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 February 1, 2022

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# Item 1

State of Florida



# Public Service Commission

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

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

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**DATE:** January 20, 2022

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

**FROM:** Office of Industry Development and Market Analysis (Williams) *CH*  
Office of the General Counsel (Jones) *TL*

**RE:** Application for Certificate of Authority to Provide Telecommunications Service

**AGENDA:** 2/1/2022 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

**SPECIAL INSTRUCTIONS:** None

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>CERT. NO.</u>
20210186-TX	Open Infra East Inc.	8968

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

FILED 1/25/2022  
DOCUMENT NO. 00392-2022  
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:** January 25, 2022

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

**FROM:** Office of the General Counsel (Cowdery, Harper, Sunshine) *SMC*  
Office of Industry Development and Market Analysis (Wendel) *CH*

**RE:** Docket No. 20210137-PU – Proposed adoption of Rule 25-18.010, F.A.C., Pole Attachment Complaints.

**AGENDA:** 02/01/22 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Fay

**RULE STATUS:** Rule Hearing

**SPECIAL INSTRUCTIONS:** None

### Case Background

By notice appearing in the Florida Administrative Register (F.A.R.) on November 4, 2021, the Commission proposed the adoption of new Rule 25-18.010, Florida Administrative Code (F.A.C.), Pole Attachment Complaints, to implement and administer Section 366.04(8), Florida Statutes (F.S.). The Commission proposed the rule after going through the rule development process that involved the following stakeholders: Florida Internet and Television Association, Inc. (FIT), Comcast Cable Communications, LLC (Comcast), AT&T, CTIA, Crown Castle Fiber LLC (Crown Castle), Duke Energy Florida (DEF), Florida Power & Light Company (FPL), Tampa Electric Company (TECO), and Frontier Communications. Following the rule's proposal, FIT and some of its members filed a joint petition for a hearing on proposed Rule 25-18.010,

F.A.C., and also filed a rule challenge at the Division of Administrative Hearings (DOAH) that is currently stayed.<sup>1</sup>

### **Section 366.04(8), Florida Statutes**

The 2021 Florida Legislature amended Section 366.04, Florida Statutes (F.S.), Jurisdiction of Commission, to add a new Section (8), which states:

(8)(a) The commission shall regulate and enforce rates, charges, terms, and conditions of pole attachments, including the types of attachments regulated under 47 U.S.C. s. 224(a)(4), attachments to streetlight fixtures, attachments to poles owned by a public utility, or attachments to poles owned by a communications services provider, to ensure that such rates, charges, terms, and conditions are just and reasonable. The commission's authority under this subsection includes, but is not limited to, the state regulatory authority referenced in 47 U.S.C. s. 224(c).

(b) In the development of rules pursuant to paragraph (g), the commission shall consider the interests of the subscribers and users of the services offered through such pole attachments, as well as the interests of the consumers of any pole owner providing such attachments.

(c) It is the intent of the Legislature to encourage parties to enter into voluntary pole attachment agreements, and this subsection may not be construed to prevent parties from voluntarily entering into pole attachment agreements without commission approval.

(d) A party's right to nondiscriminatory access to a pole under this subsection is identical to the rights afforded under 47 U.S.C. s. 224(f)(1). A pole owner may deny access to its poles on a nondiscriminatory basis when there is insufficient capacity, for reasons of safety and reliability, and when required by generally applicable engineering purposes. A pole owner's evaluation of capacity, safety, reliability, and engineering requirements must consider relevant construction and reliability standards approved by the commission.

**(e) The commission shall hear and resolve complaints concerning rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments. Federal Communications Commission precedent is not binding upon the commission in the exercise of its authority under this subsection. When taking action upon such complaints, the commission shall establish just and reasonable cost-based rates, terms, and conditions for pole attachments and shall apply the decisions and orders of**

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<sup>1</sup> DOAH granted the stay on the basis that moving forward with the DOAH proceeding while the Commission is considering the request for a public hearing and conducting same would be duplicative and could result in a waste of judicial and other resources.

**the Federal Communications Commission and any appellate court decisions reviewing an order of the Federal Communications Commission regarding pole attachment rates, terms, or conditions in determining just and reasonable pole attachment rates, terms, and conditions unless a pole owner or attaching entity establishes by competent substantial evidence pursuant to proceedings conducted pursuant to ss. 120.569 and 120.57 that an alternative cost-based pole attachment rate is just and reasonable and in the public interest. (emphasis added)**

(f) In the administration and implementation of this subsection, the commission shall authorize any petitioning pole owner or attaching entity to participate as an intervenor with full party rights under chapter 120 in the first four formal administrative proceedings conducted to determine pole attachment rates under this section. These initial four proceedings are intended to provide commission precedent on the establishment of pole attachment rates by the commission and help guide negotiations toward voluntary pole attachment agreements. After the fourth such formal administrative proceeding is concluded by final order, parties to subsequent pole attachment rate proceedings are limited to the specific pole owner and pole attaching entities involved in and directly affected by the specific pole attachment rate.

(g) The commission shall propose procedural rules to administer and implement this subsection. The rules must be proposed for adoption no later than January 1, 2022, and, upon adoption of such rules, shall provide its certification to the Federal Communications Commission pursuant to 47 U.S.C. s. 224(c)(2).

Paragraph 8(e) above provides the basis for the recommended language in Attachment A that would resolve this rule challenge. Pursuant to paragraph (8)(g) above, after the proposed rule is filed with the Department of State and becomes effective, staff intends to bring a recommendation to the next available Commission Conference for Commission approval and issuance of a certification order.

### **Joint Request for a Hearing**

On November 29, 2021, pursuant to Section 120.54(3)(c), F.S., a Joint Request for a Hearing and Separate Proceeding on Proposed Rule 25-18.010, F.A.C. (Petition), was filed with the Commission by FIT, Atlantic Broadband, Miami, LLC (Atlantic), Charter Communications, Inc. (Charter), Comcast, and Cox Communications Gulf Coast, LLC (Cox) (Petitioners). Atlantic, Charter, Comcast, and Cox are all members of FIT. Petitioners requested a separate proceeding under Sections 120.569 and 120.57, F.S., pursuant to Section 120.54(3)(c)2., F.S., or a public hearing pursuant to Section 120.54(3)(c)1., F.S., so that the Commission could receive testimony and other evidence for the purposes of making Petitioners' suggested changes to the proposed rule.

The Petition asked for a rule hearing to allow the Petitioners the opportunity to address several problems it identified with the proposed rule. The Petitioners argued that the proposed rule conflicts with Section 366.04(8)(e), F.S., because it fails to recognized that the FCC's decisions,

orders, and applicable appellate court decisions govern as the default rules applicable to pole attachment complaints. The Petitioners further argued that the proposed rule failed to articulate any standard or methodology to be followed by the Commission in resolving pole attachment complaints, which they alleged is required for certification to the FCC. Petitioners stated that, because the proposed rule has no methodology or standard governing whether a pole attachment rate is just and reasonable, the proposed rule is vague and lacking in adequate standards, resulting in unbridled discretion in the Commission. The Petitioners' position was that the FCC's rules should be set forth as the default standard, and that failure to include the FCC's decisions, orders, and applicable appellate court decisions is contrary to the public interest and will harm consumers.

### **Rule Hearing**

Staff reviewed the Petition and examined the comments received from the stakeholders during this rulemaking process in light of the Commission's authority and the direction given by the Legislature to the Commission set forth in Section 366.04(8), F.S. After considering all this information, staff is recommending changes to the proposed Pole Attachment Complaints rule. The Petitioners and FPL agree with the revised rule language.<sup>2</sup>

In response to Petitioners' request for hearing, this item is being brought to the Commission as a Section 120.54(3)(c)1., F.S., rule hearing, the purpose of which is for the Commission to decide whether to change the language of the proposed Pole Attachment Complaints rule to the agreed-upon language shown in Attachment A.<sup>3</sup> The provisions of Section 120.54(3)(c)1., F.S., give affected persons the opportunity to present evidence and argument on all issues under consideration. The Commission in making its determination is required to consider any material pertinent to the issues under consideration submitted to it between the date of publication of the notice of proposed rule and the end of the public hearing.

