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Commission Conference Agenda
September 8, 2021

Item 1A

State of Florida

Public Service Commission

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

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

DATE: August 27, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Yglesias de Ayala) CH
Office of the General Counsel (Jones) TLJ

RE: Application for Certificate of Authority to Provide Pay Telephone Service

AGENDA: 9/8/2021 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

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

DOCKET NO.	COMPANY NAME	CERT. NO.
20210139-TC	Windstream Communications, LLC	8963

The Commission is vested with jurisdiction in this matter pursuant to Section 364.3375, Florida Statutes. Pursuant to Section 364.336, Florida Statutes, certificate holders must pay a minimum annual Regulatory Assessment Fee if the certificate is active during any portion of the calendar year. A Regulatory Assessment Fee Return Notice will be mailed each December to the entity listed above for payment by January 30.

Item 1B

FILED 8/31/2021
DOCUMENT NO. 09867-2021
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 31, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Yglesias de Ayala) CH
Office of the General Counsel (Imig) TLT

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 9/8/2021 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

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

DOCKET NO.	COMPANY NAME	CERT. NO.
20210145-TX	NGA 911, L.L.C.	8964

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

Item 2

State of Florida

Public Service Commission

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

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

DATE: August 27, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Cowdery) *SMC*
Division of Accounting and Finance (Mouring) *ALM*

RE: Docket No. 20210128-EI – Petition for temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C, to file for prudence review of Florida Power & Light Company storm costs related to Hurricane Isaias and Tropical Storm Eta, and for prudence review and recovery of Gulf Power Company storm costs related to Hurricane Sally and Hurricane Zeta.

AGENDA: 09/08/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: 11/01/21 (date by which Petition must be ruled on pursuant to Section 120.542, F.S.)

SPECIAL INSTRUCTIONS: None

Case Background

On August 3, 2021, Florida Power & Light Company (FPL) filed a petition for a temporary waiver from or variance of Rule 25-6.0143(1)(g), Florida Administrative Code (F.A.C.) (Petition). Investor-owned electric utilities are required to maintain their accounts and records in conformity with the Uniform System of Accounts for Public Utilities and Licensees.[1] Rule 25-6.0143, F.A.C., addresses electric utilities' use of accumulated provision accounts 228.1, 228.2, and 228.4. Paragraph (1)(g) of Rule 25-6.0143 requires that under the Incremental Cost and

[1] Rule 25-6.014(1), F.A.C.

Capitalization Approach methodology for determining the allowable costs to be charged to cover storm-related damages, certain costs may be charged to Account 228.1 only after review and approval by the Commission. Before the Commission makes this determination, the costs may be deferred if they were incurred prior to June 1 of the year following the storm event.

Paragraph (1)(g) of the rule further requires that:

> By September 30 a utility must file a petition for the disposition of any costs deferred prior to June 1 of the year following the storm event giving rise to the deferred costs.

FPL is asking the Commission for a temporary variance from or waiver of the September 30 filing requirement. FPL asks that it be allowed until December 31, 2021, to file its paragraph (1)(g) petition concerning deferred storm costs related to Hurricane Isaias and Tropical Storm Eta, and for Gulf Power Company (Gulf) to file its petition concerning deferred storm costs related to Hurricane Sally and Hurricane Zeta.

Notice of FPL's Petition was published in the August 5, 2021, edition of the Florida Administrative Register, Vol. 47, No. 151 as required by Section 120.542(6), Florida Statutes (F.S.). No one commented on the Petition within the 14-day comment period provided by Rule 28-104.003, F.A.C. The Commission must approve or deny the Petition by November 1, 2021, under Section 120.542(8), F.S., or the Petition would be deemed approved.

The Commission has jurisdiction under Sections 120.542, 350.115, 366.04, .05, and .06, F.S

Discussion of Issues

Issue 1: Should the Commission grant Florida Power & Light Company's Petition for a temporary waiver or variance from Rule 25-6.0143(1)(g), F.A.C.?

Recommendation: Yes. The Commission should grant Florida Power & Light Company's Petition for a temporary variance or waiver of Rule 25-6.0143(1)(g), F.A.C., to allow FPL and Gulf to file petitions for certain deferred costs no later than December 31, 2021. (Cowdery, Mouring)

Staff Analysis: FPL is requesting that the Commission grant FPL and Gulf a temporary variance from or waiver of Rule 25-6.0143(1)(g), F.A.C. Pursuant to this rule provision, as explained in the Case Background, FPL and Gulf are required to file their petitions for disposition of certain deferred costs by September 30, 2021.

Legal Standard for Rule Variances or Waivers

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

Rule 25-6.0143, F.A.C., implements Section 350.115, F.S., which allows the Commission to prescribe by rule uniform systems and classifications of accounts for each type of regulated company and approve or establish adequate, fair, and reasonable depreciation rates and charges. The rule also implements Section 366.04(2)(a), F.S., which gives the Commission power over electric utilities to prescribe uniform systems and classifications of accounts.

FPL's Petition

FPL states that preparation and filing of the petitions for deferred costs related to the four named storms no later than September 30, 2021, will create a substantial hardship. FPL states that FPL and Gulf are engaged in the litigation of and preparations for a number of proceedings, including the hearing in the FPL rate case in Docket No. 20210015-EI and clause proceedings scheduled for final hearings on November 2 though November 4, 2021. FPL explains that its Power Delivery Business Unit provides much of the information and data necessary to the preparations and filing of the referenced storm dockets and also is responsible for maintaining the grid, preparing for and responding to tropical storms and hurricanes, and stands ready to assist other utilities whose service territories are impacted by natural disasters and other emergency events. FPL alleges that requiring the preparation and filing of the identified storm cost proceedings will necessarily detract from and adversely impact FPL's and the Power Delivery Business Unit's "ability to devote its full attention and resources to these critical tasks."

FPL also argues that no anticipated party to the proceedings and no customers will be prejudiced by granting its Petition for temporary variance or waiver. Further, FPL alleges that the requested temporary variance or waiver does not contravene the rule's implementing statutes.

FPL represents that the Office of Public Counsel has no objection to the relief requested in the Petition for temporary variance or waiver, and asks that the Commission expedite consideration of the Petition and consider it at the September 2021 Commission Conference.

Purpose of the Underlying Statutes

Sections 350.115 and 366.04(2)(a), F.S., give the Commission power to prescribe by rule uniform systems and classifications of accounts and to approve or establish adequate, fair, and reasonable depreciation rates and charges for electric utilities. The purpose of the September 30 filing date is to facilitate a timely review of storm restoration costs and afford the Commission adequate oversight on the use of Commission-approved storm reserves (Account 228.1). Often the initial filings made pursuant to Rule 25-6.0143, F.A.C., reflect estimated costs used to implement an interim cost recovery mechanism. As such, staff believes that the purpose of Sections 350.115 and 366.04(2), F.S., will be unaffected by granting the requested temporary variance or waiver.

Further, no anticipated party to any proceedings and no customers will be prejudiced or adversely affected by granting FPL's Petition for temporary variance or waiver. For these reasons, the purpose of the statutes will still be achieved as required by Section 120.542, F.S., if FPL's Petition for temporary variance or waiver is granted.

Substantial Hardship

The Commission has previously granted petitions for variance or waiver on the basis that application of a rule's filing deadline created substantial hardship because of utility staffing limitations caused by the specific circumstances alleged in those petitions.[2] Staff believes that the essence of FPL's substantial hardship allegations is that under the specific circumstances alleged, FPL is experiencing staffing limitations caused by the number of dockets FPL's Power Delivery Business Unit is currently involved in, which is in addition to the unit's regular responsibilities concerning maintaining the grid and preparing for and responding to named storms. Under the specific facts presented, staff believes that FPL has demonstrated substantial hardship under Section 120.542, F.S.

Conclusion

For the reasons explained above, the Commission should grant Florida Power & Light Company's Petition for a temporary variance or waiver of Rule 25-6.0143(1)(g), F.A.C., to allow FPL and Gulf to file petitions for certain deferred costs no later than December 31, 2021.

[2] Order No. PSC-2019-0067-GU, issued February 22, 2019, in Docket No. 20180230-GU, *In re: Petition for temporary waiver of Rule 25-7.045, F.A.C., by Florida Public Utilities Company;* Order No. PSC-12-0354-PAA-GU, issued July 9, 2012, in Docket No. 20120081-GU, *In re: Petition for waiver of requirement of Rule 25-7.045(8)(a), F.A.C., to file depreciation study within five years from date of filing previous study, and for authorization to file next depreciation study by August 17, 2012, by Florida Division of Chesapeake Utilities Corporation;* Order No. PSC-2002-0242-PAA-EI, issued February 25, 2002, in Docket No. 20011611-EI, *In Re: Petition for Waiver of Depreciation Study Filing Requirement in Rule 25-6.0436(8)(a), F.A.C., by Florida Power Corporation;* Order No. PSC-01-2376-PAA-EI, issued December 10, 2001, in Docket No. 20011088-EI, *In re: Florida Power & Light Company*

Issue 2: Should this docket by closed?

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

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

Item 3

State of Florida

Public Service Commission

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

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

DATE: August 27, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Brownless, Lherisson, Stiller) JSC
Division of Accounting and Finance (Mouring) ALM
Division of Economics (Draper, McNulty) JGH WBM
Division of Engineering (King) LVK TB
Office of Industry Development and Market Analysis (Eichler) BC

RE: Docket No. 20210015-EI – Petition for rate increase by Florida Power & Light Company.

AGENDA: 09/08/21 – Regular Agenda – Motion for Reconsideration – Oral argument has not been requested; Participation is at the Commission's Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On June 18, 2021, pursuant to Section 366.093, Florida Statutes (F.S.), and Rule 25-22.006, Florida Administrative Code (F.A.C.), Floridians Against Increased Rates, Inc. (FAIR) filed a request for confidential classification of information contained in its response to Florida Power & Light Company's (FPL) First Request for Production of Documents to FAIR, No. 4 (Document No. 06234-2021). On July 23, 2021, FAIR filed a Corrected Request for Confidential Classification (Corrected Request) of information contained in its response to FPL's First Request for Production of Documents to FAIR, No. 4 (Document 08288-2021). In FAIR's Corrected Request, FAIR stated that the purpose of the Corrected Request is to withdraw FAIR's

original request (Document No. 06234-2021) and replace it with the Corrected Request (Document 08288-2021). This request was filed in Docket No. 20210015-EI.

On June 21, 2021, pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., FAIR filed a Second Request for Confidential Classification (Second Request) of information contained in the Exhibit NHW-3 to the testimony of FAIR's witness Nancy H. Watkins, filed on June 21, 2021 (Document No. 06506-2021). This request was also filed in Docket No. 20210015-EI.

The information that is the subject of the Corrected Request and the Second Request (jointly as Requests) are substantially the same with a few minor differences. Both of the filings consist of FAIR's membership roster. The differences in the filings appear to be the removal of duplicated members, the addition of new members, and the addition of business names for some of the members.

On August 6, 2021, the Prehearing Officer issued Order No. PSC-2021-0299-PCO-EI[1] denying FAIR's requests for confidential classification of Document Nos. 06506-2021 and 08288-2021, finding that FAIR had not demonstrated how the information asserted to be confidential qualifies as confidential under the statute or applicable rule. The order further required that these documents be kept confidential until the time for filing an appeal of the order expired, or, if sought, through completion of judicial review. On August 16, 2021, FAIR timely filed a Motion for Reconsideration of Order No. PSC-2021-0299-PCO-EI (Motion). FAIR did not file a request for oral argument regarding the Motion.[2] On August 17, 2021, FAIR filed a Notice of Conferral Regarding the Motion for Reconsideration, in which FAIR discussed the parties of record's positions on FAIR's Motion.

This recommendation addresses FAIR's Motion for Reconsideration. The Commission has jurisdiction over this matter pursuant to Sections 366.04 and 366.05, F.S.

[1] Order No. PSC-2021-0299-PCO-EI, issued August 6, 2021, in Docket No. 20210015-EI, *In re: Petition for rate increase by Florida Power & Light Company.*

[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 FAIR three minutes.

Discussion of Issues

Issue 1: Should the Commission grant FAIR's Motion for Reconsideration of the Final Order Denying Confidential Classification?

Recommendation: No. FAIR's Motion for Reconsideration should be denied because it does not meet the required standard for a motion for reconsideration. FAIR has failed to identify a point of fact or law that was overlooked or that the Prehearing Officer failed to consider in rendering Order No. PSC-2021-0299-PCO-EI, the Order Denying FAIR's Request for Confidential Classification of Document Nos. 06506-2021 and 08288-2021. (Lherisson)

Staff Analysis:

Standard of Review

Pursuant to Rule 25-22.0376, F.A.C., any party adversely affected by a non-final order may seek reconsideration by the Commission by filing a motion within ten days after issuance of the order. 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 Prehearing Officer failed to consider in rendering the Order. See Steward 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 have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Steward Bonded Warehouse, 294 So. 2d 315, 317 (Fla. 1974).

FAIR's Motion for Reconsideration

By Order No. PSC-2021-0299-PCO-EI, the Prehearing Officer denied confidential classification for the information contained in FAIR's responses to FPL's First Request for Production of Documents No. 4 and in Exhibit NHW-3 to the testimony of FAIR's witness Nancy H. Watkins. In its Motion for Reconsideration, FAIR argues that the Prehearing Officer failed to consider or "misapprehended the factual nature of the information for which FAIR seeks confidential classification, which FAIR submits is, on its face, the 'sensitive personally identifiable information' of FAIR's members." FAIR asserts that the "Order overlooked, as a point of law, that FAIR's requests for confidential classification fall squarely within the scope of, and satisfy, the basic requirements of Section 366.093, [F.S.]."

FAIR asserts that the two sets of its "membership rosters," for which confidentiality was requested, include "the members' names, mailing street addresses, email addresses, business address if applicable, and (for a significant number of members), telephone numbers." FAIR argues that Order No. PSC-2021-0299-PCO-EI "overlooked the relevant legal facts that FAIR's claims are squarely within the non-exclusive scope of Section 366.093, [F.S.], and that FAIR's assertion that its membership roster comprises FAIR's trade secret information should result in the Commission granting confidential classification as requested." FAIR states, in part, that

"[w]hile more detail might have been desirable, FAIR believes and respectfully submits that the information for which confidential protection is sought qualifies on its face as appropriately protected confidential information. . . ." FAIR argues that its "allegations provide sufficient bases upon which the Commission should grant the requested treatment." FAIR asserts that the Commission should consider the harms that would result from denial of confidential classification:

> First, the information in FAIR's membership rosters is, for all practical purposes, a ***mailing list*** with the members' street addresses and email addresses, and denial of FAIR's Requests would result in making FAIR's members being exposed to direct mailings and e-mailings. Second, disclosing FAIR's membership roster, which is directly analogous to the "list of customers" that is expressly within the scope of protected, or at least protect-able, information under Section 812.081, Florida Statutes, would harm FAIR's interests in conducting its business operations by revealing its members' sensitive personal confidential information contrary to FAIR's policy not to disclose it and also by exposing FAIR to the consequences of anyone using FAIR's membership roster – the equivalent of a customer list – to directly contact members for whatever reasons anyone gaining access to the list might have.

