded in O&M for each utility. By applying 2019 and 2020 index increases to the FUS1 salaries approved in West Lakeland, staff believes that at least some portion of the increase would result in double recovery for the utilities. Given the abbreviated nature of LARI proceedings, the potential for double recovery, and considering that the rate increases recommended here will be applied to rates that already reflect 2019 and 2020 index increases at the utility level, staff believes it would be inappropriate to include the FUS1 index increases included in the application.

In its application, FUS1 also requested approval of a new Compliance Technician position with an annual salary of $45,000. The duties for the position would include developing compliance programs and maintaining environmental compliance for FUS1's water and wastewater systems in areas such as permitting and regulatory reporting. The utility stated that these duties are currently being performed by the President of FUS1. However, with the number of systems now managed by FUS1, a full-time position is needed to effectively perform these responsibilities. Additionally, the Compliance Technician would also perform emergency response duties, such as initiating and maintaining contact with vendors and contractors, as well as managing an inventory of emergency assets.

In total, FUS1 manages 12 water and/or wastewater utilities regulated by the Commission, and two utilities which are not regulated by the Commission.[13] Considering the total number of systems and that regulatory compliance duties are currently being handled by the President, staff believes that the establishment of a new Compliance Technician position is reasonable. Furthermore, given the number of recent storm events that have impacted the state, sufficient emergency preparation and response is needed. Therefore, staff recommends approval of the requested Compliance Technician position.

Staff's recommended salary increases are reflected in Table 1-5.

[10] The index increase was 2.36 percent in 2019 and 1.79 percent in 2020.
[11] The 2020 index increases for Alturas, East Marion, and Sunrise had an effective date of June 5, 2020.
[12] Pinecrest is eligible to apply for a 2020 index increase as long as it does so before March 31, 2021.
[13] Suwannee Valley Utilities, LLC and College Manor Utilities, LLC are regulated by Columbia County but their customer base is included in common cost calculations in this docket.

Table 1-5
Recommended Salary Increase

Position	Commission Approved (20180202-SU)	FUS1 Requested Increase	FUS1 Requested Salary	Staff Recom. Increase	Recom. FUS1 Salary
CFO	$54,366	$2,279	$56,645	$0	$54,366
Office Manager	$39,500	$4,500	$44,000	$2,844	$42,344
Customer Service	$34,000	$1,425	$35,425	$0	$34,000
Billing	$20,800	$4,200	$25,000	$3,328	$24,128
Operations Sup.	$39,000	$13,999	$52,999	$12,364	$51,364
Maintenance	$37,900	$12,099	$49,999	$10,510	$48,410
Maintenance	$37,900	$0	$37,900	$0	$37,900
Maintenance	$37,900	$0	$37,900	$0	$37,900
Compliance	$0	$45,000	$45,000	$45,000	$45,000
Total	$301,366	$83,502	$384,868	$74,046	$375,412

Source: Document No. 02809-2020, Exhibit G-1 and staff calculations.

Contractual Services – Other (636/736)

FUS1 requested recovery of the cost to replace the air conditioning system at its New Port Richey offices. Item No. 3 of the building lease makes FUS1 responsible for "all cost and expenses whatsoever kind, character, nature or description concerning . . . all HVAC."[14] According to FUS1, the system was original to the building and could not be repaired. Since FUS1 has no real property interest in the building, the lease and all associated costs with the lease are expensed through the common cost allocation method for FUS1. Two bids were obtained for air conditioning systems, totaling $6,650 and $7,200.[15] The utility selected the lower bid of $6,650, which also offered a longer warranty than the higher cost air conditioning system bid. The system was installed in February 2020. Staff reviewed the invoice and believes the air conditioning system's cost of $6,650 should be amortized over five years. As such, staff believes $1,330 ($6,650 ÷ 5 years) should be included in FUS1 common costs and allocated to all FUS1 utilities.