The Commission has jurisdiction under Sections 120.54, 350.127(2), and 366.04(8), F.S.

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<sup>2</sup> Petitioners stated in their status report to DOAH that if the changes to proposed Rule 25-18.010, F.A.C., (as shown in Attachment A) are approved by the Commission, they will file a voluntarily dismissal of the DOAH proceeding.

<sup>3</sup> Because this matter is set for a Section 120.54(3)(c)1., F.S., rule hearing, Petitioners' Joint Request for a Hearing and Separate Proceeding on Proposed Rule 25-18.010, F.A.C., is moot.



## Discussion of Issues

**Issue 1:** Should the Commission make changes to proposed Rule 25-18.010, F.A.C., Pole Attachment Complaints?

**Recommendation:** Yes. The Commission should change proposed Rule 25-18.010, F.A.C., Pole Attachment Complaints, as shown in Attachment A. (Cowdery, Wendel)

**Staff Analysis:** The intent of proposed Rule 25-18.010, F.A.C., was to adopt a procedural rule that would identify for complainants and respondents the information they would need to file with the Commission in order for the Commission to process pole attachment complaints pursuant to Section 366.04(8), F.S. The recommended changes to the filing requirements in the proposed Pole Attachment Complaints rule are as follows:

(1) A complaint filed with the Commission by a pole owner or attaching entity pursuant to Section 366.04(8), F.S., must contain:

...

~~(f) If the complaint requires the Commission to establish just and reasonable cost-based rates, terms, and conditions for pole attachments, the complaint must contain an explanation of the methodology the complainant is requesting the Commission to apply; If the complaint involves the establishment of rates, charges, terms, or conditions for pole attachments and the complainant proposes the application of rates, terms, or conditions that are based upon Federal Communications Commission (FCC) rules, orders, or appellate decisions, the complainant must identify the specific applicable FCC rules, orders, or appellate decisions that the Commission should apply pursuant to Section 366.04(8)(e), F.S.; provided, however, that if the complainant proposes an alternative cost-based rate, the complainant must identify the methodology and explain how the alternative cost-based rate is just and reasonable and in the public interest.~~

(4) A response filed under subsection (3) of this rule must include the following:

...

~~(b) If the complaint requires the Commission to establish just and reasonable cost-based rates, terms, and conditions for pole attachments, the response must contain an explanation of the methodology the respondent is requesting the Commission to apply. If the complaint involves the establishment of rates, charges, terms, or conditions for pole attachments and the respondent proposes the application of rates, terms or conditions that are based upon FCC rules, orders, or appellate decisions, the respondent must identify the specific applicable FCC rules, orders, or appellate decisions that the Commission should apply pursuant to Section 366.04(8)(e), F.S.; provided, however, that if the respondent proposes an alternative cost-based rate, the respondent must identify the methodology and explain how the alternative cost-based rate is just and reasonable and in the public interest.~~

The changes to the proposed rule language are consistent with Section 366.04(8)(e), F.S., which requires the Commission in resolving complaints to apply the decisions and orders of the FCC and any appellate court decisions reviewing an order of the FCC regarding pole attachment rates, terms or conditions unless a pole owner or attaching entity establishes by competent substantial evidence “that an alternative cost-based pole attachment rate is just and reasonable and in the public interest.” Staff believes that these changes give more specificity to the filing requirements, while not changing the intent of the procedural rule. Providing more specificity as to filing requirements gives more guidance to parties to assure that the Commission gets the information it needs to fulfill its statutory duty to hear and resolve complaints as set forth in 366.04(8), F.S.

### **Conclusion**

For the reasons set forth above, staff recommends that the Commission should change proposed Rule 25-18.010, F.A.C., Pole Attachment Complaints, as shown in Attachment A.

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

**Recommendation:** No. This docket should remain open pending further rulemaking steps under Section 120.54, F.S. In addition, the docket should remain open until the Commission provides certification to the FCC as required by Section 366.04(8)(g), F.S., and receives the certification from the FCC. (Cowdery)

**Staff Analysis:** This docket should remain open to take further rulemaking steps under Section 120.54, F.S., in order to file the rule for adoption with the Department of State. The rule will become effective 20 days after it is filed for adoption.

In addition, the docket should remain open until the Commission provides certification to the FCC as required by Section 366.04(8)(g), F.S., and receives the certification from the FCC. After the rule becomes effective, staff intends to bring a recommendation to the next available Commission Conference for the Commission to issue a certification as required by Section 366.04(8)(g), F.S., to be provided to the FCC pursuant to 47 U.S.C. § 224(c)(2).

1 25-18.010 Pole Attachment Complaints

2 (1) A complaint filed with the Commission by a pole owner or attaching entity pursuant to  
3 Section 366.04(8), F.S., must contain:

4 (a) The name, address, email address, and telephone number of the complainant or  
5 complainant's attorney or qualified representative;

6 (b) A statement describing the facts that give rise to the complaint;

7 (c) Names of the party or parties against whom the complaint is filed;

8 (d) A copy of the pole attachment agreement, if applicable, and identification of the pole  
9 attachment rates, charges, terms, conditions, voluntary agreements, or any denial of access  
10 relative to pole attachments that is the subject matter of the complaint;

11 (e) A statement of the disputed issues of material fact or a statement that there are no  
12 disputed issues of material fact;

13 ~~(f) If the complaint requires the Commission to establish just and reasonable cost-based~~  
14 ~~rates, terms, and conditions for pole attachments, the complaint must contain an explanation of~~  
15 ~~the methodology the complainant is requesting the Commission to apply; If the complaint~~  
16 ~~involves the establishment of rates, charges, terms, or conditions for pole attachments and the~~  
17 ~~complainant proposes the application of rates, terms, or conditions that are based upon Federal~~  
18 ~~Communications Commission (FCC) rules, orders, or appellate decisions, the complainant~~  
19 ~~must identify the specific applicable FCC rules, orders, or appellate decisions that the~~  
20 ~~Commission should apply pursuant to Section 366.04(8)(e), F.S.; provided, however, that if~~  
21 ~~the complainant proposes an alternative cost-based rate, the complainant must identify the~~  
22 ~~methodology and explain how the alternative cost-based rate is just and reasonable and in the~~  
23 ~~public interest.~~

24 (g) If the complaint involves a dispute regarding rates or billing, a statement of the dollar  
25 amount in dispute, the dollar amount not in dispute, whether the amount not in dispute has  
CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from  
existing law.

1 | been paid to the pole owner, and if not paid the reasons why not;

2 | (h) A statement of the relief requested, including whether a Section 120.569 and 120.57,  
3 | F.S., evidentiary hearing is being requested to resolve the complaint; and

4 | (i) A certificate of service that copies of the complaint have been furnished by email to the  
5 | party or parties identified in paragraph (1)(c) of this rule.

6 | (2) The filing date for the complaint is the date that a complaint is filed with the  
7 | Commission Clerk containing all required information set forth in subsection (1) of this rule.

8 | (3) The pole owner or attaching entity that is the subject of the complaint may file a  
9 | response to the complaint. The response must be filed with the Commission Clerk within 30  
10 | calendar days of the date the complaint was served on the respondent, unless the Prehearing  
11 | Officer grants a motion for extension of time filed pursuant to Rule 28-106.204, F.A.C., or  
12 | Rule 28-106.303, F.A.C., as appropriate.