FAIR argues that its "membership roster is, for all practical purposes, and on its face, the equivalent of a 'list of customers,' which is one of the identified types of trade secret information in Section 812.081, [F.S.]." FAIR asserts that "FAIR's declarant stated that the information contains FAIR's trade secrets" and that FAIR has a "policy not disclosing this information." FAIR argues that its membership roster "is FAIR's trade secret information, the disclosure of which would harm FAIR's operations, by disclosing FAIR's members' personal information to unauthorized persons and likely by impairing FAIR's ability to recruit members." FAIR alleges that it treats the membership lists as confidential proprietary information, and that it constitutes FAIR's trade secret information; therefore, FAIR requests that the Commission grant reconsideration of the Order Denying Confidential Classification and grant the requested confidential classification of its membership lists.

Parties' Response to Motion

No party to this docket has filed a response in support or opposition to FAIR's Motion, and the time for doing so has expired. On August 17, 2021, FAIR filed a Notice of Conferral Regarding Motion for Reconsideration[3] stating that FAIR conferred with the parties to this docket as required by Rule 28-106.204(3), F.A.C.; however the conferral occurred after the Motion was filed. The parties' responses as reflected in FAIR's Notice of Conferral are as follows: (1) FPL agrees with the Commission's order and does not believe that FAIR has met the standard for reconsideration; (2) the Florida Retail Federation, the Federal Executive Agencies, Vote Solar, the Southern Alliance for Clean Energy, and the CLEO Institute support FAIR's Motion; and (3) Daniel and Alexandria Larson, the Office of Public Counsel, the Florida Industrial Power Users Group, Florida Rising, League of United Latin American Citizens of Florida, Environmental

[3] Document No. 09455-2021.

Confederation of Southwest Florida, the Florida Internet and Television Association, and Walmart take no position on FAIR's motion.

Analysis

In denying confidential treatment to FAIR's responses to FPL's First Request for Production of Documents No. 4 and Exhibit NHW-3 to the testimony of FAIR's witness Nancy H. Watkins, the Prehearing Officer found that the information was not proprietary confidential business information. Specifically, the Prehearing Officer stated:

> Although FAIR asserts in its Corrected Request and Second Request that the documents are proprietary confidential business information, FAIR fails to provide any details on how the documents contain information relating to trade secrets and competitive interests, the disclosure of which would impair the competitive business of the provider of the information. Nor does FAIR explain what its competitive business interests are that would be harmed should the information be disclosed.

Order No. PSC-2021-0299-PCO-EI, p.3.

With one exception, the points raised by FAIR in its Motion are reargruments of the positions stated in FAIR's Requests for confidential classification, which the Prehearing Officer ruled upon. Thus, the points are reargument, and are not proper matters to be raised in a motion for reconsideration. Staff believes that one point raised by FAIR merits discussion. FAIR claims that the Prehearing Officer failed to consider that FAIR's "membership roster" is "directly analogous to the 'list of customers' that is expressly within the scope of protected, or at least protect-able, information under Section 812.081, [F.S.]." FAIR did not reference Section 812.081, F.S., in its Requests, but instead makes the reference for the first time in its Motion. Upon review of Section 812.081, F.S., staff believes that the Commission is not bound by Section 812.081, F.S., which is the definitions and penalty statute dealing with theft, robbery, and related crimes. Even if this argument was raised in FAIR's initial Requests, staff would have recommended that the Commission deny FAIR's Requests for confidential classification because the Commission is not authorized to enforce the provisions of Chapter 812, F.S., Theft, Robbery, and Related Crimes.[4] Instead the Commission is bound by Chapter 366, F.S., Public Utilities, to determine what qualifies as proprietary confidential business information under Section 366.093, F.S.

[4] If the Commission was bound by Chapter 812, F.S., FAIR would have to show, in its Requests for confidentiality, that its "list of customers" is a trade secret under Section 812.081, F.S, because the list is considered to be: secret; of value; for use or in use by the business; and of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it when the owner thereof takes measures to prevent it from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. Section 812.081(1)(c), F.S. Absent FAIR's proof that its "list of customers" met each of the trade secret requirements in Section 812.081(1)(c), F.S., the Commission, if it were bound by Chapter 812, F.S., could not find that the list constituted trade secrets.

Trade Secret

The Florida Legislature has exempted trade secrets from the public records law,[5] because "the public and private harm in disclosing trade secrets significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by nondisclosure of trade secrets."[6] Staff notes that neither Section 366.093, F.S., nor Rule 25-22.006, F.A.C., provide a definition as to what constitutes a trade secret.[7] "A customer list can constitute a 'trade secret' where the list is acquired or compiled through the industry of the owner of the list and is not just a compilation of information commonly available to the public." E. Colonial Refuse Serv., Inc. v. Velocci, 416 So. 2d 1276, 1278 (Fla. 5th DCA 1982). Chapter 688, Uniform Trade Secrets Act, Section 688.002(4), F.S., states:

> "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that: (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

See also Templeton v. Creative Loafing Tampa, Inc., 552 So. 2d 288 (Fla. 2d DCA 1989) (considering, in deciding whether a customer list is a trade secret, whether the list is product of great expense and effort and is confidential); Dicks v. Jensen, 768 A. 2d 1279 (Vt. 2001) (stating that a list of potential or existing customers which is not readily ascertainable has value and can be a trade secret). In East v. Aqua Gaming, Inc,[8] the Second District Court of Appeal of Florida held that there was enough evidence to support a finding that a corporation's customer list was trade secret, where the corporation showed that the "customer list was the product of great expense and effort, that it included information that was confidential and not available from public sources, and that it was distilled from larger lists of potential customers into a list of viable customers for [a] unique business."[9]

Given that FAIR is adamant about maintaining that its membership lists are immune to disclosure, it is incumbent upon FAIR to demonstrate that the lists constitute trade secrets. See New York State Businessmen's Group, Inc. v. Dalton, 154 A.D. 2d 801, 801 (1989); and Herbst by Herbst v. Bruhn, 106 A.D. 2d 546, 549 (1984). To meet its burden, FAIR offers conclusory statements, contained in FAIR's declarant statement, declaring that the lists are "proprietary

[5] See Section 815.045, F.S.
[6] Id.
[7] On July 6, 2021, the Florida Legislature passed H1055 enacting Section 119.0715, F.S., to exempt trade secrets held by agencies from public record requirements, and states that "'trade secret' has the same meaning as in s. 688.002." H1055; Ch 2021-223, Laws of Florida.
[8] East v. Aqua Gaming, Inc., 805 So. 2d 932, 934 (Fla. 2d DCA 2001).
[9] East, 805 So. 2d at 934. See also MNM & MAK Enterprises, LLC v. HIIT Fit Club, LLC, 134 N.E. 3d 242 (Ohio Ct. App. 2019) (holding that a Boxing franchise's client list was trade secret under Trade Secrets Act since the list was protected by password, the franchise owner spent years compiling the list, the list contained contact information for every person who ever signed up to take class or become member, list was unique to franchise, list was result of years and funds expended to market and attract business, result of these efforts was membership base that generated $8,000 to $10,000 worth of monthly revenue, and there was no public record of list, nor was list ever used in public way or provided to any mailing company).

confidential business information" that "contain FAIR's trade secrets and competitive business information," which is insufficient. See Rooney v. Hunter, 26 A.D. 2d 891, 891, 274 N.Y.S. 2d 376 (1966) (holding that a statement of appellant's attorney, made upon information and belief, that the contents of appellant's product is a trade secret, is insufficient to establish such fact). Staff believes that FAIR's mere assertion that its membership roster comprises FAIR's trade secret information is not enough to persuade the Commission to grant confidential classification as requested. Staff believes that FAIR has failed to provide any details which demonstrates how the documents contain information relating to trade secrets and competitive interests, the disclosure of which would impair the competitive business of the provider of the information.

Public Record

Chapter 119, F.S., Florida's Public Records Law, establishes a statutory right of access to records of agencies made or received pursuant to law or ordinance or in connection with the transaction of official business. Rule 25-22.006(4)(c), F.A.C., implementing applicable statutes within the rule, provides that the utility or other person shall "demonstrate how the information asserted to be confidential qualifies as one of the statutory examples listed in Section 364.183(3), 366.093(3) or 367.156(3), F.S.," or the utility or other person must explain how "the ratepayers or the person's or utility's business operations will be harmed by disclosure." Section 119.01, F.S., provides that documents submitted to governmental agencies shall be public records. As provided by Section 119.071, F.S., certain information maintained by state agencies is exempt from public disclosure, and is therefore deemed confidential. This includes social security numbers, and medical and financial information. Section 119.071(4)(d), F.S., additionally provides for the exemption of home addresses and telephone numbers from public disclosure for certain occupational groups, such as, but not limited to: active and former law enforcement personnel, correctional probation officers, Department of Health personnel, Judges, Magistrates, public defenders, etc. However, FAIR has not demonstrated how the information asserted to be confidential qualifies as confidential under any statute or applicable rule, much less provided any information to indicate that its membership list contains the telephone number or home address of those exempt from public disclosure under Section 119.07, F.S.

Pursuant to Section 668.6076, F.S. "[u]nder Florida law, e-mail addresses are public records." In accordance with that statute, the Florida Public Service Commission website states, in part, that "[i]nformation submitted through this Web site may be subject to disclosure pursuant to a public records request." The Government-in-the Sunshine Manual (2021) states:

> In the absence of [a] statutory exemption, home addresses, telephone numbers, photographs, and dates of birth of public officers and employees are not exempt from disclosure. See [Florida Attorney General Advisory Legal Opinion] AGO 96-88 (home addresses and telephone numbers and business addresses and telephone numbers of members of state and district human rights advocacy committees are public records); Browning v. Walton, 351 So. 2d 380 (Fla. 4th DCA 1977) (city cannot refuse to allow inspection of records containing the names and addresses of city employees who have filled out forms requesting that the city maintain the confidentiality of their personnel files). And see United Teachers of Dade v. School Board of Dade County, No. 92-17803 (01) (Fla. 11th Cir. Ct. Nov. 30, 1992) (home telephone numbers and addresses of school district

> employees not protected by constitutional right to privacy; only the Legislature can exempt such information). Cf. AGO 85-03 (list containing names and addresses of subscribers to state magazine is a public record).[10]

Additionally, in a case that staff believes is analogous to FAIR's Requests, the Florida Attorney General issued Advisory Legal Opinion AGO 85-03, regarding the applicability of public records law on the mailing list of a state magazine, stating that:

> The Federal Privacy Act of 1974 does not require the exclusion of the name and address of a private citizen at the request of the affected private citizen from such public records of the Game and Fresh Water Fish Commission as may be furnished pursuant to Ch. 119, F.S., since the commission is not [a] [Federal] "agency" within the meaning of that act nor is the commission authorized to sell or rent such names and addresses as may be contained in such public records.[11]

In AGO 85-03, the Attorney General made reference to Public Law 93-579,[12] quoting "(n) Mailing lists.--An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public." The Florida Attorney General further opined in Advisory Legal Opinion AGO 96-88 that "[i]n the absence of an exemption removing such information from disclosure under Chapter 119, [F.S.], the home addresses and telephone numbers and the business addresses and telephone numbers of members of [non-personnel of a state agency] are public records." Therefore, staff believes that the information FAIR asserts to be confidential does not qualify as confidential under the statute or applicable rule.

Conclusion

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).

In the Order Denying FAIR's Requests for Confidential Classification,[13] the Prehearing Officer considered FAIR's assertions that the information: is FAIR's trade secrets and competitive business information; is protected by Section 366.093(3)(a) and (e), F.S.; is intended to be and is treated as private confidential information by FAIR; has not been voluntarily disclosed to the public; and disclosure would cause harm to FAIR's business operation and its members. In review of all of FAIR's claims, the Prehearing Officer denied FAIR's Requests for Confidential

[10] Government-in-the-Sunshine Manual, at p. 139,
http://myfloridalegal.com/webfiles.nsf/wf/mnos-b9qq79/$file/sunshinemanual.pdf
[11] However, 5 U.S.C. s. 552a(a)(1) provides that for purposes of the Federal Privacy Act, the term "agency" means agency as defined by 5 U.S.C. s. 552(e). That section defines the term "agency" as defined in 5 U.S.C. s. 551(1) to include certain agencies of the executive branch of the Federal Government.
[12] Public Law 93-579, s. 3, December 31, 1974, 88 Stat. 1896, as amended by Pub.L. 94-183, s. 2(2), December 31, 1975, 89 Stat. 1057, the Federal Privacy Act of 1974, and codified at 5 U.S.C. s. 552a.
[13] Order No. PSC-2021-0299-PCO-EI.

Classification because FAIR failed to establish: (1) how the documents contained information relating to trade secrets and competitive interests, the disclosure of which would impair the competitive business of the provider of the information; (2) what its competitive business interests are that would be harmed should the information be disclosed; and (3) how the information asserted to be confidential qualifies as confidential under the statute or applicable rule.

In FAIR's Motion for Reconsideration, FAIR reargued, with the exception discussed above, the same points raised in its Requests. Staff has reviewed all arguments raised by FAIR in FAIR's Motion, and staff believes that FAIR has not brought to the Commission's attention any specific point that, had it been considered when presented in the first instance, would have required a different decision. Based on the information provided in FAIR's Requests and Motion, staff believes that FAIR has not demonstrated how the information asserted to be confidential qualifies as confidential under the statute or applicable rule. Staff recommends that FAIR's Motion for Reconsideration be denied because it fails to identify a point of law the Prehearing Officer overlooked or failed to consider by issuing Order No. PSC-2021-0299-PCO-EI.

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open for the Commission to address the pending rate case proceeding. (Lherisson)

Staff Analysis: This docket should remain open for the Commission to address the pending rate case proceeding.

Item 4

FILED 8/27/2021
DOCUMENT NO. 09784-2021
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 27, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Osborn, Crawford) JSC
Office of Consumer Assistance and Outreach (Hicks) RLH
Division of Economics (Coston) JGH

RE: Docket No. 20210136-EI – Complaint by Richard L. Davis against Florida Power & Light Company.

AGENDA: 09/08/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED:

PREHEARING OFFICER: Fay

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On November 12, 2020, Mr. Richard Davis filed an informal complaint with the Commission's Office of Consumer Assistance & Outreach (CAO) regarding his electric account with Florida Power & Light Company (FPL).[1] In his informal complaint, Mr. Davis attached a final notice of disconnection for nonpayment from FPL. He also included a document titled UCC Financing Statement Addendum that he alleged constitutes payment of his FPL account balance. In accordance with Rule 25-22.032, Florida Administrative Code (F.A.C.), the documentation Mr. Davis provided was forwarded to the Commission's Office of the General Counsel (GCL) for review. Staff confirmed that the documentation provided did not constitute payment of his account balance. Staff also did not identify a violation by FPL of any applicable statutes, rules,

[1] Complaint No. 1354387E

or Commission orders. Accordingly, the informal complaint was closed by letter to Mr. Davis dated December 8, 2020.