Insurance Expenses (655/755)

FUS1 reported auto insurance expense of $13,283 and workman's compensation insurance of $9,000 for 2019. This represents total insurance expense of $22,283 ($13,283 + $9,000) for the year. In its application, the utilities requested an increase of $6,930 for auto insurance based on the premium for the policy period November 2019 through November 2020, reflected on the Progressive Insurance declaration page.[16] The utilities also requested an increase of $200 for workman's compensation based on the estimated premium for the policy period November 2019 through November 2020. The estimate was calculated using the final premium audit amounts paid in 2018 and 2019. As such, staff believes the utilities have supported the inclusion of the pro forma insurance expense increase of $7,130 ($6,930 + $200) for purposes of this LARI.

[14] Document No. 03663-2020, filed July 8, 2020.
[15] Document No. 02809-2020, filed May 28, 2020, and Document No. 03663-2020, filed July 8, 2020.
[16] Document No. 02809-2020.

Payroll Taxes

In addition to the salary increase request discussed above, the utilities also requested recovery of the associated payroll taxes. Staff utilized a payroll tax rate of 7.65 percent based on the 2020 FICA tax rate. When applied to the recommended salary increase of $74,046 as described above, staff recommends a pro forma increase to payroll taxes of $5,665 ($74,046 x 0.0765).

Pro Forma Summary

Staff's recommended pro forma increases, allocated to the various FUS1 systems, are provided in Table 1-6.

Table 1-6
Allocated Pro Forma Increases

Utility	Salaries	Contractual Services	Insurance Expenses	Payroll Taxes	System Total
Alturas	$1,481	$27	$143	$113	$1,764
East Marion (water)	$1,111	$20	$107	$85	$1,323
East Marion (wastewater)	$1,111	$20	$107	$85	$1,323
Pinecrest	$2,962	$53	$285	$227	$3,527
Sunrise	$5,924	$106	$570	$453	$7,053
Non-LARI Systems	$61,457	$1,104	$5,918	$4,702	$73,181
Total FUS1	$74,046	$1,330	$7,130	$5,665	$88,171

Source: Document No. 02809-2020 and staff calculations.

Rate Case Expense

The utilities paid a combined filing fee $4,500 on July 6, 2020. The utilities did not include any rate case expense in its filing. By Rule 25-22.0407, F.A.C., the utility is required to mail notices of the rate case overview, notices of final rates, and notices of four-year rate reduction to its customers. For these notices, staff estimated $924 for postage expense, $392 for printing, and $84 for envelopes, resulting in noticing expense of $1,400 ($924 + $392 + $84).

The utilities expect to incur $4,180 in legal fees to complete this LARI. The utilities provided invoices from Dean Mead Attorneys at Law (Dean Mead) through August 15, 2020, reflecting actual expenses associated with the rate case totaling $1,900, and estimated an additional $2,280 to complete the case.[17] These amounts included 5 hours of actual time and 6 hours of time to complete the LARI. No adjustments were made to legal fees.

Additionally, the utilities expect to incur $3,990 in accounting fees to complete the current docket. The utilities provided invoices from OCBOA Consulting, LLC. (OCBOA) through August 15, 2020, reflecting actual expenses of $3,681, and estimated an additional $309 to

[17] Document No. 04735-2020, filed on August 19, 2020.

complete the case.[18] These amounts included 38.75 hours of actual time and 3.25 hours of time to complete the LARI. Staff made no adjustments to accounting fees.

Due to the current restrictions on travel and large gatherings, no in-person customer meetings were conducted, and the October 6, 2020, Agenda Conference will take place via teleconference. As such, no travel expense was included in rate case expense. The noticing costs and consulting fees were allocated among the four utilities in this docket based on the number of customers as shown in Table 1-7 below.

Based on the information above, staff recommends total rate case expense of $14,070 ($4,500 + $1,400 + $4,180 + $3,990), which amortized over four years results in a rate case expense of $3,517 ($14,070 ÷ 4).

Table 1-7
Allocated Rate Case Expense

Utility	Allocation[19]	Filing Fee[20]	Noticing Costs	Legal Fees	Accounting Fees	Total RCE
Alturas	10%	$1,000	$138	$410	$392	$1,940
East Marion (water)	9%	$1,000	$132	$396	$378	$1,906
East Marion (wastewater)	9%	$500	$132	$396	$377	$1,405
Pinecrest	25%	$1,000	$355	$1,060	$1,012	$3,427
Sunrise	47%	$1,000	$643	$1,918	$1,831	$5,392
Total	100%	$4,500	$1,400	$4,180	$3,990	$14,070

Source: Utility filings and staff calculations.