13 | (4) A response filed under subsection (3) of this rule must include the following:

14 | (a) A statement of whether a Section 120.569 and 120.57, F.S., evidentiary hearing is  
15 | being requested to resolve the complaint; and

16 | ~~(b) If the complaint requires the Commission to establish just and reasonable cost-based~~  
17 | ~~rates, terms, and conditions for pole attachments, the response must contain an explanation of~~  
18 | ~~the methodology the respondent is requesting the Commission to apply. If the complaint~~  
19 | ~~involves the establishment of rates, charges, terms, or conditions for pole attachments and the~~  
20 | ~~respondent proposes the application of rates, terms, or conditions that are based upon FCC~~  
21 | ~~rules, orders, or appellate decisions, the respondent must identify the specific applicable FCC~~  
22 | ~~rules, orders, or appellate decisions that the Commission should apply pursuant to Section~~  
23 | ~~366.04(8)(e), F.S.; provided, however, that if the respondent proposes an alternative cost-~~  
24 | ~~based rate, the respondent must identify the methodology and explain how the alternative cost-~~  
25 | ~~based rate is just and reasonable and in the public interest.~~

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

1 (5) The Commission will take final action on a complaint concerning rates, charges, terms,  
2 conditions, and voluntary agreements relative to pole attachments at a Commission  
3 Conference no later than 360 days after the complaint's filing date as set forth in subsection  
4 (2) of this rule.

5 (6) The Commission will take final action on a complaint limited to denial of access  
6 relative to pole attachments at a Commission Conference no later than 180 days after the  
7 complaint's filing date as established under subsection (2) of this rule.

8 *Rulemaking Authority 350.127(2), 366.04(8)(g) FS. Law Implemented 366.04(8) FS. History-*  
9 *New \_\_\_\_\_*

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# Item 3

FILED 1/20/2022  
DOCUMENT NO. 00393-2022  
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:** January 20, 2022

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

**FROM:** Office of the General Counsel (Sunshine) *SMC*  
Division of Accounting and Finance (Mouring) *ALM*  
Division of Economics (Barrett, Coston, Galloway) *JGH*  
Division of Engineering (Wooten) *TB*

**RE:** Docket No. 20210188-GU – Joint petition for variance from Rule 25-7.039(1), F.A.C., by Florida Public Utilities Company and Florida Division of Chesapeake Utilities Corporation.

**AGENDA:** 02/01/22 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** 4/10/22 (Petition for Variance Deemed Approved if Not Granted or Denied by this Date pursuant to Section 120.542(8), Florida Statutes)

**SPECIAL INSTRUCTIONS:** None

### Case Background

On November 30, 2021, Petitioners, Florida Public Utilities Company (FPUC) and the Florida Division of Chesapeake Utilities Corporation (CFG), filed a joint petition for a variance from Rule 25-7.039(1), Florida Administrative Code (F.A.C.) (Joint Petition). FPUC and CFG ask the Commission to grant a variance from Rule 25-7.039(1), F.A.C., based on the facts presented and Joint Petitioners' proposed approach as described within the Joint Petition for preparing Minimum Filing Requirements (MFRs) for an anticipated rate case to be filed in 2022.



**Rule 25-7.039(1), F.A.C.**

Rule 25-7.039(1), F.A.C., sets forth the general filing instructions for investor-owned natural gas utilities' MFRs when submitting applications for changes in rates.

Rule 25-7.039(1), F.A.C., states, in pertinent part:

(1) General Filing Instructions.

(a) The petition under Sections 366.06 and 366.071, F.S., for adjustment of rates must include or be accompanied by:

1. The information required by Commission Form PSC 1027 (12/20), entitled "Minimum Filing Requirements for Investor-Owned Natural Gas Utilities," which is incorporated into this rule by reference, and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-12643>. This form is also available on the Commission's website, [www.floridapsc.com](http://www.floridapsc.com).

This requirement implements the Commission's authority under Section 366.06, Florida Statutes (F.S.), to investigate, determine, and consider certain costs and factors when fixing and changing rates for investor-owned natural gas utilities.

Section 366.06(1), F.S., states, in pertinent part:

A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service .... In fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

**Joint Petition**

The Joint Petition states that FPUC was acquired by Chesapeake Utilities Corporation ("CUC") on October 28, 2009. CUC also operates CFG in Florida. With the acquisition of FPUC in 2009, CUC expanded its energy presence throughout Florida, acquiring Indiantown Gas Company ("Indiantown") on August 6, 2010, and purchasing the City of Fort Meade's natural gas system on October 8, 2013, both of which became Divisions of FPUC. Petitioners assert the records and surveillance reports of FPUC and CFG, as well as those of the Indiantown and Fort Meade Divisions (to the extent they exist), have been maintained separately; but the Companies

have, nonetheless, taken several steps over the years to consolidate the processes, methodologies, and tariffs of the FPUC/CFG natural gas business units.<sup>1</sup>

Joint Petitioners reviewed the MFR requirements for an anticipated rate filing in 2022 which would contemplate new, consolidated rates for the natural gas business units to be effective January 1, 2023. For the anticipated, proposed projected test year of 2023, Petitioners state that compilation of the necessary information would be based on the full consolidation of FPUC, CFG, and FPUC's Indiantown and Fort Meade Divisions, which they assert is appropriate, as well as manageable, given the structure of the MFR schedules themselves, as well as the intent of the Companies to operate, going forward, on a fully consolidated basis.

Accordingly, in paragraph 8 of the Joint Petition, Petitioners propose, in response to the requirement to provide comparable, consolidated data for certain MFRs requiring a comparison of prior period data or rates to those proposed, to provide this data for each existing division with totals where possible on a consolidated basis. In paragraph 9 of the Joint Petition, Petitioners propose to deviate from the benchmarking schedules (C-34 through C-38) because the index used to multiply the prior historic year expense data by is based on the customer growth and inflation for all the years since the last case.

In summary, the Companies request that the Commission grant a variance to allow them to provide the required data in the MFRs consistent with the Companies' proposal set forth in Attachment A of the Joint Petition. The Companies further state that "all other MFRs, other than those identified in Attachment A, would be submitted on a consolidated basis and populated consistent with the current schedule requirements, forms, and format."

### **Procedural Matters**

Pursuant to Section 120.542(6), F.S., a Notice of Variance or Waiver was published in the December 2, 2021 edition of the Florida Administrative Register. No comments were received, and the time for filing comments expired on December 27, 2021.

On December 15, 2021, staff requested additional information regarding the Joint Petition. On January 10, 2022, Joint Petitioners filed their Response to Staff's First Data Request, which provided information responsive to staff's request for additional information.

This recommendation addresses FPUC and CFG's Joint Petition. Pursuant to Section 120.542(8), F.S., the Commission must grant or deny a request for variance within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner's written request to finish processing the petition. Joint Petitioners having provided the last item of timely requested additional information on January 10, 2022, the statutory deadline for this proceeding is April 10, 2022. The Commission has jurisdiction pursuant to Sections 120.542 and 120.565, F.S., and Chapter 366, F.S.

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<sup>1</sup> See, for instance, Docket Nos. 20200214-GU; 20200046-GU; 20190056-GU; and 20150117-GU.

## Discussion of Issues

**Issue 1:** Should the Commission grant FPUC and CFG’s Joint Petition for variance from Rule 25-7.039(1), F.A.C.?

**Recommendation:** Yes, FPUC and CFG’s Joint Petition for variance from Rule 25-7.039(1), F.A.C., should be granted, subject to discovery and cross-examination procedures remaining intact. (Sunshine)

**Staff Analysis:** Joint Petitioners request the Commission grant a variance from Rule 25-7.039(1), F.A.C., to allow the Companies to complete and file the MFRs as proposed in Paragraphs 8 and 9, and Attachment A, of their Joint Petition for an anticipated 2022 rate case filing. In response to staff’s request for additional information, Joint Petitioners provided acceptable demonstrative examples of the MFR Schedules as requested. The rule requires investor-owned natural gas utilities to file MFR schedules when submitting a petition for rate relief. These schedules include substantial accounting, engineering, rate, cost of capital, and other data that the Commission, staff, and parties use in reviewing the rate request.