On February 17, February 19, and February 26, 2021, Mr. Davis sent additional e-mails reiterating his contention that he should not be responsible for payment on his FPL account. In response, CAO staff e-mailed him on February 19, February 22, and February 26, 2021, stating that GCL had confirmed that the documentation he provided does not constitute payment of his FPL account balance, and that if he did not pay his account balance in a form of currency acceptable to FPL, his service may be disconnected for nonpayment upon notice pursuant to Rule 25-6.105, F.A.C.

On June 30, 2021, staff received new correspondence from Mr. Davis. Since the previous complaint had been closed longer than 30 days, staff opened information request 1373066C. Staff responded via e-mail on June 30, 2021, again stating that GCL confirmed that the documentation Mr. Davis provided on June 30, 2021, does not constitute payment of his account balance. Mr. Davis then telephoned staff requesting an administrative hearing with the Division of Administrative Hearings. Staff responded with a letter dated July 29, 2021, informing Mr. Davis of the process for a formal complaint per Rule 25-22.036, F.A.C.[2]

On August 11, 2021, Mr. Davis filed a request for hearing.[3] This recommendation addresses the appropriate disposition of Mr. Davis's August 11, 2021, filing. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

[2] DN 09222-2021
[3] DN 09083-2021

Discussion of Issues

Issue 1: What is the appropriate disposition of Mr. Davis's request for hearing?

Recommendation: Staff recommends that Mr. Davis's request for hearing be denied without prejudice. Mr. Davis's request for hearing does not follow the requirements of a formal complaint per Rule 25- 22.036, F.A.C. (Osborn, Crawford)

Staff Analysis: Staff sent correspondence dated July 29, 2021, to Mr. Davis informing him of the process for filing a formal complaint pursuant to Rule 25-22.036, F.A.C. The letter included copies of Rules 25-22.032 and 25-22.036, F.A.C., and Section 120.57, F.S.

Pursuant to Rule 25-22.036(3)(b), F.A.C., a complaint shall contain the rule, order, or statute that has been violated; the actions that constitute the violation; the name and address of the person against whom the complaint is lodged; and the specific relief requested, including any penalty sought.

Mr. Davis's request does not meet these requirements. In his request, he does state his FPL account number. He claims to be a non-legal entity and that he has "been unknowingly complicit in a fraud perpetuated by the local providers of utilities." He then alleges that he is not the class of user that is to be billed, he is not using the service in federally regulated activity, and he is not using the service within the territorial jurisdiction of the Constitution's Commerce Clause. He alleges that disconnecting his service for inability to legally pay is cruel and unusual punishment and that it is impossible to pay in Federal Reserve Notes because those are debt obligations and not "money."

Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction that affects the complainant's substantial interests and that is in violation of a statute enforced by the Commission, or of any Commission rule or order. Mr. Davis's request fails to show that FPL' s disconnection of his service violates a statute, rule, or order as required by Rule 25-22.036(2), F.A.C.

As Mr. Davis has been informed by correspondence dated December 8, 2020; February 19, February 22, and February 26, 2021; and June 30, 2021, a UCC Financing Statement Addendum does not constitute payment of his account balance and nonpayment of his account balance in a form of currency acceptable to FPL may result in disconnection for nonpayment upon notice, pursuant to Rule 25-6.105, F.A.C.

In the letter dated December 8, 2020, CAO staff informed Mr. Davis that Rules 25-6.101 and 25-6.105, F.A.C., indicate that an electric bill is considered past due if the payment has not been received within 20 days from the date the utility mailed or delivered the bill. If the company does not receive a payment by the end of the twentieth day, it has to mail a final notice of at least five working days before it can disconnect the customer's service for nonpayment. Staff stated they had learned from FPL that on October 19, 2020, FPL had sent a regular monthly bill to Mr. Davis that included current charges, a late payment charge, and a past due balance. On

November 10, 2020, FPL mailed Mr. Davis a final notice requesting the past due balance by November 18, 2020, to avoid a service interruption.

Mr. Davis did not identify any statutes, rules, or orders that FPL violated in handling his account. His request for hearing also did not comply with the other requirements of the applicable rule: the actions that would constitute such a violation, or the specific relief requested, including any penalty sought. Mr. Davis framed his filing as a request for hearing. As has been previously explained to him, however, until such time as the Commission makes a decision that affects his substantial interests (such as deciding on a formal complaint), no opportunity to request an administrative hearing is available to him.

Pursuant to Rule 25-22.036(2), F.A.C., a complaint is dismissed with prejudice if no cause of action is stated and an amended pleading will not cure the deficiency. Staff believes Mr. Davis should be afforded the opportunity to amend his filing to comply with the requirements of Rule 25-22.036, F.A.C. Staff therefore recommends that the Commission deny without prejudice Mr. Davis's request for hearing.

Issue 2: Should this docket be closed?

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

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

Item 5

FILED 8/27/2021
DOCUMENT NO. 09792-2021
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 27, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Wooten, Long) CH
Office of the General Counsel (Trierweiler, Jones) TLT

RE: Docket No. 20210108-TP – 2022 State certification under 47 C.F.R. §54.313 and §54.314, annual reporting requirements for high-cost recipients and certification of support for eligible telecommunications carriers.

AGENDA: 08/27/21 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

CRITICAL DATES: 10/01/21 (Filing deadline with the Federal Communications Commission and the Universal Service Administrative Company)

SPECIAL INSTRUCTIONS: None

Case Background

One of the primary principles of universal service support as described in the Telecommunications Act of 1996 (Telecom Act) is for consumers in all regions to have reasonably comparable access to telecommunications and information services at reasonably comparable rates.[1] The federal universal service high-cost program is designed to help ensure that consumers in rural, insular, and high-cost areas have access to modern communications networks capable of providing voice and broadband service, both fixed and mobile, at rates that are reasonably comparable to those in urban areas.[2] The program supports the goal of universal

[1] 47 U.S.C. §254(b)(3) (2021)
[2] FCC, "Universal Service for High Cost Areas - Connect America Fund," updated July 15, 2021, https://www.fcc.gov/general/universal-service-high-cost-areas-connect-america-fund, accessed July 15, 2021.

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

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

Certification will be filed online with USAC through USAC's online portal. Immediately following online certification, the USAC website will automatically generate a letter that may be submitted electronically to the FCC to satisfy the submission requirements of 47 C.F.R. §54.314(c). In order for a carrier to be eligible for high-cost universal service support for all of calendar year 2022, certification must be submitted by the Commission by October 1, 2021.[4]

[3] 47 C.F.R §54.314(a) (2021)
[4] 47 C.F.R §54.314(d) (2021)

Discussion of Issues

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

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

Staff Analysis: All Florida ETCs that are seeking high-cost support have filed affidavits with the Florida Public Service Commission (Commission) attesting that the high-cost funds received for the preceding calendar year were used, and funds for the upcoming calendar year will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Additionally, each company has filed FCC Form 481 with USAC. Form 481 includes information such as emergency operation capability, FCC pricing standards comparability for voice and broadband service, holding company and affiliate brand details, and tribal lands service and outreach. Price cap carriers certify in Form 481 that high-cost support received was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor. Rate-of-return carriers certify in Form 481 that reasonable steps are being made to achieve FCC broadband upload and download standards and, if privately held, submit documents detailing the company's financial condition. Based on previous years' data and projected changes in support, staff estimates that the amount of 2022 high-cost support that these carriers may receive in Florida will be approximately $15 million.[5]

Staff reviewed the affidavits and submissions made by each carrier to the Commission and to USAC. Each of the Florida ETCs receiving high-cost support has attested that all federal high-

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

cost support provided to them within Florida was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

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

Issue 2: Should this docket be closed?

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

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

Item 6

FILED 8/27/2021
DOCUMENT NO. 09764-2021
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 27, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Doehling, Knoblauch) TB
Division of Economics (Wu) JGH
Office of the General Counsel (Weisenfeld) TLT

RE: Docket No. 20210087-EI – Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company.

AGENDA: 09/08/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On April 21, 2021, Tampa Electric Company (TECO or Company) petitioned the Florida Public Service Commission (Commission) to approve the Bayside Station Section 316(b) Compliance Project (Project) for cost recovery through the Environmental Cost Recovery Clause (ECRC). TECO stated that the project is required to comply with the Environmental Protection Agency's (EPA) final rule regarding Section 316(b) of the Clean Water Act.

The EPA adopted a rule pursuant to Section 316(b) of the Clean Water Act on September 7, 2004. This rule established requirements for reducing mortality of aquatic organisms as a result of cooling water intake structures (CWIS) at existing power plants. In 2004, TECO requested Commission approval for cost recovery through the ECRC for a Comprehensive Demonstration

Study, which was needed to comply with the new Section 316(b) rule. Cost recovery for the study was approved by the Commission in Docket No. 20041300-EI.[1]

The 2004 Section 316(b) rule changes were challenged and the EPA published a final rule regarding Section 316(b) (EPA Rule or Rule) on August 15, 2014, which outlined the requirements for CWIS at existing facilities.[2] The EPA Rule requires that the best technology available be applied to the design and operation of CWIS to minimize adverse impacts to aquatic life. In 2018, TECO petitioned the Commission for cost recovery through the ECRC for its Big Bend Unit 1 Section 316(b) Impingement Mortality project in order to comply with the EPA Rule. The Commission approved ECRC cost recovery for the Big Bend project by Order No. PSC-2018-0594-FOF-EI, issued December 20, 2018.[3] The proposed Bayside Station Section 316(b) Compliance Project is substantially similar to the previously approved Big Bend Unit 1 Section 316(b) Impingement Mortality project.

Pursuant to Section 366.8255, Florida Statutes (F.S.), the Florida Legislature authorized the recovery of prudently incurred investor-owned electric utility environmental compliance costs through the ECRC. The method for cost recovery for such costs was first established by Order No. PSC-94-0044-FOF-EI, issued on January 12, 1994.[4] The Commission has jurisdiction over this matter pursuant to Section 366.8255, F.S.

[1] Order No. PSC-05-0164-PAA-EI, issued February 10, 2005, in Docket No. 20041300-EI, *In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause by Tampa Electric Company.*
[2] Federal Register, Volume 79, No. 158, pp. 48300-48439, codified at Title 40, Part 125, Subpart J, Code of Federal Regulations.
[3] Order No. PSC- 2018-0594-FOF-EI, issued December 20, 2018, in Docket No. 20180007-EI, *In re: Environmental cost recovery clause.*
[4] Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 19930613-EI, *In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0285, Florida Statutes by Gulf Power Company.*

Discussion of Issues

Issue 1: Should the Commission approve Tampa Electric Company's petition for approval of the Bayside Station Section 316(b) Compliance Project for cost recovery through the Environmental Cost Recovery Clause?

Recommendation: Yes. Staff recommends that TECO's Bayside Station Section 316(b) Compliance Project is necessary to comply with the EPA's Section 316(b) rule. Consistent with prior ECRC orders, operation and maintenance (O&M) costs associated with the Project should be allocated to appropriate rate classes on an energy basis and capital costs should be allocated on a demand basis. (Doehling, Wu)

Staff Analysis: The EPA Rule establishes requirements for CWIS at existing facilities. The Rule requires that the best technology available be applied to the design and operation of CWIS to minimize impingement mortality[5] and entrainment[6] of aquatic life. The Rule allows for seven different approaches for impingement mortality compliance. For entrainment compliance, the Rule requires the evaluation of closed-cycle cooling, alternative water supplies, and fine mesh screens for a site-specific determination by the Florida Department of Environmental Protection (DEP) Director. In addition, the Rule requires that a Compliance Optimization Study be performed once the Project is in-service to validate the effectiveness of the Project.

In its petition, TECO states that it evaluated its compliance options and identified modified traveling screens with a fish return as the most cost-effective solution to comply with the EPA Rule. TECO also stated that its Project is required to comply with the impingement mortality requirements of the Rule. While the Project may also reduce the entrainment of aquatic life, entrainment compliance must be determined after the Project is in-service, based on the DEP Director's review of the Project's performance. If the DEP Director determines that additional improvements are needed to meet entrainment requirements, TECO intends to address them through a subsequent petition.

The work to be completed includes retrofitting existing coarse mesh screens with modified traveling screens and the installation of two return pipes to release fish away from the influence of the CWIS. Staff notes that this project is substantially similar to TECO's Commission-approved Big Bend Unit 1 Section 316(b) Impingement Mortality Project.[7] Engineering work for the Bayside Station Section 316(b) Compliance Project will begin near the end of 2021, construction in the third quarter of 2022, and is expected to be placed in-service in the fourth quarter of 2023.

[5] Impingement mortality occurs when aquatic life are pinned against the CWIS screens.
[6] Entrainment occurs when small aquatic life pass through the CWIS screens and enter the cooling system.
[7] Order No. PSC- 2018-0594-FOF-EI, issued December 20, 2018, in Docket No. 20180007-EI, *In re: Environmental cost recovery clause.*

The estimated cost for the Project is $10.1 million, including the compliance optimization study, as seen in Table 1-1. The Project has an expected service life of 20 years, with annual in-service O&M costs of $512,000 beginning in 2024. The costs in Table 1-1 were developed by TECO based on actual costs from TECO's Big Bend Unit 1 Section 316(b) Impingement Mortality Project. Labor costs from central Florida were used along with estimates on the major equipment such as the traveling screens. A draft layout of the fish return system was created, and material requirements were estimated. Further, Table 1-2 shows the estimated annual impact of the Project on residential customer bills.

Table 1-1
Estimated Capital and O&M Costs

	2021 ($000)	2022 ($000)	2023 ($000)	2024 ($000)	2025 ($000)	Total ($000)
Capital						
Engineering	375	75	75	-	-	525
Equipment	450	4,425	1,125	-	-	6,000
Construction	-	1,850	750	-	-	2,600
Owners Costs	125	125	125	-	-	375
Demolition / Retirement	-	30	30	-	-	60
Total Capital	950	6,505	2,105	-	-	9,560
Compliance Optimization Study	-	-	-	270	270	540
In-Service Annual O&M						
Variable O&M	-	-	-	134	134	N/A
Operating Labor	-	-	-	50	50	N/A
Maintenance Material	-	-	-	198	198	N/A
Maintenance Labor	-	-	-	130	130	N/A
Total O&M	-	-	-	512	512	N/A

Source: TECO's petition

Table 1-2
Residential Bill Impact
(1,000 kWh Monthly Usage)

Year	Estimated Annual Impact
2022	$ 0.162
2023	$ 0.050
2024	$ 0.320
2025	$ 0.004

Source: TECO's response to Staff's Third Data Request No. 2

Based on TECO's petition and the Company's responses to staff's data requests,[8] staff recommends that TECO's ECRC Project is necessary for compliance with the EPA Rule. The Commission's criteria for ECRC recovery relevant to this docket, established by Order No. PSC-94-0044-FOF-EI, are:

(1) The activities are legally required to comply with governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the Company's last test year upon which rates are based; and

(2) None of the expenditures are being recovered through some other cost recovery mechanism or through base rates.