Table 1-8
Amortized Rate Case Expense

Utility	Total RCE	Amortized RCE
Alturas	$1,940	$485
East Marion (water)	$1,906	$477
East Marion (wastewater)	$1,405	$351
Pinecrest	$3,427	$857
Total	$8,678	$2,170

Source: Staff Calculations.

While all four LARI utilities were included for purposes of determining the allocations and the rate case expense applicable to each system, no rate case expense is included in the increase

[18] Document No. 04735-2020.
[19] Rate case expense allocations are based on the number of customers for Alturas, East Marion water system, East Marion wastewater system, Pinecrest, and Sunrise only.
[20] Filing fees are based on the capacity of each utility's water and wastewater system, not by allocation.

calculated for Sunrise. The calculated increase for Sunrise is greater than the 20 percent allowed by Rule 25-30.457(1), F.A.C.[21] As such, staff capped Sunrise's increase at 20 percent. Accordingly, no four-year rate reduction (Issue 4) would be required for Sunrise. The total rate case expense for the other systems should be amortized over four years. The appropriate amortized rate case expense for each system is reflected in Table 1-8.

Conclusion

The data presented in the application was based on annualized revenues by customer class and meter size for the period ended December 31, 2019, the most recent 12-month period. Table 1-9 summarizes staff's recommended adjustments for each utility. Table 1-10 displays the annualized revenues, the percent increase, and the resulting annual increase in revenues that produce the total annual service revenues for each system and include staff's adjustments. Staff's annualized revenues reflect the 2020 index increases for Alturas, East Marion, and Sunrise, which had an effective date of June 5, 2020.

Table 1-9
Summary of Adjustments

Utility	Allocated O&M Adj.	Allocated Payroll Adj.	Pro Forma Increase	RCE	Adj. for RAF	Increase Capped At 20%	Total Increase
Alturas	$986	$76	$1,763	$485	$156	$0	$3,466
East Marion (water)	$739	$57	$1,323	$476	$122	$0	$2,717
East Marion (wastewater)	$739	$57	$1,323	$351	$116	$0	$2,586
Pinecrest	($571)	$51	$3,527	$857	$182	$0	$4,046
Sunrise	$3,941	$305	$7,054	$1,348	$596	($1,512)	$11,731

Source: Staff calculations

Table 1-10
Staff Recommended Increase

Utility	Annualized Revenue	Percentage Increase	Revenue Increase	Total Annual Service Revenue
Alturas	$24,666	14.05%	$3,466	$28,132
East Marion (water)	$31,213	8.71%	$2,717	$33,930
East Marion (wastewater)	$43,976	5.88%	$2,586	$46,562
Pinecrest	$60,640	6.67%	$4,046	$64,686
Sunrise	$58,656	20.00%	$11,731	$70,387

Source: Document No. 02809-2020 and staff calculations.

[21] As filed, Sunrise requested an increase of 22.92 percent.

Pursuant to Rule 25-30.457(7), F.A.C., the utility is required to hold any revenue increase granted subject to refund with interest in accordance with Rule 25-30.360(4), F.A.C.

To ensure overearnings will not occur because of these rate increases, staff will conduct earning reviews of the twelve-month period following the implementation of the revenue increase. At the end of the twelve-month period, each utility has 90 days to complete and file Form PSC 1025 (03/20), entitled "Limited Alternative Rate Increase Earnings Review." In the event a utility needs additional time to complete the form, that utility may request an extension of time supported by a statement of good cause that must be filed with Commission staff within seven days prior to the 90-day deadline. If staff's earnings review demonstrates that the utility exceeded the range of its last authorized rate of return on equity, such overearnings, up to the amount held subject to refund, with interest, shall be disposed of for the benefit of the customers. If staff determines that the utility did not exceed the range of its last authorized return on equity, the revenue increase will no longer be held subject to refund.

Based on the information described above, staff recommends approval of the utilities' application with the modifications discussed above.

Issue 2: What are the appropriate monthly service rates for Alturas, East Marion, Pinecrest, and Sunrise?

Recommendation: The existing service rates for the utilities should be increased as shown below to generate the recommended revenue increase in accordance with Rule 25-30.457, F.A.C.