Joint Petitioners assert their proposed approach of providing the information required by the specific schedules, as identified in Attachment A to their Joint Petition, will provide the Commission with all of the information contemplated by the MFRs and in the most accurate form possible; emphasizes that all other MFRs, other than those identified in Attachment A to their Joint Petition, would be submitted on a consolidated basis and populated consistent with the current schedule requirements, form, and format; and that not permitting their proposed approach would subject the Companies to the significant and undue hardship of forcing the separate entities’ information into the fully consolidated format of the specified MFRs, which might result in inaccurate or skewed data as a result to translating the data of four separate entities into a consolidated format that just does not fit, which could ultimately result in the Companies’ request being unfairly denied as deficient or incomplete simply because the information available does not fit the specific format of the MFRs.

### Law Governing Petitions for Variance

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

### Purpose of the Underlying Statute

The purpose of Section 366.06, F.S., is to ensure that investor-owned natural gas utilities only charge or receive rates that have been approved by the Commission; to ensure that the Commission only approves rates that are fair, just, and reasonable for each customer class; and to set a procedure for fixing and changing rates.

Joint Petitioners request a variance from the Rule 25-7.039(1), F.A.C., requirement for submission of certain MFR information for an anticipated 2022 rate case filing because they

assert certain consolidated data does not yet exist. Instead, Joint Petitioners propose to submit the MFR information as described in Paragraphs 8 and 9 and Attachment A of the Joint Petition for an anticipated 2022 rate case filing and assert this proposed approach will provide the Commission with all of the information contemplated by the MFRs and in the most accurate form possible. For these reasons, Joint Petitioners maintain their proposed filings would achieve the underlying purpose of Section 366.06, F.S.

Staff believes Joint Petitioners' proposed approach to preparing MFRs for an anticipated 2022 rate case filing will allow the Commission to evaluate the rate case based on those MFRs and fulfill its statutory obligation to approve rates that are fair, just, and reasonable, as long as the Commission, staff, and parties maintain the ability to conduct appropriate discovery and cross-examination on such information. Accordingly, staff recommends the purpose of the underlying statute will be achieved by other means for an anticipated 2022 rate case filing.

### **Substantial Hardship**

Joint Petitioners assert denial of their request for a variance would subject the Companies "to the significant and undue hardship of forcing separate entities' information into the fully consolidated format of the specified MFRs, which may also result in inaccurate or skewed data as a result of translating the data of four separate entities into a consolidated format that just does not fit, which could ultimately result in the Companies' request being unfairly denied as deficient or incomplete simply because the information available does not fit the specific format of the MFRs."

Staff believes a strict application of Rule 25-7.039(1), F.A.C., to Joint Petitioners' potential 2022 rate case filing would create a substantial hardship for Joint Petitioners based on the unavailability of certain MFR information. Consequently, staff recommends Joint Petitioners have demonstrated that a strict application of the rule would create a substantial hardship under the circumstances described by Joint Petitioners.

### **Conclusion**

Based on the above, staff recommends that the Commission grant FPUC and CFG's Joint Petition for variance from Rule 25-7.039(1), F.A.C., subject to discovery and cross-examination procedures remaining intact.

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

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

**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 4

FILED 1/20/2022  
DOCUMENT NO. 00391-2022  
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:** January 20, 2022

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

**FROM:** Office of the General Counsel (DuVal) *SMC*  
Division of Economics (Coston, Draper) *JGH*

**RE:** Docket No. 20220012-EI – Petition for temporary waiver of Rule 25-6.078(3), F.A.C. by Florida Power & Light Company.

**AGENDA:** 02/01/22 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** 4/07/22 (Petition for Temporary Waiver Deemed Approved if Not Granted or Denied by this Date pursuant to Section 120.542(8), F.S.)

**SPECIAL INSTRUCTIONS:** None

### Case Background

On January 7, 2022, Florida Power & Light Company (FPL) filed a petition for a temporary waiver of Rule 25-6.078(3), Florida Administrative Code (F.A.C.) (Petition). FPL asks the Commission to grant a temporary waiver of Rule 25-6.078(3), F.A.C., that would allow a deferred filing of certain information due to be filed by April 1, 2022, as described within the Petition.

#### Rule 25-6.078(3), F.A.C.

Rule 25-6.078, F.A.C., addresses any potential contribution-in-aid-of-construction for the installation of electric underground facilities in new residential subdivisions. Subsection (1) of Rule 25-6.078, F.A.C., requires utilities to file a written policy with the Commission that

becomes part of the utility's tariff rules and regulations on the installation of underground facilities in new subdivisions, including any estimated average cost differentials. Subsection (3) of the rule sets forth the timelines for submission of a utility's written policy and requires that:

On or before October 15 of each year, each utility shall file with the Commission Clerk, using current material and labor costs, Form PSC 1031 (08/20), entitled "Overhead/Underground Residential Differential Cost Data," which is incorporated by reference into this rule and is available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-12425>. If the cost differential as calculated in Form PSC 1031 (08/20) varies from the Commission-approved differential by plus or minus 10 percent or more, the utility shall file a written policy and supporting data and analyses as prescribed in subsections (1), (4) and (5) of this rule on or before April 1 of the following year; *however, each utility shall file a written policy and supporting data and analyses at least once every 3 years.*

(Emphasis added). This requirement implements the pertinent provisions of Sections 366.03, 366.04, and 366.06, Florida Statutes (F.S.), which set forth the general duties of a public utility, the Commission's authority to regulate the rates and service of a public utility, and the Commission's statutory obligation to approve rates that are fair, just, and reasonable.

Section 366.03, F.S., states that:

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

Section 366.04, F.S., states in pertinent part:

(1) In addition to its existing functions, the commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service; assumption by it of liabilities or obligations as guarantor, endorser, or surety; and the issuance and sale of its securities....

(2) In the exercise of its jurisdiction, the commission shall have power over electric utilities for the following purposes:

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(f) To prescribe and require the filing of periodic reports and other data as may be reasonably available and as necessary to exercise its jurisdiction hereunder.

Section 366.06(1), F.S., states that:

A public utility shall not, directly or indirectly, charge or receive any rate not on file with the commission for the particular class of service involved, and no change shall be made in any schedule. All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service. The commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in the public service, and shall keep a current record of the net investment of each public utility company in such property which value, as determined by the commission, shall be used for ratemaking purposes and shall be the money honestly and prudently invested by the public utility company in such property used and useful in serving the public, less accrued depreciation, and shall not include any goodwill or going-concern value or franchise value in excess of payment made therefor. In fixing fair, just, and reasonable rates for each customer class, the commission shall, to the extent practicable, consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers; and public acceptance of rate structures.

### **Petition**

In its Petition, FPL recognizes its obligation to comply with the filing requirements of Rule 25-6.078(3), F.A.C., but points out its unique situation resulting from its recent merger with Gulf Power Company (Gulf). As a result of the Commission-approved settlement agreement in Docket No. 20210015-EI,<sup>1</sup> FPL and Gulf were consolidated for ratemaking purposes, effective January 2022.

FPL filed revised tariffs, including a new written policy, addressing the installation of underground facilities in new residential subdivisions, based on 2020 estimated average cost differentials for FPL and Gulf, as part of that approved settlement agreement. However, FPL states that the supporting data and analyses were not included in the rate case filings. The differential was zero prior to the rate case and continued to be zero in the settlement agreement tariffs, for both FPL and Gulf. FPL provides that Gulf's most recent written policy and supporting data and analyses were filed and approved in 2020 and that FPL's were filed and approved in 2019. FPL further provides that both FPL and Gulf filed their Form PSC 1031 (08/20), entitled "Overhead/Underground Residential Differential Cost Data," with the Commission on October 15, 2021, as required by Rule 25-6.078(3), F.A.C., and that both FPL and Gulf indicated that their estimated average cost differentials continue to be zero. As a result, FPL must file a written policy and supporting data and analyses by April 1, 2022, to meet the

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<sup>1</sup> Order No. PSC-2021-0446-S-EI, filed on December 2, 2021.

component of Rule 25-6.078(3), F.A.C., that requires a utility to make such a filing “at least once every 3 years.”