Staff recommends that the activities proposed in TECO's petition meet these criteria. These activities are necessary for TECO to comply with governmentally imposed environmental regulation. The need for the above-referenced compliance activities were triggered after TECO's last test year upon which rates are currently based.[9] Specifically, the need for these activities was triggered by the renewal of the facility's National Pollutant Discharge Elimination System Permit, which requires compliance with the EPA Rule. Finally, the costs of the proposed compliance activities are not currently being recovered through some other cost recovery mechanism or through base rates. Staff notes that the reasonableness and prudence of individual expenditures related to the Project will continue to be subject to the Commission's review in future ECRC proceedings.

Conclusion

Staff recommends that TECO's Bayside Station Section 316(b) Compliance Project is necessary to comply with the EPA's Section 316(b) Rule. Consistent with prior ECRC orders, O&M costs associated with the Project should be allocated to appropriate rate classes on an energy basis and capital costs should be allocated on a demand basis.[10]

[8] Document Nos. 04587-2021, 07715-2021, and 08704-2021 dated June 8, July 12, and August 4, 2021, respectively.

[9] On August 6, 2021, a joint Stipulation and Settlement Agreement between TECO and intervening parties was filed in Docket No. 20210034-EI. The hearing for TECO's current rate case is set for October 21, 2021, by Order No. PSC-2021-0301-PCO-EI. The costs of the Project are not included in the Settlement Agreement.

[10] Order No. PSC-2017-0483-PAA-EI, issued December 22, 2017, in Docket No. 20170168-EI, *In re: Petition for approval of the second phase of CCR program for cost recovery through the environmental cost recovery clause, by Tampa Electric Company,* Order No. PSC-16-0248-PAA-EI, issued June 28, 2016, in Docket No. 20160027-EI, *In re: Petition for approval of new environmental program for cost recovery through Environmental Cost Recovery Clause, by Tampa Electric Company.*

Issue 2: Should this docket be closed?

Recommendation: Yes. This docket should be closed upon issuance of a Consummating Order unless a person whose substantial interests are affected by the Commission's decision files a protest within 21 days of the issuance of the Proposed Agency Action Order. (Weisenfeld)

Staff Analysis: At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a Consummating Order.

Item 7

State of Florida

Public Service Commission

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

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

DATE: August 27, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Forrest, Coston) JGH
Office of the General Counsel (Osborn, Crawford) JSC

RE: Docket No. 20210088-GU – Joint petition to modify tariffs to accommodate receipt and transport of renewable natural gas, by Florida Public Utilities Company, Florida Public Utilities - Indiantown Division, Florida Public Utilities - Fort Meade, and Florida Division of Chesapeake Utilities Corporation.

AGENDA: 09/08/21 – Regular Agenda – Tariff Filing - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 12/21/21 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

Florida Public Utilities Company, Florida Public Utilities-Indiantown Division, Florida Public Utilities-Fort Meade, and Florida Division of Chesapeake Utilities Corporation (jointly, Companies) are local distribution companies subject to the Commission's jurisdiction pursuant to Chapter 366, Florida Statutes (F.S.). The Companies serve customers in 26 counties within Florida. On April 21, 2021, the Companies submitted a joint petition for a new Renewable Natural Gas Service (RNGS) tariff for biogas[1] producers to allow the Companies to provide services for the purposes of converting biogas into usable Renewable Natural Gas (RNG) that meets pipeline quality gas standards. RNG is produced by cleaning and conditioning biogas in

[1] Biogas is described as raw, freshly emitted, and untreated gas, especially methane, produced by the breakdown of organic matter.

order to meet pipeline quality gas and heat standards, which can then be used interchangeably with natural gas within a gas distribution system.

The Commission has approved similar RNG rate schedules for Peoples Gas System in Order No. PSC-2017-0497-TRF-GU[2] and for Florida City Gas in Order No. PSC-2021-0040-TRF-GU.[3] In 2020, the Companies received Commission approval to modify the quality of gas provisions in their tariff to allow for the receipt and transportation of RNG. [4]

The proposed tariff modifications include the new RNGS tariff (tariff sheet Nos. 7.506-7.507) and certain other tariff revisions to include definitions of RNG. During the review of this petition, staff issued two data requests for which responses were received on June 22, 2021 and July 23, 2021. On August 24, 2021, the Companies filed an amended tariff to include additional language concerning ratepayer protections and to correct a scriveners error in the availability provision. The proposed RNGS tariffs are included as Attachment A to the recommendation.

By Order No. PSC-2021-0239-PCO-GU, issued on July 1, 2021, the Commission suspended the proposed tariffs pursuant to the 60-day file and suspend provision in Section 366.06(3), F.S. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, F.S.

[2] Order No. PSC-2017-0497-TRF-GU, issued December 29, 2017, in Docket No. 20170206-GU, *In Re: Petition for approval of tariff modifications to accommodate receipt and transportation of renewable natural gas from customers, by Peoples Gas System.*
[3] Order No. PSC-2021-0040-TRF-GU, issued January 25, 2021, in Docket No. 20200216-GU, *In re: Request for approval of tariff modifications to accommodate receipt and transportation of renewable natural gas from customers, by Florida City Gas.*
[4] Order No. PSC-2020-0113-TRF-GU, issued April 20, 2020, in Docket No. 20200046-GU, *In re: Petition to revise tariffs for Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade, Florida Division of Chesapeake Utilities Corporation, and Peninsula Pipeline Company to update the description of gas quality and character of service.*

Discussion of Issues

Issue 1: Should the Commission approve the Companies' proposed new RNGS rate schedule and associated tariff modifications?

Recommendation: Yes, the Commission should approve the Companies' proposed new RNGS rate schedule and associated tariff modifications effective September 8, 2021. The RNGS rate schedule would furnish the Companies with an opportunity to provide biogas cleaning and conditioning services to interested customers. The utility demonstrated a reasonable approach to implementing the tariff. A participating customer would enter into an agreement with the respective Company and all capital and operating costs associated with the biogas upgrading and conditioning service would be borne by the customer over the life of the contract. (Forrest)

Staff Analysis: The Companies stated in the petition that RNG captures methane from animal waste and other biomass sources that otherwise would have directly entered the atmosphere. When it is eventually combusted, the RNG releases significantly fewer greenhouse gas emissions.[5] Without the collection of the biogas to be conditioned into RNG, the biogas produced would escape into the atmosphere or be burned off at the source with emissions from the burning process released into the atmosphere. Once conditioned, RNG can be interchangeable with conventional natural gas from other sources and can be used as a carbon neutral fuel source for a variety of applications by different types of customers. The Companies explained that not only can RNG be used for fuel and generation purposes, but also has the opportunity to encourage growth in the agriculture industry by providing a solution to waste management.

Proposed New RNGS Tariff

Under the proposal, a biogas-producing customer would enter into a mutually satisfactory RNG Service Agreement (agreement) with one of the Companies to construct and operate the RNG facilities on behalf of the customer. In the response to staff's first data request, the Companies stated that the estimated cost for biogas conditioning equipment and facility could range from $2 to $40 million for a single facility based on size and scope of the project.[6] The tariff requires that all RNG be conditioned to meet the Companies' pipeline quality gas and heat standards. This requirement would ensure that all RNG produced under the proposed tariff can be safely used without any adverse impact to the integrity of the customers' and the Companies' natural gas equipment.

The proposed RNGS tariff provides the terms and conditions under which the Companies may provide service to biogas producers who wish to convert their biogas into RNG. These services include upgrading and conditioning biogas to pipeline quality gas standards that can then be interconnected and injected for delivery onto the Companies' distribution system. The terms of this agreement would include the design, location, quality specifications, operational requirements, and the required monthly service charge.

[5] Florida Public Utilities Company, Florida Public Utilities Company- Indiantown Division, Florida Public Utilities Company- Fort Meade, and the Florida Division of Chesapeake Utilities Corporation petition, Document No. 03632-2021.
[6] Response to Staff's first data request No. 3, (Document No. 06659-2021).

The monthly service charge would be designed to cover the costs of construction, operational costs, and carrying costs of the facilities that would allow the respective Company to collect a rate of return on the RNG facility investment. Under the tariff, ownership and title of the RNG remains with the customer and the customer is solely responsible for determining the end-user of the RNG. Should the Companies elect to purchase RNG from a biogas producer, the Companies and the customer would enter into an RNG commodity purchase agreement.

Impact on the General Body of Ratepayers

The Companies state that the RNGS tariff has essential safeguards that ensure that the contracting company's general body of ratepayers would not subsidize the biogas customers taking service under the RNGS tariff. Specifically, the Companies stated that they would ensure that service taken under the proposed RNGS tariff would not affect any ratepayers by confirming the credit worthiness of the customers taking service under the tariff. In response to staff's second data request the Companies stated that they would do sufficient due diligence to ensure that the non-participants are not at risk by requiring RNGS customers to provide one of the following options: (a) a guarantor to secure payment of bills, (b) an irrevocable letter of credit from a bank equal to two months average bills, (c) a surety bond equal to two months average bills, or (d) pay a cash deposit.[7]

In the event of default, the Companies stated that they would discontinue service, terminate the contract, and start all remedies that are provided in the service agreement. This may include applying any deposit paid to the customer's account, seeking payment from a guarantor to cover the outstanding balance, and pursuing legal or equitable claims against the defaulting customer. In response to staff's second data request, the Companies modified the proposed tariff on August 24, 2021, to incorporate language on tariff sheet No. 7.507 (last paragraph) emphasizing that the tariff would not cause any additional costs to non-participants.

Staff recommends approval of this petition based, in part, on the Companies' assertion that they would implement a thorough and reasonable process to evaluate the credit worthiness of a potential customer to be served under the RNGS tariff. Based on this process, the Companies do not anticipate any cost impact to the general body of ratepayers.

Conclusion

Staff recommends that Commission should approve the Companies' proposed new RNGS rate schedule and associated tariff modifications effective September 8, 2021. The RNGS rate schedule would furnish the Companies with an opportunity to provide biogas cleaning and conditioning services to interested customers. The Companies demonstrated a reasonable approach to implementing the proposed tariff. A participating customer would enter into an agreement with the respective Company and all capital and operating costs associated with the biogas upgrading and conditioning service would be borne by the customer over the life of the contract.

[7] Response to Staff's second data request No. 1 (Document No. 08261-2021).

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Osborn, Crawford)

Staff Analysis: Yes. If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

TECHNICAL TERMS AND ABBREVIATIONS - CONTINUED

Relinquishment. The release of firm capacity right(s) pursuant to the Rules and Regulations in this Natural Gas Tariff and FERC rules.

Renewable Natural Gas (RNG). Pipeline-quality biomethane that is interchangeable with conventional natural gas.

Request for Gas Sales or Transportation Service. Company's Natural Gas Service Agreement which, when properly executed by a prospective Customer, requests Gas Service from the Company.

Retainage. A percentage of Customer's or Customer's Agent's Gas that Company is allowed to retain for Gas shrinkage at no cost to Company.

Service Line. All piping between the Main tap up to and including the first valve or fitting of the Meter or regulator setting.

Shipper. Customer or Pool Manager who has executed a Transportation Service Agreement or an Aggregated Transportation Service Agreement, and who has acquired capacity with a Transportation Service Provider.

Shipper's Designee. A contractually authorized Marketer or Agent of an Individual Transportation Service Customer or CFG Off-system Delivery Point Operator Service Customer under these Rules and Regulations who is appointed by Customer and approved by Company to perform the obligations of an ITS and CFG OS-DPO Customer or Pool Manager on the Company's system such as invoicing and payment, nominations, monthly imbalance resolution or operator order responsibility.

Standard Delivery Pressure. Gas delivered at Standard Delivery Pressure may vary from three (3) inches to fifteen (15) inches of water column. No adjustment will be made for variation from the normal Atmospheric Pressure at the Customer's Meter.

Sub-metering. The practice of installing additional metering equipment beyond the Company installed utility Meter.

Therm. A unit of heating value equivalent to one hundred thousand (100,000) British Thermal Units.

Total Heating Value. The number of British Thermal Units produced by combustion in a recording calorimeter at a constant pressure of the amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty degrees Fahrenheit (60°F.) if saturated

TECHNICAL TERMS AND ABBREVIATIONS - CONTINUED

Total Heating Value continued

with water vapor, and under a pressure equal to that of thirty inches (30") of mercury at thirty-two degrees Fahrenheit (32°F.) and under standard gravitational force (acceleration 980.665 centimeters per second) with air of the same temperature and pressure as the gas, when
the products of combustion are cooled to the initial temperature of the gas and air, and when

~~*TECHNICAL TERMS AND ABBREVIATIONS - CONTINUED*~~

~~Total Heating Value continued~~
the water formed by combustion is condensed to the liquid state.

Company will determine a monthly average heating value of natural gas to be effective as of the first Day of each Month. Said monthly average heating value will be in effect on a calendar Month basis. It will reflect the average monthly heating value of the natural gas delivered to Company during the immediately preceding calendar Month.

Transportation Service. The service provided by Company where Customer-owned Gas is received by Company from a Transportation Service Provider at the Company Receipt Point(s), transported through Company's distribution system, and delivered by Company at the Company's Delivery Points to Customer.

Transportation Service Agreement. The fully executed Transportation Service Agreement or Contract Transportation Service Agreement between Company and Customer.

Transportation Service Provider. Any interstate pipeline, intrastate pipeline, or local distribution company that transports Gas to Company's Receipt Point(s).

Transportation Service Provider Delivery Point(s). The point at the connection of the facilities of Transportation Service Provider, at which the gas leaves the outlet side of the measuring equipment of Transportation Service Provider and enters an off-system facility.

Upstream Pipeline Capacity Costs. Expenses incurred by the Company including but not limited to reservation, demand, usage, commodity, fuel, and applicable fuel charges incurred by the Company as a result of Company's contractual arrangements with Transportation Service Provider(s).

Working Day. Shall have the same meaning as Business Day, previously defined herein.