Utility	% Rate Increase
Alturas	14.05%
East Marion (water)	8.71%
East Marion (wastewater)	5.88%
Pinecrest	6.67%
Sunrise	20.00%

The appropriate staff recommended service rates are shown on Schedule No. 1. The utilities should file tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the rates should not be implemented until staff has approved the proposed customer notice. The utilities should provide proof of the date notice was given no less than 10 days after the date of the notice. (Bethea, Sibley, Bruce)

Staff Analysis: Based on staff's recommended approval of the utilities' LARI in Issue 1, the existing service rates for the utilities should be increased by the individual percentage rate increases shown in Table 2-1, which are in accordance with Rule 25-30.457, F.A.C.

Table 2-1
Staff Recommended Percentage Rate Increase

Utility	% Rate Increase
Alturas	14.05%
East Marion (water)	8.71%
East Marion (wastewater)	5.88%
Pinecrest	6.67%
Sunrise	20.00%

Source: Staff Calculations

Therefore, staff calculated rates by applying the percentage rate increases across-the-board to the existing base facility and gallonage charges for each utility. The appropriate staff recommended service rates are shown on Schedule No. 1. The utilities should file tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the rates should not be implemented until staff has

approved the proposed customer notice. The utilities should provide proof of the date notice was given no less than 10 days after the date of the notice.

Issue 3: What is the appropriate amount by which the rates should be reduced four years after the published effective date to reflect the removal of the amortized rate case expense as required by Section 367.081(8), F.S.?

Recommendation: The rates should be reduced, as shown in Schedule No. 1, to remove rate case expenses grossed-up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the rate case expense recovery period, pursuant to Section 367.081(8), F.S. Alturas, East Marion, and Pinecrest should be required to file revised tariffs and proposed customer notices setting forth the lower rates and the reason for the reductions no later than one month prior to the actual date of the required rate reductions. If this reduction is filed in conjunction with price index or pass-through rate adjustments, separate data should be filed for the price index and/or pass-through increase or decrease and the reductions in the rates due to the amortized rate case expenses. (Bruce, Richards, D. Brown) (Procedural Agency Action)

Staff Analysis: Section 367.081(8), F.S., requires that the rates be reduced immediately following the expiration of the recovery period by the amount of the rate case expenses previously included in rates. These reductions will reflect the removal of revenue associated with the amortization of rate case expenses and the gross-up for RAFs. The total reductions for each system are listed in Table 4-1 below.

Table 3-1
Four-Year Rate Reduction

Utility	Reduction
Alturas	$508
East Marion (water)	$499
East Marion (wastewater)	$368
Pinecrest	$897

Source: Staff calculations.

Staff recommends that the rates should be reduced, as shown in Schedule No. 1, to remove rate case expense grossed-up for RAFs and amortized over a four-year period. The decrease in rates should become effective immediately following the expiration of the rate case expense recovery period, pursuant to Section 367.081(8), F.S. Alturas, East Marion, and Pinecrest should be required to file revised tariffs and proposed customer notices setting forth the lower rates and the reason for the reductions no later than one month prior to the actual date of the required rate reductions. If this reduction is filed in conjunction with price index or pass-through rate adjustments, separate data should be filed for the price index and/or pass-through increases or decreases and the reductions in the rates due to the amortized rate case expenses.

Issue 4: Should the recommended rates be approved for Alturas, East Marion, Pinecrest, and Sunrise on a temporary basis, subject to refund, in the event of a protest filed by a party other than the utility?

Recommendation: Yes. Pursuant to Rule 25-30.457(9), F.A.C., in the event of a protest of the Proposed Agency Action (PAA) Order by a substantially affected person other than one of the aforementioned utilities, the utilities should be authorized to implement the rates established in the LARI PAA Order on a temporary basis subject to refund upon filing a SARC application within 21 days from the date the protest is filed.