FPL highlights that a filing by April 1, 2022, would be based upon 2021 costs, which would be calculated using supporting data and analyses from FPL and Gulf operating separately from a cost and rate perspective. FPL further states that deferring the filing until April 2023 would actually allow the Commission to review the more meaningful 2022 combined operational cost data and analyses sooner than would be the case if FPL were to follow its current reporting schedule. Therefore, FPL asks the Commission for a temporary waiver of the Rule 25-6.078(3), F.A.C., requirement to file its written policy and supporting data and analyses at least once every three years, to allow FPL to defer its April 1, 2022 filing to April 1, 2023.

### **Procedural Matters**

Pursuant to Section 120.542(6), F.S., a Notice of Variance or Waiver was published in the January 11, 2022 edition of the Florida Administrative Register. The time for filing comments, provided by Rule 28-104.003, F.A.C., expires on January 25, 2022.

This recommendation addresses FPL’s Petition. Pursuant to Section 120.542(8), F.S., the Commission must grant or deny a request for waiver within 90 days after receipt of the original petition, the last item of timely requested additional material, or the petitioner’s written request to finish processing the petition. As such, the statutory deadline for this proceeding is April 7, 2022.

The Commission has jurisdiction under Section 120.542, F.S., and Chapter 366, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission grant FPL’s Petition for a temporary waiver of Rule 25-6.078(3), F.A.C.?

**Recommendation:** Yes, the Commission should grant FPL’s Petition for a temporary waiver of Rule 25-6.078(3), F.A.C. (DuVal, Coston)

**Staff Analysis:** FPL requests that the Commission grant it a one-year waiver of Rule 25-6.078(3), F.A.C., to file its consolidated written policy on the installation of underground facilities in new residential subdivisions, along with supporting data and analyses, on April 1, 2023. The rule requires that a utility file a written policy and supporting data and analyses at least once every three years. FPL is currently due to file its revised tariffs addressing the installation of underground facilities, including its written policy and supporting data and analyses, by April 1, 2022. However, FPL asserts that a delayed filing containing 2022 consolidated operational cost data would achieve the purpose of the underlying statutes implemented by Rule 25-6.078(3), F.A.C., and that not permitting FPL’s proposed approach would create a substantial hardship to the company.

### Law Governing Petitions for Variance or Waiver

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

### Purpose of the Underlying Statutes

FPL identifies Sections 366.03, 366.04, and 366.06, F.S., as the underlying statutes for Rule 25-6.078, F.A.C.

The purpose of Section 366.03, F.S., is to set forth the general duties of a public utility; including the requirement to furnish sufficient, adequate, and efficient service, subject to the Commission’s requirements, to each person who applies for service. The purpose of Section 366.04(1), F.S., is to grant the Commission with jurisdiction to regulate and supervise public utilities’ rates and service, assumptions of liabilities or obligations, and issuance and sale of their securities. The purpose of Section 366.04(2)(f), F.S., is to grant the Commission power to require electric utilities to file periodic reports and other data as necessary to exercise its jurisdiction. The purpose of Section 366.06(1), F.S., is to ensure that investor-owned electric utilities only charge or receive rates that have been approved by the Commission; to ensure that the Commission only approves rates that are fair, just, and reasonable for each customer class; and to set a procedure for fixing and changing rates.

If its request for a one-year waiver of the Rule 25-6.078(3), F.A.C., is granted, FPL will file its written policy and supporting data and analyses on April 1, 2023, based on its consolidated 2022 operations data. FPL states that its proposed approach will provide the Commission with more meaningful combined cost data and analyses sooner than would be the case if FPL were to

follow its current reporting schedule<sup>2</sup> and will ultimately enhance the quality of the filing. For these reasons, FPL asserts that its deferred filing would achieve the purpose of the underlying statutes.

FPL's deferred filing will allow the Commission to ensure that FPL is complying with its statutory duties regarding rates and service, to obtain FPL's most up-to-date reporting information, and to fulfill its statutory obligation to approve rates that are fair, just, and reasonable. Based on FPL's claim that the estimated cost differential is not likely to change and because FPL will still be subject to the requirement to file Form PSC 1031 (08/20) by October 15, 2022, staff believes there should be no adverse impacts to FPL's customers by granting the request. Additionally, permitting FPL's deferred filing will effectively harmonize FPL and Gulf's reporting schedules for purposes of Rule 25-6.078(3), F.A.C., thereby creating enhanced administrative efficiency going forward. Therefore, staff recommends that the purpose of the underlying statutes will be achieved by allowing FPL to defer the filing of its written policy and supporting data and analyses to April 1, 2023.

### **Substantial Hardship**

FPL argues that application of Rule 25-6.078(3), F.A.C., would create a substantial hardship and would be contrary to the intent and purpose of the rule because FPL would be required to develop cost data and analyses for a time period prior to FPL and Gulf being consolidated for cost and ratemaking purposes. FPL further asserts that this expenditure of resources would be directed at providing the Commission with unnecessary information and would delay the Commission's receipt of the more meaningful combined data.

Staff believes that a strict application of Rule 25-6.078(3), F.A.C., would create a substantial hardship for FPL based on the expenditure of resources needed to determine the supporting underlying costs for a time period prior to the consolidation of FPL and Gulf for cost and ratemaking purposes. Therefore, staff recommends that FPL has demonstrated that a strict application of the rule would create a substantial hardship under the circumstances described in its Petition.

### **Conclusion**

Based on the above, staff recommends that the Commission grant FPL's petition for a temporary waiver of Rule 25-6.078(3), F.A.C., to allow FPL to file its new written policy and supporting data and analyses by April 1, 2023. If granted, FPL's three-year filing cycle would effectively be reset such that its next filing would be due by April 1, 2026, instead of by April 1, 2025. However, as always, FPL would need to file a new written policy and supporting data and analyses if its cost differential varies from the Commission-approved differential by plus or minus 10 percent, in which case a new three-year cycle would be initiated from the date of that filing.

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<sup>2</sup> Without the temporary rule waiver of the upcoming April 2022 filing, the Commission would likely not receive FPL's combined cost data and analyses until April 1, 2025.

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

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

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

# Item 5

FILED 1/20/2022  
DOCUMENT NO. 00383-2022  
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:** January 20, 2022

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

**FROM:** Office of Industry Development and Market Analysis (Deas, Fogleman) *CH*  
Office of the General Counsel (Imig) *TLJ*

**RE:** Docket No. 20210190-TP – Petition on behalf of the Florida telecommunications industry for expeditious approval of the industry's consensus recommendation to implement Alternative No. 1, the all-services distributed overlay of the 305/786 NPA overlay, by North American Numbering Plan Administrator.

**AGENDA:** 02/01/22 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** The estimated exhaust date for the 305/786 area codes is the first quarter of 2024

**SPECIAL INSTRUCTIONS:** None

### Case Background

On December 2, 2021, the North American Numbering Plan Administrator (NANPA), on behalf of Florida's telecommunications industry (Industry), filed a petition with the Florida Public Service Commission (Commission) for approval of its area code relief plan for the 305/786 Numbering Plan Area (NPA). The Industry reached a consensus decision to recommend an all-services distributed overlay as the form of relief for the 305/786 NPA. NANPA projects that the supply of central office codes in the 305/786 NPA will exhaust during the first quarter of 2024. Consequently, NANPA is also requesting that the Commission approve the recommended 9-month implementation schedule.

NANPA is the neutral third-party administrator of the North American Numbering Plan, which is the area code system shared by the United States, Canada, Bermuda, and 17 Caribbean countries. The area served by NANPA is divided into NPAs, which are each identified by a three-digit NPA code, commonly called an area code. NANPA's responsibilities include assigning area codes and prefixes, and tracking numbering usage to ensure effective and efficient utilization. NANPA is also responsible for forecasting the exhaust of geographic area codes and area code relief planning. NANPA publishes its forecasted exhaust of all area codes on a semi-annual basis. This forecast is used to determine when to start the area code relief process.