RULES AND REGULATIONS - CONTINUED

f. Flexible Gas Service (FGS):
This service is available at the Company's option to Customers meeting the applicability standards which include i) the Customer must demonstrate to the Company that Customer has a viable economic energy alternative including verifiable documentation of Customer's energy alternative; and ii) the Company must demonstrate that this new Customer will not cause any additional costs to, or cross-subsidization by, the Company's other rate classes. The Company is under no obligation to grant service under this Tariff.

g. Off System Sales Service (OSSS-1):
Interruptible Natural Gas delivered by Company to any person not connected to Company's distribution system. Customer and Company shall rely on measurement made by the Transportation Service Provider. Unless curtailed, all Nominations to Customer's Transportation Service Provider Pipeline Delivery Point shall be considered to have been made by the Transportation Service Provider. Off-System Sales include i) intrastate and interstate pipeline capacity releases made by the Company, ii) commodity sales made by the Company, and / or iii) delivered sales made by the Company. Fifty percent (50%) of the net revenues shall be retained by Company. The remaining fifty percent (50%) of the net revenues shall be used to reduce Company's costs recovered through the Company's Purchase Gas Cost Recovery Clause.

h. Renewable Natural Gas Service (RNG):
Service provided to RNG producers which includes conditioning or upgrading biogas into pipeline quality RNG for interconnection, injection, and delivery into the Company's distribution systems. The Company may provide upgrade equipment, compressors, blowers, anaerobic digestors, site work, piping, heat exchangers, driers, metering, system interconnects, injection equipment, storage vessels, and other equipment deemed necessary for the safe and reliable operation of the biogas conditioning site and system interconnect/injection point(s). The Company's provision of RNG service to the Customer may require an agreement between the Company and the Customer. RNG shall conform to the Quality of Gas provisions contained in this tariff.

i. ~~h.~~ Pool Manager Services:
   i. Shipper Administrative and Billing Service (SABS):
   Administrative and billing service provided to a Pool Manager under the SABS rate schedule, in accordance with the Rules and Regulations and Agreements set forth in this Tariff. The Company shall provide the following services to Pool Managers under the SABS; i) reading of

RULES AND REGULATIONS - CONTINUED

Customer's Meters, ii) provision of Customer projected monthly usage information, along with Transportation Service Provider capacity quantity to be released to Pool Manager, iii) provision of Customer usage information to Pool Manager each Month, iv) retention of Customer's historical usage information, v) LOA retention and administration, vi) receipt and administration of Pool Manager's Gas rates for Customer billing, vii) calculation and presentation of Pool Manager's gas billing charges on Company's monthly bill or, at Company's sole option, on a separate bill to Customer, viii) collection and application of Customer payments for Pool Manager's Gas billing charges, ix) remittance of Customer payments for Pool Manager's gas billing charges to Pool Manager, net of Pool Manager's billing charges that are bad debt write-

~~***RULES AND REGULATIONS - CONTINUED***~~

Shipper Administrative and Billing Service (SABS) Continued

offs and recovery of said bad debts, the SABS Tariff-approved charges and other applicable charges and adjustments, and x) other services as the Company may determine necessary to administer Gas deliveries by Pool Managers to Customers. This service is required for TTS Pool Managers and is not available to CI Pool Managers. Billing Adjustments and Taxes and Fees, as set forth on Sheet Nos. 7.900-7.922, may also apply.

ii. Shipper Administrative Service (SAS):
Administrative service provided to a Pool Manager under the SAS rate schedule, in accordance with the Rules and Regulations ser forth in this Tariff. The Company shall provide the following services to Pool Managers under the SAS; i) reading of Customer's Meters, ii) provision of Customer projected monthly usage information, along with Transportation Service Provider capacity quantity to be released to Pool Manager, iii) provision of Customer usage information to Pool Manager each Month, iv) retention of Customer's historical usage information, v) Letter of Authorization retention and administration, and vi) other service as the company may determine necessary to administer Gas deliveries by Pool Managers to Customers. This service is required for CI Pool Manager or Customers that have executed an FGS or Special Contract Agreement, as may be negotiated by Company, and is not available to TTS Pool Manager. Billing Adjustments and Taxes and Fees, as set forth on Sheet Nos. 7.900-7.922, may also apply.

iii. Delivery Point Operator Service (DPO):

RULES AND REGULATIONS - CONTINUED

Administrative service provided to a Pool Manager by Company, or Company's agent acting as DPO, in accordance with the Rules and Regulations set forth in this Tariff. Company shall provide the following services to Pool Managers receiving DPO service; i) receipt and administration of scheduled Gas quantities for Pool Manager's Customer Pool, ii) compilation of measured Gas quantities for Pool Manager's Customer Pool, iii) resolution of monthly imbalances with Transportation Service Provided (difference between scheduled Gas quantities for all Pool Managers and measured Gas quantities at the Company's Receipt Points), using approved book-out and/or cash-out processes of Transportation Service Provider(s), iv) resolution of monthly imbalances with Pool Manager (difference between scheduled Gas quantities and measured Gas quantities for Pool Manager's Customer Pool), in

~~***RULES AND REGULATIONS - CONTINUED***~~

Delivery Point Operator Service (DPO) Continued

accordance with this Tariff, v) administration of the Operational Balancing Account ("OBA"), in accordance with this Tariff, vi) administration of Transportation Service Provider Operational Orders, including financial transactions, if any, and vii) other service as Company may determine necessary to administer Gas deliveries by Shippers to Customers.

iv. Off-System Delivery Point Operator Service (OS-DPO):
Administrative service, in accordance with an executed Off-System Delivery Point Operator Agreement, provided at Company Receipt Point(s) to a Pool Manager by Company, or Company's agent acting as DPO, in accordance with the Rules and Regulations set forth in this Tariff, as applicable. Company shall provide the following services to Pool Managers under the OS-DPO Service, i) receipt and administration of scheduled Gas quantities for Pool Manager's Customer Pool, ii) compilation of measured Gas quantities for Pool Manager's Customer Pool, iii) resolution of monthly imbalances with Transportation Service Provider (difference between scheduled Gas quantities for all Pool Managers and measured Gas quantities at the Company Receipt Point(s)), using approved book-out and/or cash-out processes of Transportation Service Provider, iv) resolution of monthly imbalances with Pool Manager

(difference between scheduled Gas quantities and measured Gas quantities for Pool Manager's Customer Pool), in accordance with this Tariff, v) administration of the OBA account, in accordance with this Tariff, vi) administration of Transportation Service Provider Operational

RULES AND REGULATIONS - CONTINUED

Orders, including financial transactions, if any, in accordance with this Tariff, and vii) other services as Company may determine necessary to administer Gas deliveries by Pool Managers to Customers. Billing Adjustments and Taxes and Fees, as set forth on Sheet Nos. 7.900-7.922, may also apply. Upon initiation of service, any TTS Pool Manager or CI Pool Manager who has executed an Off-System Delivery Point Operator Agreement will be assigned to the OS-DPO rate schedule.

Florida Public Utilities Company and Florida Division of Chesapeake Utilities
FPSC Tariff
Original Volume No. 1
Original Sheet No. 7.002

INDEX OF RATE SCHEDULES - CONTINUED

Issued by: Jeffry Householder, Chief Executive Officer
Florida Public Utilities Company and Chesapeake Utilities Corporation
Effective:

Florida Public Utilities Company and Florida Division of Chesapeake Utilities
FPSC Tariff
Original Volume No. 1
Original Sheet No. 7.003

INDEX OF RATE SCHEDULES - CONTINUED

Issued by: Jeffry Householder, Chief Executive Officer
Florida Public Utilities Company and Chesapeake Utilities Corporation
Effective:

Florida Public Utilities Company and Florida Division of Chesapeake Utilities
FPSC Tariff
Original Volume No. 1 Original Sheet No. 7.506

All Companies
RENEWABLE NATURAL GAS SERVICES – (RNGS) - CONTINUED

Availability:
Throughout all service areas of the Companies, and within the area served by an interstate or intrastate natural Gas pipeline that provides service to the Companies.

Applicability:
For services provided to eligible Customers for biogas upgrading and conditioning services to generate Renewable Natural Gas ("RNG") and for requisite gas services as agreed upon in the service agreement between the Customer and the Company. Service under this schedule is contingent upon mutually satisfactory arrangements between the Company and the Customer for the design, location, construction, and operation of RNG facilities.

Renewable Natural Gas Service Agreement:
The Customer and the Company will enter into a service agreement with terms designed to recover the Company's costs to provide services, including but not limited to return on investment, amortization and depreciation, and taxes, as well as any terms necessary to comply with other provisions as determined appropriate by the Company. Absent an executed RNG service agreement, this rate schedule is not available to Customers.

Service Charges:
The Customer will be charged a monthly service charge, or other agreed upon rate and rate mechanism, designed to collect the required return on investment for the Company's plant investment, depreciation and amortization expenses, operation and maintenance expenses, taxes, and all other expenses incurred by the Company to perform the services necessary to upgrade the biogas and to inject and transport the RNG on the Company's distribution system for the RNG project. The Company's plant investment in the RNG project may include, but is not limited to biogas upgrade facility equipment, compressors, blowers, anaerobic digestion equipment, site work, piping, heat exchangers, driers, metering, system interconnects, injection equipment, storage vessels, and any other equipment deemed necessary for the safe and reliable operation of the biogas conditioning site and system interconnect/injection points. The Company's provision of RNG services to the customer will require an agreement by the Customer to purchase RNG services for a minimum period of time, to take or pay for a minimum amount of RNG service, to pay a contribution in aid of construction, if necessary, to provide adequate security as determined by the Company, and to comply with other provisions as determined necessary by the Company.

Additional Terms:

The Company's provision of RNG service does not include the provision of electricity, natural gas, or any other fuels required to operate the RNG facilities. The customer shall reimburse the Company for all such electricity and fuel expenses incurred by the Company to provide RNG services to the customer.

Issued by: Jeffry Householder, Chief Executive Officer Effective:
Florida Public Utilities Company and Chesapeake Utilities Corporation

Florida Public Utilities Company and Florida Division of Chesapeake Utilities
FPSC Tariff
Original Volume No. 1 Original Sheet No. 7.507

All Companies
RENEWABLE NATURAL GAS SERVICES – (RNGS) - CONTINUED

Additional Terms Continued:

Service provided under this Rate Schedule shall be subject to the Rules and Regulations as set forth in the Company's tariff, except as modified under this Rate Schedule and in the executed service agreement.

All RNG delivered into the Company's distribution system must meet the gas quality standards as set forth in the "Quality of Gas" section of the Company's tariff. The Company, at its sole discretion, may accept or reject RNG that does not meet those standards.

Unless otherwise agreed to between the Customer and the Company, ownership of the RNG commodity will remain with the Customer, and the Customer shall remain solely responsible for determining the end-user of such RNG unless the Company and the Customer enter into a RNG commodity purchase agreement.

Service under this Rate Schedule is contingent upon the Company and the Customer entering a mutually satisfactory RNG Service Agreement; provided, however, that the service provided to the Customer under this Rate Schedule shall not cause any additional cost to the Company's other rate classes, unless otherwise approved by the Commission in a future proceeding.

Issued by: Jeffry Householder, Chief Executive Officer Effective:
Florida Public Utilities Company and Chesapeake Utilities Corporation

Item 8

State of Florida

Public Service Commission

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

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

DATE: August 27, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Hampson, Coston) JGH
Office of the General Counsel (Osborn) JSC

RE: Docket No. 20210106-GU – Petition for approval of transportation service agreement between Peninsula Pipeline Company, Inc. and Florida Division of Chesapeake Utilities Corporation.

AGENDA: 09/08/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On May 26, 2021, Peninsula Pipeline Company, Inc. (Peninsula) filed a petition seeking approval of a firm transportation service agreement (Agreement) between Peninsula and the Florida Division of Chesapeake Utilities Corporation, d/b/a Central Florida Gas (CFG), collectively the Joint Petitioners. Peninsula operates as a natural gas transmission company as defined by Section 368.103(4), Florida Statutes (F.S.).[1] CFG provides natural gas service to residential, commercial, and industrial customers in areas including Polk County and currently receives deliveries of natural gas over interstate transmission pipelines owned by Gulfstream

[1] Order No. PSC-06-0023-DS-GP, issued January 9, 2006, in Docket No. 20050584-GP, *In re: Petition for declaratory statement by Peninsula Pipeline Company, Inc. concerning recognition as a natural gas transmission company under Section 368.101, F.S., et seq.*

Natural Gas System and Florida Gas Transmission Company (FGT). CFG is a local distribution company subject to the regulatory jurisdiction of the Commission pursuant to Chapter 366, F.S.

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

In accordance with the proposed Agreement, Peninsula will construct, own, and operate a natural gas pipeline, a new gate station, and a new delivery receipt station in Polk County. During the evaluation of the petition, staff issued two data requests to the Joint Petitioners, for which responses were received on July 23, 2021 and on August 9, 2021. In addition, staff held an informal follow-up meeting with the Joint Petitioners on August 16, 2021. The proposed Agreement is included with this recommendation as Attachment A. The project map, identifying the proposed construction projects, is included as Attachment B to this recommendation. The dashed line represents the pipeline Peninsula will construct, pursuant to the proposed Agreement. The Commission has jurisdiction over this matter pursuant to Sections 366.05(1), 366.06, and 368.105, F.S.

[2] Order No. PSC-07-1012-TRF-GP, issued December 21, 2007, in Docket No. 20070570-GP, *In re: Petition for approval of natural gas transmission pipeline tariff by Peninsula Pipeline company, Inc.*
[3] Peninsula Pipeline Company, Inc., Intrastate Pipeline Tariff, Original Vol. 1, Original Sheet No. 11, Section 3.
[4] Peninsula Pipeline Company, Inc., Intrastate Pipeline Tariff, Original Vol. 1, Original Sheet No. 12, Section 4.

Discussion of Issues

Issue 1: Should the Commission approve the proposed Transportation Service Agreement between Peninsula and CFG dated May 7, 2021?

Recommendation: Yes, the Commission should approve the proposed Transportation Service Agreement between Peninsula and CFG dated May 7, 2021. The proposed Agreement is reasonable and meets the requirements of Section 368.105, F.S. Furthermore, the proposed Agreement benefits CFG customers by enhancing reliability, serving new incremental load, and by avoiding the risks associated with ownership of the facilities. (Hampson)

Staff Analysis: **Proposed Transportation Service Agreement**

The Joint Petitioners have entered into the proposed Agreement to provide CFG with the additional capacity needed to serve new incremental load in the Winter Haven distribution system. The overall scope of Peninsula's project contemplates the construction of a steel pipeline, a new gate station[5] with FGT, and a new delivery receipt station.