Each utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. If the recommended rates are approved on a temporary basis, the incremental increase collected by the utility will be subject to the refund provisions outlined in Rule 25-30.360, F.A.C. Pursuant to Rule 25-30.457(9), F.A.C., if a utility fails to file a SARC application within 21 days in the event there is a protest, the application for a LARI will be deemed withdrawn. (Richards, D. Brown) (Procedural Agency Action)

Staff Analysis: This recommendation proposes an increase in rates. A timely protest might delay what may be a justified rate increase resulting in an unrecoverable loss of revenue for the aforementioned utilities. Therefore, pursuant to Rule 25-30.457(9), F.A.C., the utilities should be authorized to implement the rates established in the LARI PAA Order on a temporary basis subject to refund upon filing a SARC application within 21 days from the date the protest is filed.

Each utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The rates should be effective for service rendered on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. In addition, the temporary rates should not be implemented until staff has approved the proposed notice, and the notice has been received by the customers. If the recommended rates are approved on a temporary basis, the incremental increase collected by the utility will be subject to the refund provisions outlined in Rule 25-30.360, F.A.C. Pursuant to Rule 25-30.457(9), F.A.C., if a utility fails to file a SARC application within 21 days in the event there is a protest, the application for a LARI will be deemed withdrawn.

Issue 5: Should this docket be closed?

Recommendation: No. In the event of a protest, the utilities may implement the rates established in the PAA Order on a temporary basis, subject to refund with interest, upon the utility's filing of a SARC application within 21 days of the date the protest is filed. If the utilities fail to file a SARC within 21 days, the utility's petition for a LARI will be deemed withdrawn pursuant to Rule 25-30.457(9), F.A.C. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the PAA Order, a Consummating Order should be issued. The docket should remain open for staff's verification that the revised tariff sheets reflecting the Commission-approved rates, and the customer notice, have been filed by the utilities and approved by staff, so that staff may conduct an earnings review of the utility pursuant to Rule 25-30.457(8), F.A.C. Upon staff's approval of the tariff and completion of the earnings review process as set forth in Rule 25-30.457(8), F.A.C., this docket should be closed administratively. (Passidomo, Weisenfeld)

Staff Analysis: In the event of a protest, the utilities may implement the rates established in the PAA Order on a temporary basis, subject to refund with interest, upon the utility's filing of a SARC application within 21 days of the date the protest is filed. If the utilities fail to file a SARC within 21 days, the utility's petition for a LARI will be deemed withdrawn pursuant to Rule 25-30.457(9), F.A.C. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the PAA Order, a Consummating Order should be issued. The docket should remain open for staff's verification that the revised tariff sheets reflecting the Commission-approved rates, and the customer notice, have been filed by the utilities and approved by staff, so that staff may conduct an earnings review of the utility pursuant to Rule 25-30.457(8), F.A.C. Upon staff's approval of the tariff and completion of the earnings review process as set forth in Rule 25-30.457(8), F.A.C., this docket should be closed administratively.

Alturas Water, LLC. **Schedule No. 1**
Test Year Ended 12/31/19 **Docket No. 20200152-WS**
Water Rates

	UTILITY'S EXISTING RATES	UTILITY'S PROPOSED RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
Residential and General Service				
Base Facility Charge by Meter Size				
5/8" x 3/4"	$13.11	$14.61	$14.95	$0.27
3/4"	$19.67	$21.91	$22.43	$0.41
1"	$32.78	$36.52	$37.38	$0.68
1 1/2"	$65.55	$73.05	$74.75	$1.35
2"	$104.88	$116.87	$119.60	$2.16
3"	$209.76	$233.75	$239.20	$4.32
4"	$327.75	$365.23	$373.75	$6.75
6"	$655.50	$730.46	$747.50	$13.50
Charge per 1,000 gallons	$5.91	$6.59	$6.74	$0.12
Typical Residential 5/8" x 3/4" Meter Bill Comparison				
2,000 Gallons	$24.93	$27.79	$28.43	
4,000 Gallons	$36.75	$40.97	$41.91	
6,000 Gallons	$48.57	$54.15	$55.39	

East Marion Utilities, LLC. **Schedule No. 1**
Test Year Ended 12/31/19 **Docket No. 20200152-WS**
Water Rates