The 305 area code was created in 1947 and originally covered the entire state of Florida. The first geographic split of the 305 NPA occurred in 1953, resulting in the creation of the 813 NPA. Over the next 40 years, the 305 NPA was split twice more to create the 407 and 954 NPAs. In 1998, area code relief was needed again for the 305 area code. Rather than splitting the 305 NPA again, the Commission approved an overlay, resulting in the 786 area code being assigned to the same NPA. The 786 area code overlay originally covered only Miami-Dade County but was expanded to include the Keys in 2014. Currently, the 305/786 area code serves Miami-Dade County and the Florida Keys, which includes municipalities such as Miami, Coral Gables, and Homestead.

In October 2021, NANPA forecasted that the 305/786 area code would exhaust during the first quarter of 2024. NANPA convened an industry meeting on November 8, 2021, to review and approve the area code relief filing. On December 2, 2021, NANPA filed a petition with the Commission on behalf of the Industry requesting approval of an all services distributed overlay for the 305/786 area code (see map Attachment A). The Commission has jurisdiction to address this issue pursuant to Sections 364.16(7) and 120.80(13)(d), Florida Statutes, and 47 Code of Federal Regulations (C.F.R.) § 52.19.



## Discussion of Issues

**Issue 1:** Should the Commission approve the Industry's consensus recommendation of an all-services distributed overlay as the area code relief plan for the 305/786 area codes?

**Recommendation:** Yes, the Commission should approve the Industry's consensus recommendation of an all-services distributed overlay as the area code relief plan for the 305/786 area codes. (Deas, Fogleman, Imig)

**Staff Analysis:** Area code relief responsibilities have been delegated to the states by the Federal Communication Commission (FCC) pursuant to 47 C.F.R. § 52.19. In Florida, the Commission is responsible for determining the appropriate form of area code relief when telephone numbers exhaust within an area code. There are a number of methods available to address area code exhaust issues; however, the two most commonly used methods are a geographic split or an overlay.

### Geographic Split

The geographic split method divides the exhausting NPA into two, leaving the existing area code to serve one NPA and assigning a new area code to serve the other NPA. This method generally acknowledges jurisdictional or natural boundaries, but for technical reasons and number optimization considerations, the actual boundaries must conform to existing rate center boundaries. Under this method, customers on both sides of the split would retain seven digit dialing; however, it would require one half of the customers to change their area code. The last split implemented in Florida was 19 years ago. Industry guidelines specify that in the case of a geographic split, the difference in area code life expectancies between the split areas should be 10 years or less.<sup>1</sup>

### Overlay

The overlay method adds a new area code to the same geographic area served by the area code requiring relief. This results in the assignment of more than one area code to the same NPA. Current customers keep their existing area code and number; however, new customers or customers adding additional lines would receive the new area code. Once an overlay is implemented, the FCC requires 10-digit dialing for all local calls within the NPA. There are four potential implementation strategies for an overlay, which are as follows:

**a) All-Services Distributed Overlay** - The distributed overlay strategy may be considered in situations when growth in telephone numbers is expected to be more or less evenly distributed throughout the existing NPA. The new area code is added to the same geographic area as the code requiring relief and shares exactly the same geographic boundaries.

**b) Concentrated Growth Overlay** - A concentrated growth overlay may be considered in situations when the majority of need for the new telephone numbers is expected to be

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<sup>1</sup> NPA Code Relief Planning & Notification Guidelines ATIS-0300061 - Section 5.0 (g).

concentrated in one section of the existing NPA. For example, a fast growing metropolitan area and a sparsely populated rural area could exist within the same NPA. The overlay area code would be assigned initially to the section of the NPA experiencing the fastest growth, and new phone numbers in that section would be assigned from the new area code. As more relief is required, the geographic area served by multiple area codes could expand to the rest of the NPA.

**c) Boundary Elimination Overlay** - With a boundary elimination overlay, the NPA requiring relief is adjacent to an NPA with available numbering resources. The boundary between these NPAs is eliminated, and spare telephone numbers from the adjacent area code are assigned within the NPA boundary where relief is required.

NANPA asserts that based on industry guidelines, when area code relief is required for an existing overlay area, only an overlay will meet the requirement for relief. Therefore, during the November 8, 2021 Industry meeting hosted by NANPA the following three overlay relief alternatives were considered.

**Alternative No.1 – All-Services Distributed Overlay (see map in Attachment A)**

A new area code would be assigned to the same geographic area occupied by the existing 305/786 area codes. Customers would retain their current telephone numbers and would continue to dial 10-digits when making local calls. At the exhaust of the 305/786 area codes, all future assignments will be made from the new area code. The projected life of this method would be approximately 19 years.

**Alternative No. 2 – Boundary Elimination Overlay (see map in Attachment B)**

The boundary between the existing 305/786 and 754/954 area codes would be eliminated and all four area codes would be assigned to the same geographic area. This alternative would allow customers assigned to the 305/786 and 754/954 area codes to retain their telephone numbers and would eliminate the need for a new area code. Also, customers would continue to dial 10-digits when making local calls. The projected life of this method would be approximately 10 years.

**Alternative No. 3 – Boundary Elimination Overlay With All-Services Distributed Overlay (see map in Attachment C)**

The boundary between the existing 305/786 and 754/954 area codes would be eliminated and a new area code would be assigned to the combined geographic area. This alternative would allow customers assigned to the 305/786 and 754/954 area codes to retain their telephone numbers and continue to dial 10-digits when making local calls. At the exhaust of the 305/786 and 754/954 area codes, all future assignments would be made from the new area code. The projected life of this method would be approximately 22 years.

**Industry Consensus**

After review of the three overlay alternatives, the Industry reached a consensus recommending alternative No. 1, an all-services distributed overlay, as the recommended form of relief for the 305/786 area codes. Industry chose this alternative because in September of 2021, NANPA

declared “jeopardy” in the 305/786 area codes.<sup>2</sup> Jeopardy is declared when the forecasted and/or actual demand for numbering resources is expected to exceed the supply of numbers before area code relief can be implemented. According to Industry, the two boundary elimination alternatives would require additional technical work and modifications to switches in all of the four overlay area codes. As a result, Industry states it chose the all-services distributed overlay because it will take less time to implement than the boundary elimination alternatives.

The Industry has also recommended a 9-month implementation schedule. Since mandatory 10-digit dialing is already in place there will be no permissive dialing period. Therefore, the new area code will be implemented at the completion of the necessary network preparation and customer education. Industry asserts this schedule will allow sufficient time to implement the new area code prior to exhaust of the 305/786 area codes.

### **Proposed Dialing Plan**

The following recommended dialing plan is already in place in the 305/786 NPA:

Local Calls	10-digit dialing (as required by the FCC)
Toll Calls	1 + 10-digit dialing
Operator Calls	0 + 10-digit dialing

### **Staff Workshop**

In an effort to educate and receive customer input, staff held a virtual customer workshop on December 21, 2021. During this workshop, Commission staff and a representative from NANPA explained the area code relief process, the relief option being considered, and customer impact. Two customer comments were filed with the Commission and both were in favor of the all-services distributed overlay. One of the comments suggested what the new area code should be; however, according to numbering guidelines, that decision is determined by NANPA.

### **Conclusion**

Staff reviewed the petition and analyzed all of the alternatives. Staff considered the impact each alternative would have on customers as well as the Industry. In all of the alternatives being considered, customers will retain their current telephone numbers and continue dialing 10-digits. Staff notes that due to an increase in requests for numbering resources by Industry, NANPA declared jeopardy for the 305/786 area codes. Jeopardy was declared in order to ensure that the available supply of numbers does not exhaust before area code relief can be implemented. Under the current jeopardy conditions, Industry is limited in how many numbering resources they can access per month. With this in mind, staff agrees with Industry that the all-services distributed overlay will take less time to implement than the boundary elimination alternatives. The shorter

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<sup>2</sup> With FCC approval, NANPA declares jeopardy in order to ration the number of Central Office codes that can be assigned each month when the supply of numbers could exhaust before area code relief can be implemented.