Specifically, Peninsula would construct a gate station connecting the new pipeline to the FGT Avon Park Lateral, south of Winter Haven. Peninsula would also install 7,400 feet of 4-inch steel pipeline beginning from the new gate station and continuing northward to the new delivery receipt station. Peninsula would construct the delivery receipt station in the area of Pollard Road and Logistics Parkway. The Joint Petitioners state that the proposed project would allow CFG to capture new load growth in the area, including a large can manufacturing facility expected to begin operation in the third quarter of 2021. Peninsula stated that it anticipates the construction of the pipeline, gate station with FGT, and the delivery receipt station to be completed in the first quarter of 2022.[6]

The proposed Agreement specifies an initial term of 20 years; with an extension on a year-by-year basis, unless either party gives written notification of termination not less than 90 days prior to expiration. In response to staff's data request, CFG explained it did not issue a formal Request for Proposals. The Joint Petitioners state that FGT has declined to bid for similar projects in previous discussions, citing that constructing and owning laterals like those proposed is not the focus of their expansion activities.[7]

Staff notes that the pipeline along Bomber Road, shown as the solid line on Attachment B, will be constructed and owned by CFG and is therefore not part of the proposed Agreement. In response to staff's data request, the Joint Petitioners explained that the 4-inch medium-density polyethylene pipeline is an extension of CFG's existing distribution main, making CFG the logical choice to construct and own that pipeline.[8]

[5] A gate station is a facility that depressurizes, odorizes, and measures the natural gas received from transmission pipelines.
[6] Joint Responses to Staff's First Data Request, No. 3 (DN 08276-2021).
[7] Joint Responses to Staff's First Data Request, No. 6 (DN 08276-2021).
[8] Joint Responses to Staff's First Data Request, No. 5 (DN 08276-2021).

Negotiated Monthly Reservation Payments to Peninsula

The Joint Petitioners assert that the negotiated monthly reservation charge contained in the proposed Agreement is consistent with market rates, because the rates are substantially the same as rates set forth in similar agreements as required by Section 368.105(3)(b), F.S. Staff has reviewed the proposed Agreement's monthly reservation charge as well as the cost estimates for each portion of the project and the breakdown between labor and materials.[9] In discussions with Commission staff, the Joint Petitioners explained that the negotiated monthly reservation charge was determined based on the expected costs associated with the project; including design costs, capital and depreciation costs, operations and maintenance costs, safety and regulatory compliance costs, taxes, and Peninsula's return on equity.

CFG has proposed to recover its payments to Peninsula through its swing service rider mechanism, consistent with other gas transmission pipeline costs incurred by CFG.[10] The swing service rider allows CFG to recover intrastate capacity costs from its transportation customers and is a cents per therm charge that is included in the monthly gas bill of transportation customers.[11] Staff believes that while CFG will incur costs associated with this service expansion, any new load will help spread the costs over a larger customer base. The benefit of Peninsula, as opposed to CFG, constructing the new pipeline is primarily that Peninsula's construction and ownership of the pipeline will protect CFG's ratepayers from undertaking the costs and risks associated with the project.

Anticipated System Benefits

The Joint Petitioners assert that the proposed project is anticipated to provide multiple reliability and operational benefits for CFG. First, the project would introduce additional natural gas supply from FGT to CFG's distribution system approximately mid-way between existing FGT gate stations in Bartow and Winter Haven. Staff agrees this would provide additional reliability for CFG's distribution system, should either current FGT gate station in the Bartow and Winter Haven area become constrained.

Second, the Joint Petitioners explained that completion of Peninsula's proposed project would allow CFG to decrease the pipeline pressure along Spirit Lake Road, eliminating the need for several existing farm taps.[12] CFG has identified eight farm taps for retirement, which would otherwise need to be rebuilt within the next year. By decreasing the pressure along Spirit Lake Road, CFG is able to avoid the cost associated with rebuilding the older equipment. In response to staff's data request, the Joint Petitioners stated that customers served by these farm taps should not anticipate any changes to service reliability.[13] Staff agrees that retiring the aging farm taps would avoid the additional costs associated with rebuilding the equipment and would not impact reliability for customers currently served by them.

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[9] Joint Responses to Staff's First Data Request, No. 1 (DN 08276-2021).

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

[11] CFG does not purchase gas for its customers.

[12] A farm tap is a smaller regulator station used to serve a single family home or small development directly from the natural gas main.

[13] Joint Responses to Staff's First Data Request, No. 4 (DN 08276-2021).

Finally, CFG has identified four larger regulator stations that could also be retired as result of decreasing the pipeline pressure. Two regulator stations to be removed from service are located near high traffic roads and their removal should result in increased public safety. The Joint Petitioners state that the remaining two regulator stations are located in a CFG operations yard and are fed by a higher-pressure pipeline that crosses under Lake Shipp. Staff agrees that retiring the regulator stations would result in reduced maintenance expenses and increased safety in the area. CFG stated that it anticipates the retirement of the farm taps and four regulator stations to be completed by the end of the second quarter of 2022, dependent upon Peninsula's completion of its project.[14]

Conclusion

Based on the petition and the Joint Petitioners' responses to staff's data request, staff recommends that the Commission should approve the proposed Transportation Service Agreement between Peninsula and CFG dated May 7, 2021. The proposed Agreement is reasonable and meets the requirements of Section 368.105, F.S. Furthermore, the proposed Agreement benefits CFG customers by enhancing reliability, serving new incremental load, and by avoiding the risks associated with ownership of the facilities.

[14] Joint Responses to Staff's First Data Request, No. 3 (DN 08276-2021).

Issue 2: Should this docket be closed?

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

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

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

THIS AGREEMENT entered into this 7th day of May, 2021, by and between Peninsula Pipeline Company, Inc., a corporation of the State of Delaware (herein called "Company"), and the Florida Division of Chesapeake Utilities Corporation, a corporation of the State of Florida (herein called "Shipper").

WITNESSETH

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

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

WHEREAS, Company intends to construct an intrastate pipeline on behalf of Shipper, the origin of which will be a newly constructed gate station with Florida Gas Transmission and the terminus of which will be the end of the existing Central Florida Gas distribution system, allowing for Shipper's distribution meter to be placed into service near the intersection of Pollard Road and Logistics Pkwy (the "Project").

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

ARTICLE I
DEFINITION

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

ARTICLE II
QUANTITY & UNAUTHORIZED USE

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

2.2 If, on any Day, Shipper utilizes transportation quantities, as measured at the Point(s) of Delivery, in excess of the established MDTQ, as shown on Exhibit A, such unauthorized use of transportation quantities (per Dekatherm) shall be billed at a rate of 2.0 times the rate to be charged for each Dekatherm of the MDTQ as set forth on Exhibit A of this Agreement.

1

ARTICLE III
FIRM TRANSPORTATION SERVICE RESERVATION CHARGE

3.1 The Monthly Reservation Charge for Firm Transportation Service provided under this Agreement shall be as set forth on Exhibit A of this Agreement and shall be charged to Shipper beginning at the notification of in-service by Company, and shall thereafter be assessed in accordance with the terms and conditions set forth herein.

3.2 The parties agree to execute and administratively file with the Commission an affidavit, in the form provided in Company's Tariff to comply with the provisions of the Natural Gas Transmission Pipeline Intrastate Regulatory Act.

3.3 If, at any time after the Execution Date (as herein defined) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional or reduced tax rates (including, without limitation, income tax and property taxes) with regard to the service provided by Company under this Agreement, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's Tariff.

3.4 If, at any time after the Execution Date (as herein defined) and throughout the term of this Agreement, the Company is required by any Governmental Authority (as that term is defined in Section 9.10) asserting jurisdiction over this Agreement and the transportation of Gas hereunder, to incur additional capital expenditures with regard to the service provided by Company under this Agreement, other than any capital expenditures required to provide transportation services to any other customer on the pipeline system serving Shipper's facility, but including, without limitation, mandated relocations of Company's pipeline facilities serving Shipper's facility and costs to comply with any changes in pipeline safety regulations, then Shipper's Monthly Reservation Charge shall be adjusted and Exhibit A updated accordingly, and the new Monthly Reservation Charge shall be implemented immediately upon the effective date of such action. If Shipper does not agree to the adjusted Monthly Reservation Charge, Company shall no longer be required to continue to provide the service contemplated in this Agreement should an action of a Governmental Authority result in a situation where Company otherwise would be required to provide transportation service at rates that are not just and reasonable, and in such event the Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's Tariff.

ARTICLE IV

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

TERM AND TERMINATION

4.1 Subject to all other provisions, conditions, and limitations hereof, this Agreement shall commence on the notification of in-service, ("Effective Date") and shall continue in full force and effect for an initial period of twenty (20) years from the Effective Date ("Initial Term"). Thereafter, the Agreement shall be extended on a year to year basis (each a "Renewed Term" and, all Renewed Terms together with the Initial Term, the "Current Term"), unless either party gives written notice of termination to the other party, not less than (90) days prior to the expiration of the Current Term. This Agreement may only be terminated earlier in accordance with the provisions of this Agreement and the parties' respective rights under applicable law.

4.2 No less than 120 days before expiration of the Current Term, either party may request the opportunity to negotiate a modification of the rates or terms of this Agreement to be effective with the subsequent Renewed Term. Neither Party is obligated to, but may, agree to any mutually acceptable modification to the Agreement for the subsequent Renewed Term. In the event the parties reach agreement for a modification to the Agreement for the subsequent Renewed Term, such agreed upon modification ("Agreement Modification") shall be set forth in writing and signed by both parties prior to the expiration of the Current Term.

4.3 Any portion of this Agreement necessary to resolve monthly balancing and operational controls under this Agreement, pursuant to the Rules and Regulations of Company's Tariff, shall survive the other parts of this Agreement until such time as such monthly balancing and operational controls have been resolved.

4.4 In the event Shipper fails to pay for the service provided under this Agreement or otherwise fails to meet Company's standards for creditworthiness set forth in Section C of the Rules and Regulations of the Company's Tariff, otherwise violates the Rules and Regulations of Company's Tariff, or defaults on this Agreement, Company shall have the right to terminate this Agreement pursuant to the conditions set forth in Section D of the Rules and Regulations of Company's Tariff.

ARTICLE V
COMPANY'S TARIFF PROVISIONS

5.1 Company's Tariff approved by the Commission, including any amendments thereto approved by the Commission during the term of this Agreement ("Company's Tariff"), is hereby incorporated into this Agreement and made a part hereof for all purposes. In the event of any conflict between Company's Tariff and the specific provisions of this Agreement, the latter shall prevail, in the absence of a Commission Order to the contrary.

ARTICLE VI
REGULATORY AUTHORIZATIONS AND APPROVALS

6.1 Company's obligation to provide service is conditioned upon receipt and acceptance of any necessary regulatory authorization to provide Firm Transportation Service for Shipper in accordance with the Rules and Regulations of Company's Tariff.

ARTICLE VII
DELIVERY POINT(S) AND POINT(S) OF DELIVERY

7.1 The Delivery Point(s) for all Gas delivered for the account of Shipper into Company's pipeline system under this Agreement, shall be as set forth on Exhibit A attached hereto.

7.2 The Point(s) of Delivery shall be as set forth on Exhibit A attached hereto.

7.3 Shipper shall cause Transporter to deliver to Company at the Delivery Point(s) on the Transporter's system, the quantities of Gas to be transported by Company hereunder. Company shall have no obligation for transportation of Shipper's Gas prior to receipt of such Gas from the Transporter at the Delivery Point(s), nor shall Company have any obligation to obtain capacity on Transporter for Shipper or on Shipper's behalf. The Company shall deliver such quantities of Gas received from the Transporter at the Delivery Point(s) for Shipper's account to Company's Point(s) of Delivery identified on Exhibit A.

ARTICLE VIII
SCHEDULING AND BALANCING

8.1 Shipper shall be responsible for nominating quantities of Gas to be delivered by the Transporter to the Delivery Point(s) and delivered by Company to the Point(s) of Delivery. Shipper shall promptly provide notice to Company of all such nominations. Imbalances between quantities (i) scheduled at the Delivery Point(s) and the Point(s) of Delivery, and (ii) actually delivered by the Transporter and/or Company hereunder, shall be resolved in accordance with the applicable provisions of Company's Tariff, as such provisions, and any amendments to such provisions, are approved by the Commission.

8.2 The parties hereto recognize the desirability of maintaining a uniform rate of flow of Gas to Shipper's facilities over each Gas Day throughout each Gas Month. Therefore, Company agrees to receive from the Transporter for Shipper's account at the Delivery Point(s) and deliver to the Point(s) of Delivery up to the MDTQ as described in Exhibit A, subject to any restrictions imposed by the Transporter and to the provisions of Article IX of this Agreement, and Shipper agrees to use reasonable efforts to regulate its deliveries from Company's pipeline system at a daily rate of flow not to exceed the applicable MDTQ for the Gas Month in question, subject to any additional restrictions imposed by the Transporter or by Company pursuant to Company's Tariff.

ARTICLE IX

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

MISCELLANEOUS PROVISIONS

9.1 Notices and Other Communications. Any notice, request, demand, statement, or payment provided for in this Agreement, unless otherwise specified, shall be sent to the parties hereto at the following addresses:

Company: Peninsula Pipeline Company, Inc.
500 Energy Lane, Suite 200
Dover, Delaware 19901
Attention: Contracts

Shipper: The Florida Division of Chesapeake Utilities Corporation
208 Wildlight Avenue
Yulee, Florida 32097
Attention:

9.2 Headings. All article headings, section headings and subheadings in this Agreement are inserted only for the convenience of the parties in identification of the provisions hereof and shall not affect any construction or interpretation of this Agreement.

9.3 Entire Agreement. This Agreement, including the Exhibit attached hereto, sets forth the full and complete understanding of the parties as of the date of its execution by both parties (the "Execution Date"), and it supersedes any and all prior negotiations, agreements and understandings with respect to the subject matter hereof. No party shall be bound by any other obligations, conditions, or representations with respect to the subject matter of this Agreement.

9.4 Amendments. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which enforcement of the termination, amendment, supplement, waiver or modification shall be sought. A change in (a) the place to which notices pursuant to this Agreement must be sent or (b) the individual designated as the Contact Person pursuant to Section 9.1 shall not be deemed nor require an amendment of this Agreement provided such change is communicated in accordance with Section 9.1 of this Agreement. Further, the parties expressly acknowledge that the limitations on amendments to this Agreement set forth in this section shall not apply to or otherwise limit the effectiveness of amendments that are or may be necessary to comply with the requirements of, or are otherwise approved by, the Commission or its successor agency or authority.

9.5 Severability. If any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided, however, that if such severability materially changes the economic benefits of this Agreement to either party, the

parties shall negotiate in good faith an equitable adjustment in the provisions of this Agreement.

9.6 Waiver. No waiver of any of the provisions of this Agreement shall be deemed to be, nor shall it constitute, a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver, unless otherwise specifically identified as such in writing. No waiver shall be binding unless executed in writing by the party making the waiver.

9.7 Attorneys' Fees and Costs. In the event of any litigation between the parties arising out of or relating to this Agreement, the prevailing party shall be entitled to recover all costs incurred and reasonable attorneys' fees, including attorneys' fees in all investigations, trials, bankruptcies, and appeals.

9.8 Independent Parties. Company and Shipper shall perform hereunder as independent parties. Neither Company nor Shipper is in any way or for any purpose, by virtue of this Agreement, a partner, joint venture, agent, employer or employee of the other. Nothing in this Agreement shall be for the benefit of any third person for any purpose, including, without limitation, the establishing of any type of duty, standard of care or liability with respect to any third person.