	UTILITY'S EXISTING RATES	UTILITY'S PROPOSED RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
Residential and General Service				
Base Facility Charge by Meter Size				
5/8" x 3/4"	$12.77	$13.55	$13.88	$0.20
3/4"	$19.16	$20.33	$20.82	$0.30
1"	$31.93	$33.88	$34.70	$0.50
1 1/2"	$63.85	$67.75	$69.40	$1.00
2"	$102.16	$108.40	$111.04	$1.60
3"	$204.32	$216.80	$222.08	$3.20
4"	$319.25	$338.76	$347.00	$5.00
6"	$638.50	$677.51	$694.00	$10.00
Charge per 1,000 gallons - Residential				
0 - 10,000 gallons	$2.68	$2.84	$2.91	$0.04
Over 10,000 gallons	$4.01	$4.26	$4.36	$0.06
Charge per 1,000 gallons - General Service	$3.13	$3.32	$3.40	$0.05
Typical Residential 5/8" x 3/4" Meter Bill Comparison				
2,000 Gallons	$18.13	$19.23	$19.70	
4,000 Gallons	$23.49	$24.91	$25.52	
6,000 Gallons	$28.85	$30.59	$31.34	

East Marion Utilities, LLC. **Schedule No. 1**
Test Year Ended 12/31/19 **Docket No. 20200152-WS**
Wastewater Rates

	UTILITY'S EXISTING RATES	UTILITY'S PROPOSED RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
Residential Service				
All Meter Sizes	$17.52	$18.33	$18.55	$0.15
Charge per 1,000 gallons	$5.34	$5.59	$5.65	$0.04
10,000 gallon cap				
General Service				
Base Facility Charge by Meter Size				
5/8" x 3/4"	$17.52	$18.33	$18.55	$0.15
3/4"	$26.28	$27.51	$27.83	$0.23
1"	$43.80	$45.84	$46.38	$0.38
1 1/2"	$87.60	$91.67	$92.75	$0.75
2"	$140.16	$146.67	$148.40	$1.20
3"	$280.32	$293.33	$296.80	$2.40
4"	$438.00	$458.33	$463.75	$3.75
6"	$876.00	$916.66	$927.50	$7.50
Charge per 1,000 gallons	$6.41	$6.71	$6.79	$0.05
Typical Residential 5/8" x 3/4" Meter Bill Comparison				
2,000 Gallons	$28.20	$29.51	$29.85	
4,000 Gallons	$38.88	$40.69	$41.15	
6,000 Gallons	$49.56	$51.87	$52.45	

Pinecrest Utilities, LLC. **Schedule No. 1**
Test Year Ended 12/31/19 **Docket No. 20200152-WS**
Water Rates

	UTILITY'S EXISTING RATES	UTILITY'S PROPOSED RATES	STAFF RECOMMENDED RATES	4 YEAR RATE REDUCTION
Residential and General Service				
Base Facility Charge by Meter Size				
5/8" x 3/4"	$16.36	$17.14	$17.45	$0.24
3/4"	$24.54	$25.72	$26.18	$0.36
1"	$40.90	$42.86	$43.63	$0.60
1 1/2"	$81.80	$85.70	$87.25	$1.20
2"	$130.88	$137.12	$139.60	$1.92
3"	$261.76	$274.24	$279.20	$3.84
4"	$409.00	$428.50	$436.25	$6.00
6"	$818.00	$857.00	$872.50	$12.00
Charge per 1,000 gallons	$4.93	$5.16	$5.26	$0.07
Typical Residential 5/8" x 3/4" Meter Bill Comparison				
2,000 Gallons	$26.22	$27.46	$27.97	
4,000 Gallons	$36.08	$37.78	$38.49	
6,000 Gallons	$45.94	$48.10	$49.01	

Sunrise Water, LLC. **Test Year Ended 12/31/19** **Water Rates**			**Schedule No. 1** **Docket No. 20200152-WS**
	UTILITY'S EXISTING RATES	**UTILITY'S PROPOSED RATES**	**STAFF RECOMMENDED RATES**
Residential and General Service			
Base Facility Charge by Meter Size			
5/8" x 3/4"	$10.50	$12.65	$12.60
3/4"	$15.75	$18.98	$18.90
1"	$26.25	$31.63	$31.50
1 1/2"	$52.50	$63.24	$63.00
2"	$84.00	$101.18	$100.80
3"	$168.00	$202.37	$201.60
4"	$262.50	$316.20	$315.00
6"	$525.00	$632.40	$630.00
Charge per 1,000 gallons - Residential			
0 - 5,000 gallons	$3.35	$4.03	$4.02
5,001-10,000 gallons	$3.68	$4.44	$4.42
Over 10,000 gallons	$7.36	$8.86	$8.83
Charge per 1,000 gallons - General Service	$3.81	$4.58	$4.57
Typical Residential 5/8" x 3/4" Meter Bill Comparison			
3 ,000 Gallons	$20.55	$24.74	$24.66
6,000 Gallons	$30.93	$37.24	$37.12
8,000 Gallons	$38.29	$46.12	$45.96