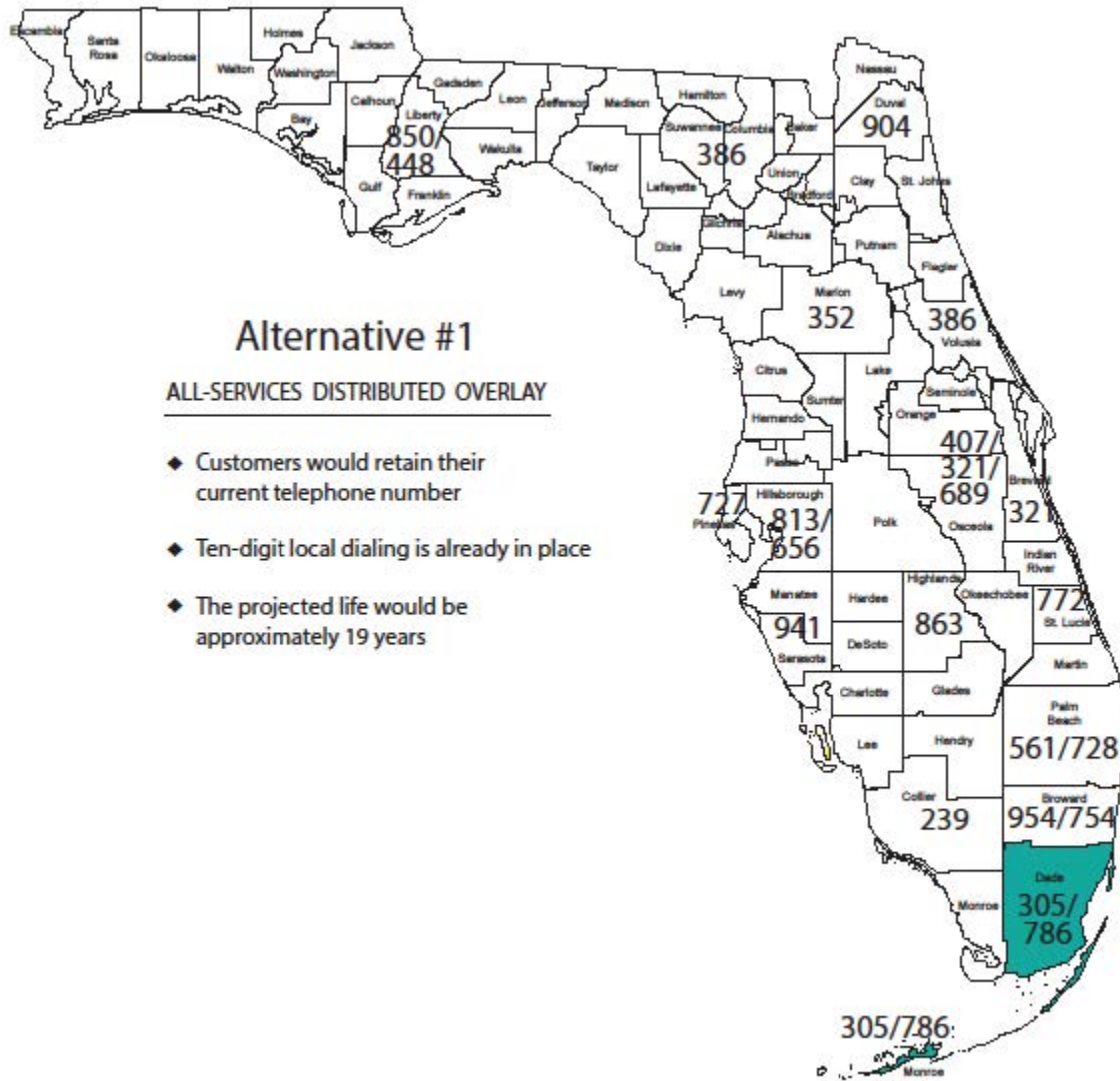
implementation period will minimize the numbering resource restriction period for Industry as they try to accommodate customer demand.

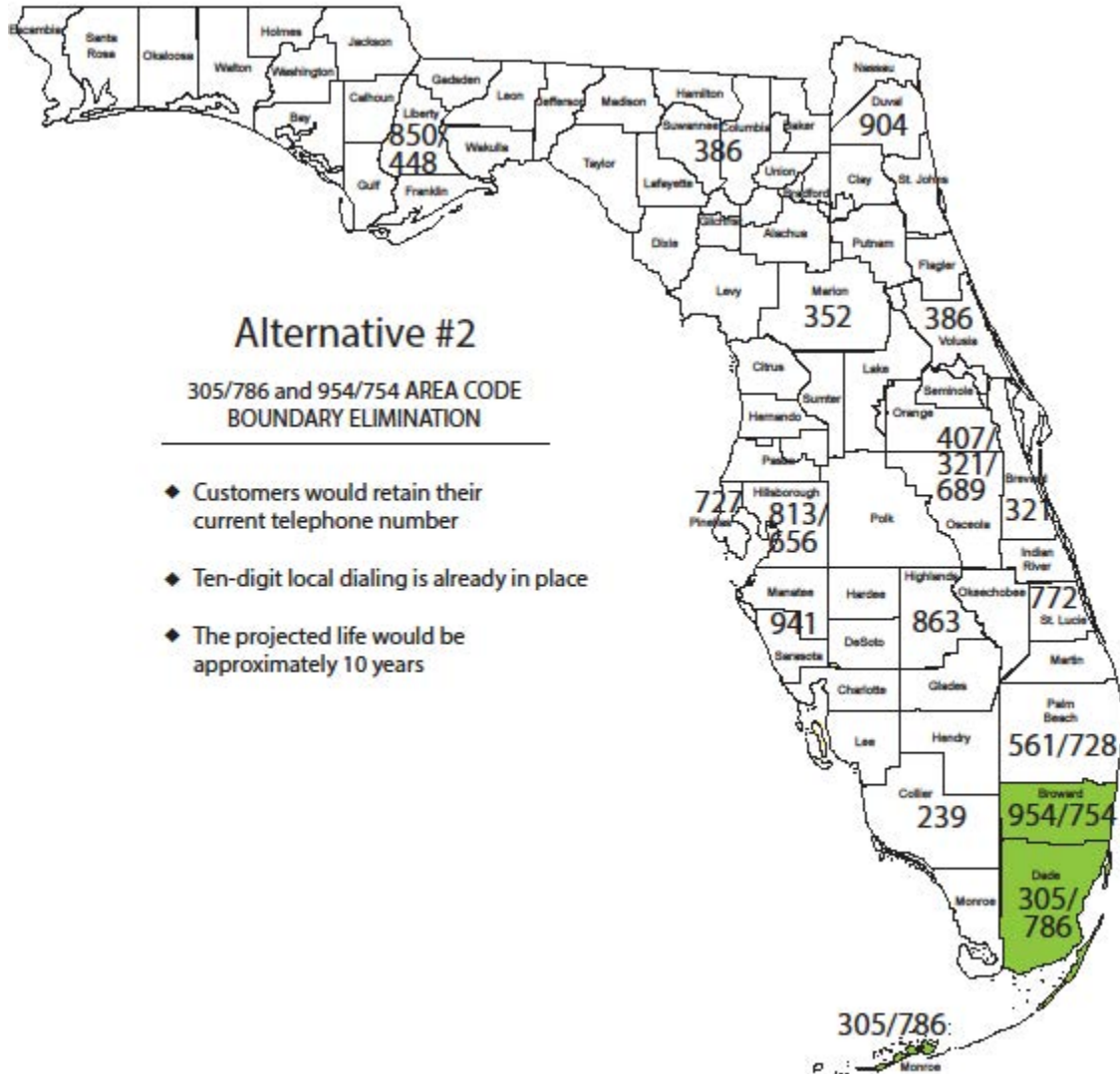
Staff agrees with the Industry and recommends the Commission approve the proposed all-services distributed overlay as the form of relief for the 305/786 area codes. Additionally, staff recommends Commission approval of the proposed 9-month implementation schedule. Finally, staff recommends the Commission order that central office codes in the new area code be available only when all assignable prefixes in the 305/786 area codes have been assigned.