9.9 Assignment and Transfer. No assignment of this Agreement by either party may be made without the prior written approval of the other party (which approval shall not be unreasonably withheld) and unless the assigning or transferring party's assignee or transferee shall expressly assume, in writing, the duties and obligations under this Agreement of the assigning or transferring party. Upon such assignment or transfer, as well as assumption of the duties and obligations, the assigning or transferring party shall furnish or cause to be furnished to the other party a true and correct copy of such assignment or transfer and the assumption of duties and obligations.

9.10 Governmental Authorizations; Compliance with Law. This Agreement shall be subject to all valid applicable state, local and federal laws, orders, directives, rules and regulations of any governmental body, agency or official having jurisdiction over this Agreement and the transportation of Gas hereunder. Company and Shipper shall comply at all times with all applicable federal, state, municipal, and other laws, ordinances and regulations. Company and/or Shipper will furnish any information or execute any documents required by any duly constituted federal or state regulatory authority in connection with the performance of this Agreement. Each party shall proceed with diligence to file any necessary applications with any governmental authorities for any authorizations necessary to carry out its obligations under this Agreement. In the event this Agreement or any provisions herein shall be found contrary to or in conflict with any applicable law, order, directive, rule or regulation, the latter shall be deemed to control, but nothing in this Agreement shall prevent either party from contesting the validity of any such law, order, directive, rule, or regulation, nor shall anything in this Agreement be construed to require either party to waive its respective rights to assert the lack of jurisdiction of any governmental agency other than the Commission, over this Agreement

or any part thereof. In the event of such contestation, and unless otherwise prohibited from doing so under this Section 9.10, Company shall continue to transport and Shipper shall continue to take Gas pursuant to the terms of this Agreement. In the event any law, order, directive, rule, or regulation shall prevent either party from performing hereunder, then neither party shall have any obligation to the other during the period that performance under the Agreement is precluded. If, however, any Governmental Authority's modification to this Agreement or any other order issued, action taken, interpretation rendered, or rule implemented, will have a material adverse effect on the rights and obligations of the parties, including, but not limited to, the relative economic position of, and risks to, the parties as reflected in this Agreement, then, subject to the provisions of Section 3.3 of this Agreement, the parties shall use reasonable efforts to agree upon replacement terms that are consistent with the relevant order or directive, and that maintain the relative economic position of, and risks to, the parties as reflected in this Agreement as of the Execution Date. As used herein, "Governmental Authority" shall mean any United States federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, court, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

(i) If any Governmental Authority asserting jurisdiction over the pipeline facility contemplated in this Agreement, issues an order, ruling, decision or regulation not covered by Section 3.3 or 3.4 of this Agreement (including denial of necessary permits or amendments to existing permits) related to the operation, maintenance, location, or safety and integrity compliance, including any new or revised enforceable regulatory classification of the pipeline facility, as applicable, which is not reasonably foreseeable as of the Execution Date and which results in a materially adverse effect on either party's rights and benefits under this Agreement, each party shall use commercially reasonable efforts and shall cooperate with the other party to pursue all necessary permits, approvals and authorizations, if any, of such applicable Governmental Authority, and to amend the terms and conditions of this Agreement, in each case as may be reasonably required in order that provision of firm transportation service under this Agreement shall continue; provided that neither party shall be required to take any action pursuant to this Section which is reasonably likely to have a materially adverse effect on such party's rights and benefits under this Agreement.

(ii) If the Parties are unable or unwilling to reach agreement pursuant to this Section 9.10, Company shall have the right to terminate this Agreement, without any further obligations to Shipper, upon one hundred twenty (120) days prior written notice to Shipper.

9.11 Applicable Law and Venue. This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of Florida. The venue for any action, at law or in equity, commenced by either party against

the other and arising out of or in connection with this Agreement shall be in a court of the State of Florida having jurisdiction.

9.12 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original instrument as against any party who has signed it.

PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives.

COMPANY	SHIPPER
Peninsula Pipeline Company, Inc.	The Florida Division of Chesapeake Utilities Corporation
By: Jeffrey R. Tietbohl	By: Shane E. Breakie
Jeffrey R. Tietbohl	Shane E. Breakie
Title: Vice President & Chief Operating Officer	Title: Vice President
Date: May 14, 2021	Date: May 12, 2021

(To be attested by the corporate secretary if not signed by an officer of the company)

By: _____	By: _____
Title: _____	Title: _____
Date: _____, 2021	Date: _____, 2021

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PENINSULA PIPELINE COMPANY, INC.
FIRM TRANSPORTATION SERVICE AGREEMENT

EXHIBIT A

TO

FIRM TRANSPORTATION SERVICE

AGREEMENT BETWEEN

PENINSULA PIPELINE COMPANY, INC.

AND

THE FLORIDA DIVISION OF CHESAPEAKE UTILITIES

DATED

May 7, 2021

Description of Transporter Delivery Point(s)	Description of Point(s) of Delivery	MDTQ, in Dekatherms, excluding Fuel Retention
Interconnection with FGT Gate Station in Polk County, Florida and Peninsula Pipeline	See Below	[redacted] Dt/Day

Total MDTQ (Dekatherms): [redacted] Dt/Day

MHTP: 4.17%

Monthly Reservation Charge

The Monthly Reservation Charge will be $[redacted] ($[redacted]/Dekatherm), subject to adjustment pursuant to the terms of this Agreement.

The Company shall provide written notification to Shipper that the pipeline has been completed and establish an in-service date.

Description of Point(s) of Delivery:
Located on the north side of the intersection of Pollard Road and Logistics Pkwy

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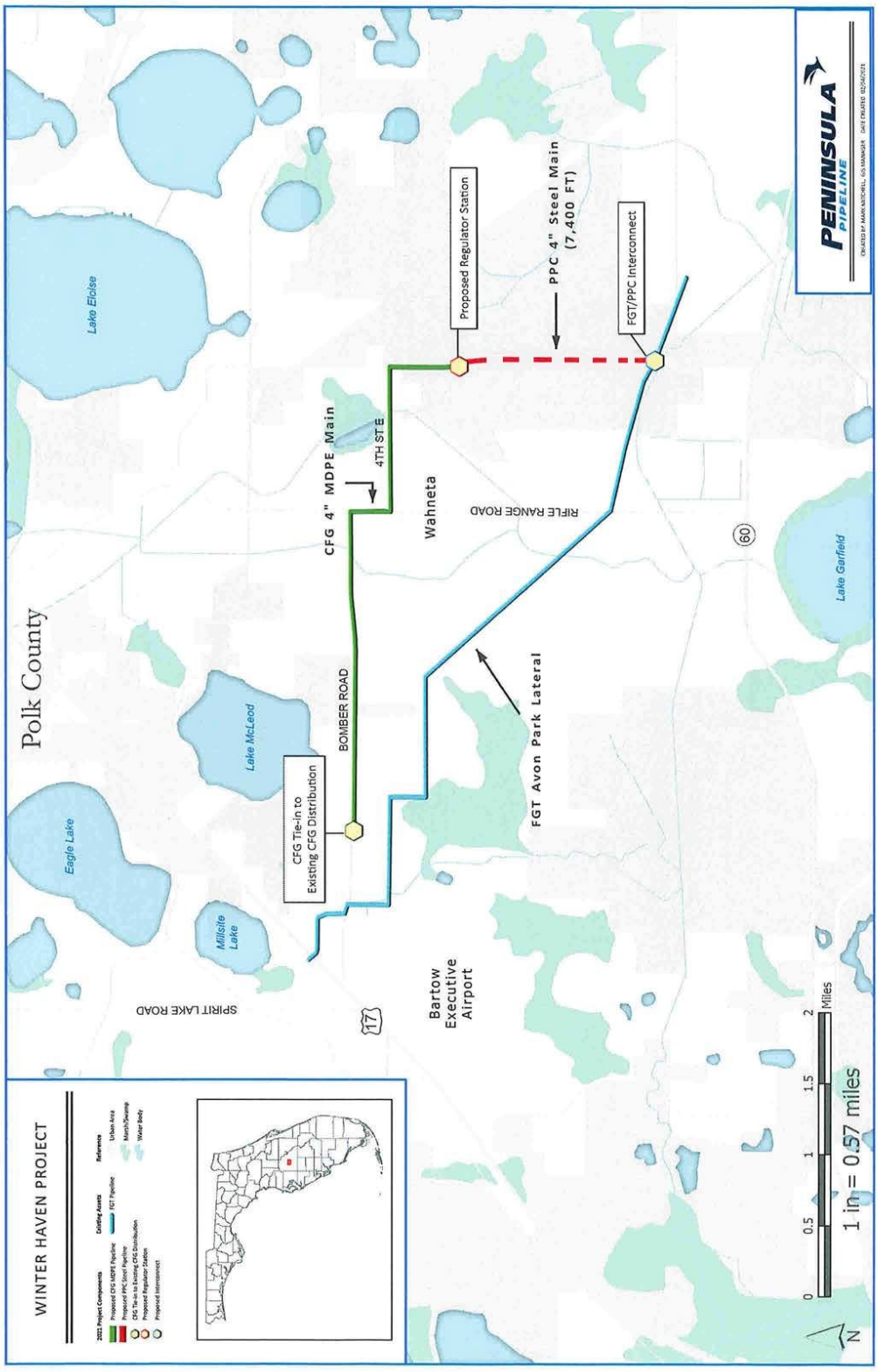
WINTER HAVEN PROJECT
2021 Project Components
Existing Assets
References
Proposed CFG MDPE Pipeline
Proposed PPC Steel Pipeline
CFG Tie-in to Existing CFG Distribution
Proposed Regulator Station
Proposed Interconnect
FGT Pipeline
Urban Area
Marsh/Swamp
Water Body
Polk County
Lake Eloise
Eagle Lake
Lake McLeod
Millsite Lake
Lake Garfield
SPIRIT LAKE ROAD
BOMBER ROAD
RIFLE RANGE ROAD
4TH ST E
Wahneta
17
60
CFG Tie-in to Existing CFG Distribution
CFG 4" MDPE Main
Proposed Regulator Station
PPC 4" Steel Main (7,400 FT)
FGT/PPC Interconnect
FGT Avon Park Lateral
Bartow Executive Airport
0
0.5
1
1.5
2
Miles
1 in = 0.57 miles
N
PENINSULA PIPELINE

Item 9

FILED 8/27/2021
DOCUMENT NO. 09790-2021
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 27, 2021

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Bruce, Hudson) JGH
Office of the General Counsel (Trierweiler, Crawford) JSC

RE: Docket No. 20200139-WS – Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.

AGENDA: 09/08/21 – Regular Agenda – Motion for Reconsideration – Oral Argument Requested; Participation is at the Commission's Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Fay

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Utilities, Inc. of Florida (UIF or Utility) filed its Application for Increase in Rates (Application) on June 30, 2020, and the official filing date was August 31, 2020. The Office of Public Counsel (OPC) intervened and is the only other party to this docket. Type 2 Stipulations were proposed on 14 of the 45 contested issues, which were approved by the Commission at the February 3, 2021 hearing and set forth in the Commission's Final Order approving the rate increase.[1] Two of the stipulated issues were Issue 34 ("What are the appropriate rate structures and rates for the water systems?") and Issue 36 ("What are the appropriate rate structures and rates for the

[1] Order PSC-2021-0206-FOF-WS, issued June 4, 2021, in Docket No. 20200139-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties, by Utilities, Inc. of Florida.*

wastewater systems?").[2] The approved Type 2 stipulations for Issues 34[3] and 36[4] provided for an across-the-board increase to UIF's water and wastewater service rates at the time of filing.

On June 18, 2021, UIF served counsel for OPC and staff with a Motion for Reconsideration (Motion) and Request for Oral Argument (Request) of Order No. PSC-2021-0206-FOF-WS. However, UIF inadvertently filed with the Commission Clerk two copies of its Request for Oral Argument, on June 18, 2021, omitting the Motion itself. Notwithstanding the untimely filing of the Motion, OPC filed its Response to UIF's Motion (Response), on June 25, 2021. UIF's Motion wasn't filed in the docket until July 2, 2021, by memorandum from Commission counsel, having discovered UIF's error in filing.[5]

In its Motion, UIF states that neither the staff post-hearing recommendation nor the Final Order mentioned the application of a repression adjustment[6] that was requested by UIF in its Application.[7] UIF concludes that as a repression adjustment was not mentioned, the Commission must have overlooked the matter in the Final Order.

In its Response, OPC contends that UIF failed to provide evidence at hearing upon which a repression adjustment could be made, and that such an adjustment was unnecessary given UIF's stipulation to rate design.

This recommendation addresses UIF's Request for Oral Argument, UIF's Motion for Reconsideration, and OPC's Response thereto. The Commission has jurisdiction pursuant to Section 367.081, Florida Statutes (F.S.).

[2] Order No. PSC-2021-0064-PHO-WS, issued January 29, 2021, in Docket No. 20200139-WS, pp. 27-28.
[3] Order No. PSC-2021-0206-FOF-WS, issued June 4, 2021, in Docket No. 20200139-WS, p. 118. The approved language for Issue 34 provides, in pertinent part: "The appropriate rate structure is a continuation of the existing rate structure and the percentage increase shall be applied as an across-the-board increase to service rates at the time of filing. To determine the appropriate percentage increase to apply to the service rates, miscellaneous revenues of $363,563 shall be removed from the test year revenues." Table 16, showing the fall-out percentage increase to water service rates, is not included herein.
[4] Order No. PSC-2021-0206-FOF-WS, p. 119. The approved language for Issue 36 provides, in pertinent part: "The appropriate rate structure is a continuation of the existing rate structure and the percentage increase shall be applied as an across-the-board increase to service rates at the time of filing. To determine the appropriate percentage increase to apply to the service rates, miscellaneous revenues of $333,719 shall be removed from the test year revenues." Table 17, showing the fall-out percentage increase to wastewater service rates, is not included herein.
[5] See duplicate Document Nos. 06228-2021 and 06229-2021, and Document No. 07450-2021.
[6] A repression adjustment reflects the elasticity of demand, or customer's change in the quantity of a product demanded in response to a change in price. The purpose of the repression adjustment is to ensure the utility will achieve the approved revenue requirement, taking into account the customers' reaction to the price increase. Staff does not use a repression adjustment with respect to non-discretionary usage, because it assumes that non-discretionary usage is not responsive to price.
[7] DN 03423-2020. On page 3 of its Application, UIF requested "the revenue which the Company requests should be adjusted to incorporate the repression in the customer usage as a result of the rates established in this case, in accordance with the standard methodology as utilized by the staff."

Discussion of Issues

Issue 1: Should UIF's Request for Oral Argument on its Motion for Reconsideration of Order No. PSC-2021-0206-FOF-WS be Granted?