Item 14

State of Florida

Public Service Commission

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

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

DATE: September 24, 2020

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Coston) JGH
Division of Accounting and Finance (Mouring) ALM
Office of the General Counsel (Stiller, Crawford) JSC

RE: Docket No. 20200170-EI – Petition for approval of optional electric vehicle public charging pilot tariffs, by Florida Power & Light Company.

AGENDA: 10/06/20 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 10/06/20 (60-day file and suspend waiver provided by the utility until 10/06/20)

SPECIAL INSTRUCTIONS: None

Case Background

On June 19, 2020, Florida Power & Light Company (FPL or utility) filed a petition requesting approval of three optional electric vehicle (EV) public charging pilot tariffs. The first tariff, Utility-Owned Public Charging for Electric Vehicles (Rate Schedule UEV), would establish a charging rate for utility-owned direct current fast charging stations. The second set of tariffs, Electric Vehicle Charging Infrastructure Riders for General Service Demand and General Service Large Demand (Rate Schedules GSD-1EV and GSLD-1EV), would establish a rate for competitive market charging stations operating in FPL's service area. This rate would implement a threshold on the demand charge associated with the general service rates. The utility requests for these rates to take effect in January 2021.

On June 26, 2020, FPL waived the 60-day file and suspend provision pursuant to Section 366.06(3), Florida Statutes (F.S.), until the September 1, 2020 Agenda Conference. After further discussion with staff, on July 17, 2020, the utility extended the 60-day file and suspend provision until the October 6, 2020 Agenda Conference. There are eleven interested persons in this docket.[1]

Staff has currently issued three data requests. Staff's first data request was issued on July 20, 2020, with responses provided by the utility on August 3, 2020. Staff issued a second data request on September 3, 2020, with responses provided on August 10, 2020. Staff's third data request was issued on September 18, 2020, with responses due on October 2, 2020. This recommendation addresses the suspension of FPL's proposed pilot tariffs in order to provide sufficient time for review. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, F.S.

[1] The interested persons are: Walmart, Inc.; Tesla, Inc.; Southern Alliance for Clean Energy; Sierra Club; Rivian; the Office of Public Counsel; Florida Solar Energy Center; EVgo; Electrify America, LLC; Drive Electric Florida; and Central Florida Clean Cities Coalition.

Discussion of Issues

Issue 1: Should FPL's proposed optional electric vehicle public charging pilot tariffs be suspended?

Recommendation: Yes. Staff recommends that the tariffs be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the tariff proposals. (Coston)

Staff Analysis: FPL's petition to establish rates for EV charging stations is the first request of this type to be considered by the Commission. As such, there are a number of factors to consider when evaluating the proposed tariffs. Staff recommends that the tariffs be suspended to allow staff additional time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the tariff proposals.

Pursuant to Section 366.06(3), F.S., the Commission may withhold consent to the operation of all or any portion of a new rate schedule, delivering to the utility requesting such a change a reason or written statement of good cause for doing so within 60 days. The utility has extended the 60-day period until the October 6, 2020 Agenda Conference. Staff believes that the reason stated above is a good cause consistent with the requirement of Section 366.06(3), F.S., and prior practice of the Commission.[2]

[2] Order PSC-17-0193-PCO-EI, issued May 5, 2019, in Docket No. 170074-EI, *In re: Petition for approval of 2017 revisions to underground residential distribution tariffs, by Gulf Power Company.*

Issue 2: Should the docket be closed?

Recommendation: No. This docket should remain open pending the Commission's decision on the proposed tariffs. (Stiller)

Staff Analysis: This docket should remain open pending the Commission's decision on the proposed tariffs.