Recommendation: No. Staff recommends that oral argument was not requested consistent with the requirements of Rule 25-22.0022, Florida Administrative Code (F.A.C.), and that the pleadings are sufficient for the disposition of this matter. However, if the Commission chooses to hear oral argument at its discretion, staff recommends providing 5 minutes per party. (Trierweiler)

Staff Analysis:

Law

Rule 25-22.0022(1), F.A.C., allows a party to request oral argument before the Commission for any motion by separate written pleading filed concurrently with the motion on which argument is requested. Failure to timely file a request for oral argument constitutes a waiver thereof. Granting or denying oral argument is within the sole discretion of the Commission. Rule 25-22.0022(3), F.A.C. Pursuant to Rule 25-22.0022(2), F.A.C., the Commission may request oral argument at its discretion.

UIF's Position

UIF contends that because the repression adjustment was not discussed in the Staff Recommendation and was not addressed by the Commissioners at the post-hearing Commission Conference, the Commissioners would benefit by hearing oral argument on the issue. UIF requests fifteen (15) minutes for each party. OPC did not file a response to UIF's Request for Oral Argument.

Staff Analysis

As discussed in the case background, the Utility's Request for Oral Argument was not filed concurrently with the Motion, as required by Rule 25-22.0022(1), F.A.C. Further, staff believes that the pleadings are sufficient on their face for the Commission to evaluate and decide UIF's Motion. Staff recommends that UIF's Request should be denied as unnecessary for the disposition of this matter, and because its request for oral argument was not made consistent with the requirements of Rule 25-22.022, F.A.C. However, if the Commission, in its discretion, chooses to hear oral argument, staff recommends 5 minutes per party is sufficient.

Issue 2: Should UIF's Motion for Reconsideration of Order No. PSC-2021-0206-FOF-WS be Granted?

Recommendation: No. UIF's Motion for Reconsideration should be denied as being untimely filed. However, if the Commission wishes to address the substance of UIF's Motion, staff recommends the Motion should be denied because UIF fails to raise a point of fact or law that the Commission overlooked or failed to consider in rendering its decision. (Trierweiler)

Staff Analysis:

Law

Rule 25-22.060(3), F.A.C., applies to requests for reconsideration of final orders, and states:

> (3) Time. A motion for reconsideration of a final order shall be filed within 15 days after issuance of the order. A response to a motion for reconsideration or a cross motion for reconsideration shall be served within 7 days of service of the motion for reconsideration to which the response or cross motion is directed. A response to a cross motion for reconsideration shall be served within 7 days of service of the cross motion.

The standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that Commission overlooked or failed to consider in rendering the order. *See 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 162 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. *Sherwood v. State*, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958). Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." *Stewart Bonded Warehouse, Inc.*

UIF's Motion

UIF states in its Motion that a water repression adjustment quantifies changes in consumption in response to an increase in price. UIF also states that the Commission has historically estimated that the rate by which residential customers will reduce their water consumption in response to an increase in price - elasticity of demand - is four percent of discretionary usage for every ten percent increase in price. UIF asserts that inclusion of a repression adjustment is a long-standing Commission practice. According to UIF, the Commission's failure to apply a repression adjustment establishes that this Motion clearly meets the strict standard for reconsideration of a point of fact being overlooked.

In its Motion, UIF concedes that it did not present evidence on repression as it and other utilities have done in the past. To support its position, UIF cites to prior Commission orders addressing base rate proceedings for Commission-regulated water and wastewater utilities, in which repression adjustments were made to reflect anticipated reductions in the number of gallons sold.

In Final Order No. PSC-2021-0206, the Commission approved a 10.20 percent increase in water rates and a 22.82 percent increase in wastewater rates, which UIF asserts requires a repression adjustment in order for UIF to have a fair opportunity to achieve its authorized rate of return consistent with the Commission's practice of applying a repression adjustment. UIF estimates that the repression adjustment revenues should have been approximately $250,000 for water and $250,000 for wastewater, for a total annual revenue shortfall of approximately $500,000. UIF contends this results in a rate of return of closer to the lower end of its authorized rate of return of 8.75 percent, almost assuring the need for another rate case in less than four years.

UIF concludes by asking the Commission to reconsider the lack of a repression adjustment and increase UIF's revenue requirement to incorporate the expected repression in usage, so UIF can have an opportunity to earn its authorized return.

OPC's Response

OPC asserts that UIF entered into a stipulation of Issue 36,[8] as reflected in Prehearing Order No. PSC-2021-0064-PHO-WS, issued January 29, 2021, which OPC did not oppose. OPC avers that the stipulation of Issue 36 resolved all rate design matters, including the single reference to a repression adjustment listed in UIF's Application, filed June 30, 2020. Moreover, OPC argues that UIF did not present testimony to explain or support a repression adjustment and that by its own admission, UIF simply "did not present evidence on repression." Therefore, OPC contends that even if the issue had not been resolved by UIF 's stipulation, the Utility failed to carry its burden of proof for a repression adjustment.

OPC notes that UIF's witnesses, Swain and Seidman, each referenced repression only tangentially in an exhibit schedule concerning the Used and Useful (U&U) status of just one of UIF's systems - Pennbrooke.[9] While acknowledging demand had dropped at Pennbrooke, the witnesses proposed that the U&U for that one system should remain at 100% "to reflect reduced demand due to repression and conservation."

OPC argues that no statute or administrative rule requires the Commission to apply a repression adjustment to rate increases in all cases. Instead, application of a repression adjustment is subject to the discretion of the Commission. OPC reasons that the law does not require a repression adjustment in cases in which a utility fails to present testimony or evidence to support such an adjustment.

OPC cites to *Florida Power Corp. v. Cresse*, 413 So. 2d 1187, 1191 (Fla. 1982), for the premise that the burden of proof is always on a utility seeking a rate change. OPC notes that the Commission's rules do not require the Commission to automatically apply a repression adjustment to rate increases of a certain amount and thus, argues that UIF's reliance on staff to automatically include a repression adjustment has no legal basis. Moreover, OPC argues that UIF's stipulation negated any reliance on alleged but unfounded "long-standing Commission practice." OPC asserts that to allow a utility to merely list allegations or requests in its petition,

[8] In its response, OPC references Issue 36 regarding wastewater rate structure, but does not specifically reference Issue 34 regarding water rate structure. However, its Response references both water and wastewater rates.
[9] Swain Ex. DDS-I, page 276; Seidman Ex. FS-3, page 130.

fail to produce evidence, and then expect all aspects of the petition to be granted, would establish a dangerous precedent and represent a shift in the burden of proof away from the petitioning utility.

OPC also takes issue with UIF's complaint that the Commission did not discuss a repression adjustment during the post-hearing Commission Conference. OPC notes that in light of the stipulation to which UIF agreed, there was no basis for the Commission to delve into that topic. OPC asserts that even if a repression adjustment had been at issue, UIF resolved the matter via stipulation. OPC also asserts that the lack of a particular discussion of one item in a document or proceeding is not presumptive proof that the item or matter was not considered by the tribunal at all.[10] OPC argues that there is no reason to believe the Commission overlooked or failed to consider a repression adjustment and that the record evidence shows that all aspects of rate design were considered, and that UIF's stipulation fully addressed and resolved the issue.

OPC characterizes UIF's Motion an attempt to use reconsideration as a tactic to reargue the case or persuade the Commission to change its mind in the absence of evidence to support the change, and that such use of reconsideration is contrary to law.[11] OPC concludes that that UIF's Motion fails to meet the requirements for reconsideration under Rule 25-22.060, F.A.C., and that granting UIF's Motion would be a departure from established Commission policy and would result in reversible error.

Staff Analysis

Untimely Filing of the Motion

Although OPC chose not to raise the matter in its Response, UIF's Motion should have been filed within 15 days, pursuant to Rule 25-22.060(3), F.A.C. Failure to file a timely motion for reconsideration shall constitute waiver of the right to do so. Rule 25-22.060(1)(d), F.A.C. As discussed in the case background, any request for reconsideration of Order No. PSC-2021-0206-FOF-WS was due to be filed by June 21, 2021.[12] UIF inadvertently filed two copies of its Request for Oral Argument on June 18, 2021. While timely served to counsel for OPC and staff, UIF's Motion for Reconsideration was not filed with the Commission Clerk until July 2, 2021, when the error was discovered by staff, and a copy of the Motion was placed by staff in the docket file. The time limitation for filing reconsideration is jurisdictional, and the Commission does not have the authority to enlarge it.[13] Staff recommends that UIF's Motion should be denied on the basis of untimeliness. However, if the Commission addresses the substance of UIF's Motion,[14] staff recommends it should be denied for the reasons set forth below.

[10] *Citing cf., State ex rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817, 819 (Fla. 1st DCA 1958) ("[c]ounsel should not . . . draw the conclusion that the matters not discussed were not considered").
[11] *Citing Stewart Bonded Warehouse, Inc. v. Bevis*, and *Sherwood v. State, supra.*
[12] The 15th day fell on Saturday, June 19, 2021. Pursuant to Rule 28-106.103, F.A.C., regarding the computation of time, the reconsideration period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.
[13] *See City of Hollywood v. Public Employees Relations Commission*, 432 So.2d 79 (Fla. 4th DCA 1983), in which the court held that, since neither Chapter 120, Florida Statutes, PERC's rules, nor the Model Rules of Procedure expressly authorized an extension of time to file for reconsideration, PERC erred in granting such an extension.
[14] *See* Order No. PSC-95-0047-FOF-WS, issued January 11, 1995, in Docket No. 930880-WS, *In re: Southern States Utilities, Inc.*, in which the order under reconsideration had been subsequently amended (thus tolling the time

Absence of Evidence in the Record

In its Motion, UIF cites to 11 Commission orders addressing base rate increases for Commission-regulated water and wastewater utilities, in which repression adjustments were made to reflect anticipated reductions in the number of gallons sold. However, 9 of the 11 cases referenced by UIF were conducted pursuant to the Commission's Proposed Agency Action (PAA) process. If a utility is dissatisfied with the Commission's PAA order, it can request an administrative hearing, at which it bears the ultimate burden to support its rate request and to place into evidence the various components that go into setting rates, including testimony and evidence as to the appropriate repression adjustment, if any.

The other two orders cited by UIF were post-hearing decisions, issued after the Commission conducted an administrative hearing. In both instances, the repression adjustments were supported by expert testimony. For example, a repression adjustment was prominently featured in UIF's 2016 rate case, where UIF filed evidence in support of the repression adjustment issue in the record, which included the testimony of the Utility's own expert witness, that was then countered by the testimony of the Commission staff witness.[15] UIF provided no citations to Commission orders where a repression adjustment was made after conducting a hearing in which no evidence was provided regarding such an adjustment. Nor did UIF cite to a case where a repression adjustment was made after an across-the-board increase to service rates was approved by the Commission.

Despite UIF's admission in its Motion that it failed to provide evidence or testimony to support a repression adjustment in this docket, the Utility claims that Commission staff should have applied it anyway because the Utility requested it in its Application.[16] The Commission's long-standing practice is that the ultimate burden of proof to establish a record sufficient to support requested rates lies with the utility seeking a rate change.[17] When the record is devoid of the evidence required to support a repression adjustment, the Commission cannot create that evidence after the fact and retroactively apply it to the approved rates. Indeed, as the record is silent, UIF's speculated revenue shortfall amounts due to the absence of a repression adjustment cannot be verified. Further, as discussed below, a repression adjustment would not be appropriate in this case, where an across-the-board increase to water and wastewater service rates was made.

UIF's Stipulation to Issues 34 and 36

As discussed in the case background, Type 2 stipulations were agreed to by UIF and approved by the Commission with respect to the rate structure for water (Issue 34) and wastewater (Issue 36) rate structure, resulting in an across-the-board increase to water and wastewater service rates.

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for reconsideration), and the Commission found that no harm would occur in any event if it were to take up the motion for reconsideration, since the Commission was denying the motion.

[15] Order No. PSC-2017-0361-FOF-WS, issued September 25, 2017, in Docket No. 20160101-WS, *In re: Application for increase in water and wastewater rates in Charlotte, Highlands, Lake, Lee, Marion, Orange, Pasco, Pinellas, Polk, and Seminole Counties by Utilities, Inc. of Florida,* pp. 202, 206-207.

[16] *See* DN 03423-2020, at p. 3 of UIF's Application: "The revenue which the Company requests should be adjusted to incorporate the repression in the customer usage as a result of the rates established in this case, in accordance with the standard methodology as utilized by the Staff." *See also* FN7 above; these appear to be the sole references to repression made by UIF in this proceeding.

[17] *Florida Power Corp. v. Cresse*, 413 So. 2d 1187, 1191 (Fla. 1982).

The Commission does not apply a repression adjustment to across-the-board rate increases. The application of an across-the-board increase results in the existing rates being increased uniformly by the percentage increase in the revenue requirement. Under the application of an across-the-board increase, all parameters of rate design are held constant, such as the base facility charge recovery allocation, rate blocks, and billing determinants. Factoring in a repression adjustment negates the premise of an across-the-board increase because cost recovery would have to be redistributed to account for any anticipated reduction in gallons and related operation and maintenance expenses. As OPC notes in its response, UIF's stipulation to water and wastewater rate structure is an across-the-board rate increase where staff does not apply a repression reduction. These stipulations resolved all rate design matters, including the passing reference to a repression adjustment listed in UIF's Application. OPC did not oppose approval of the stipulation, and UIF's stipulation to Issues 34 and 36 is not contested in its Motion.

Conclusion

As stated above, staff recommends that UIF's Motion should be denied as having been untimely filed. However, if the Commission addresses the substance of UIF's Motion, staff recommends it should be denied for the following reasons. The standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that Commission overlooked or failed to consider in rendering the order.[18] The lack of a particular discussion of one item in a document or proceeding is not presumptive proof that the item or matter was not considered by the tribunal. Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review."[19]

UIF's assertion, that the absence of a repression adjustment in the staff recommendation and subsequent final order suggests that the Commission overlooked the issue, is contrary to UIF's admission in its Motion that it offered no evidence in support of a repression adjustment in the record or at Hearing. It further ignores UIF's stipulation to an across-the-board rate increase to water and wastewater service rates, reflected in the Final Order of this proceeding. The Utility, who has the burden of proof, admits that the record is silent on this issue; therefore, there was nothing for the Commission to consider, other than the proposed stipulations it approved. Rather than overlooking a repression adjustment, the adjustment wasn't relevant considering the absence of evidence in the record and in light of UIF's stipulation to Issues 34 and 36. Accordingly, staff recommends that UIF's Motion for Reconsideration should be denied.

[18] *Stewart Bonded Warehouse, Inc.* v. *Bevis*, 294 So. 2d 315 (Fla. 1974).
[19] *Id*.

Issue 3: Should this docket be closed?

Recommendation: Yes, this docket should be closed. (Trierweiler)

Staff Analysis: This docket should be closed.