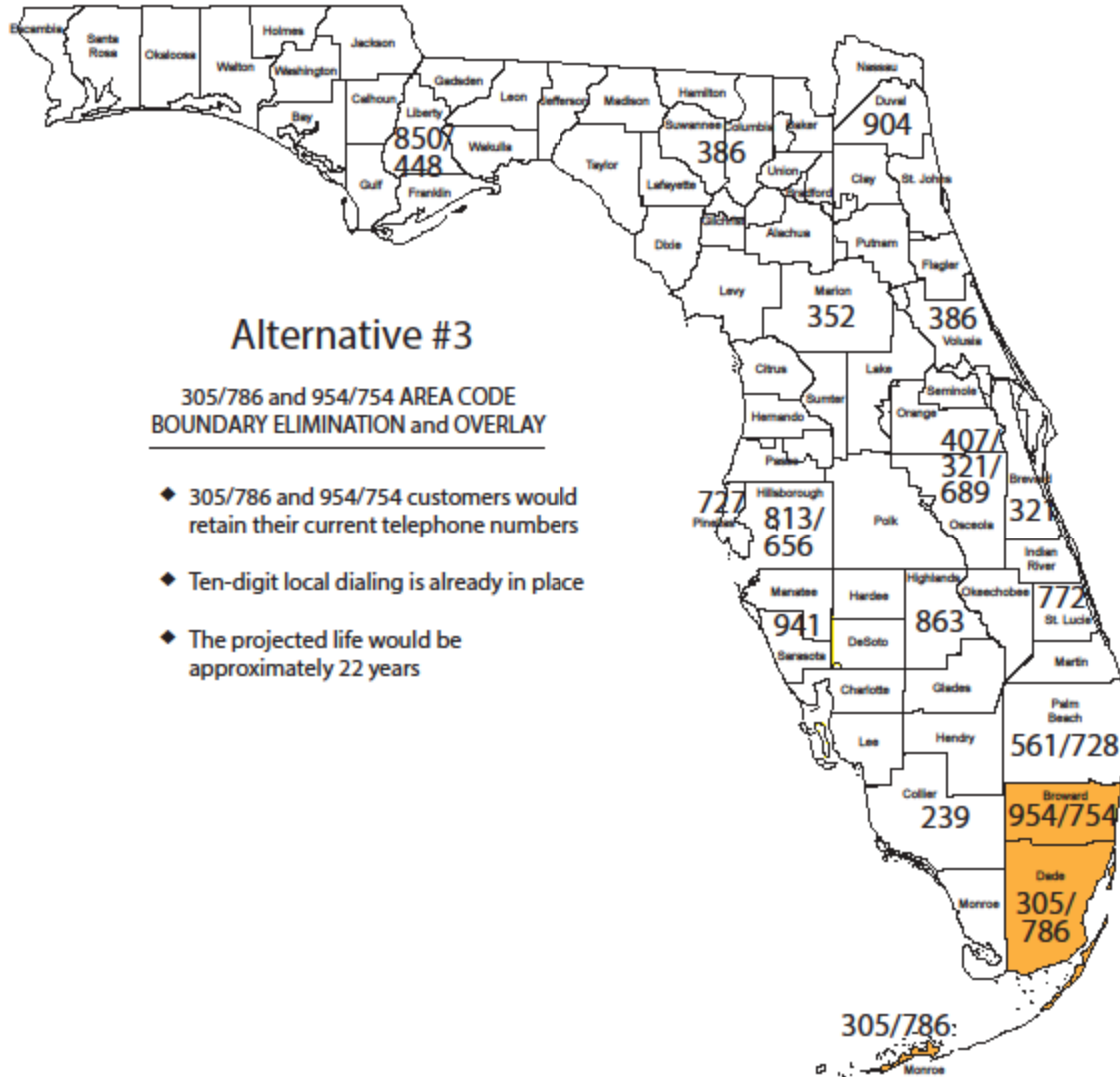
**Issue 2:** Should this docket be closed?

**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 Proposed Agency Action Order, this docket should be closed upon the issuance of a Consummating Order. (Imig)

**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 6

FILED 1/20/2022  
DOCUMENT NO. 00395-2022  
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:** January 20, 2022

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

**FROM:** Division of Accounting and Finance (Higgins) *ALM*  
Division of Economics (Draper, Coston) *JGH*  
Office of the General Counsel (Brownless) *JSC*

**RE:** Docket No. 20220001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

**AGENDA:** 02/01/22 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** La Rosa

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

### Case Background

On December 17, 2021, Duke Energy Florida, LLC (DEF or Company), filed for a mid-course correction (MCC Petition) of its 2022 fuel cost recovery factors.<sup>1</sup> The MCC Petition was filed in Docket No. 20210001-EI. However, as the 2022 fuel clause docket was subsequently established, processing of the MCC Petition has been transferred to Docket No. 20220001-EI.

DEF's currently-effective 2022 fuel factors were approved last year at the November 2, 2021 final hearing.<sup>2</sup> Underlying the approval of DEF's 2022 factors was the Florida Public Service Commission's (Commission) review of the Company's projected 2022 fuel-related costs. These

<sup>1</sup>Document No. 13092-2021.

<sup>2</sup>Order No. PSC-2021-0442-FOF-EI, issued November 30, 2021, and Order No. PSC-2021-0442A-FOF-EI, issued December 13, 2021, in Docket No. 20210001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.*

costs are recovered through fuel cost recovery factors that are set/reset annually in this docket. These cost recovery factors are usually effective for a period of 12 months. However, by Rule 25-6.0424, Florida Administrative Code (F.A.C.), the Commission requires that if an investor-owned electric utility's fuel or capacity cost recovery position is projected to exceed a specified range within the standard 12-month timeframe, the utility shall promptly notify the Commission.

### **Mid-Course Corrections**

Mid-course corrections are used by the Commission between annual clause hearings whenever costs deviate from revenue by a significant margin. Under Rule 25-6.0424, F.A.C., which is commonly referred to as the "mid-course correction rule," a utility must notify the Commission whenever it expects to experience an under- or over-recovery of certain service costs greater than 10 percent. The notification of a 10 percent cost-to-revenue variance shall include a petition for mid-course correction to the fuel cost recovery or capacity cost recovery factors, or shall include an explanation of why a mid-course correction is not practical. The mid-course correction rule and its codified procedures are further discussed throughout this recommendation.

### **DEF's Petition for Mid-Course Correction**

Through its MCC Petition, DEF is proposing a mid-course correction of its 2022 fuel charges. Specifically, the Commission is being asked to approve an increase to DEF's fuel cost recovery factors due to the Company now projecting a period-ending 2022 under-recovery of fuel costs that exceed the 10 percent threshold. The proposed increase to DEF's currently-authorized fuel charges is being driven by 2021 and 2022 fuel costs being greater than originally estimated. This topic is discussed further in Issue 1. Higher market prices for natural gas is the primary driver of DEF's fuel cost under-recovery.

The Company is requesting that its revised fuel factors and associated tariff become effective beginning with the March 2022 billing cycle. The effective date is further discussed in both Issues 1 and 2. Also included in the Company's proposed tariff are the bi-annual rate adjustments related to its nuclear asset-recovery bonds, or "Asset Security Charge," that was originally authorized in 2015.<sup>3</sup> However, while the rate adjustments are included as part of the proposed tariff, neither the rate change nor associated amounts are at issue in this proceeding. The implementation date of the revised Asset Security Charges simply coincide with the proposed fuel rate changes.

The Commission is vested with jurisdiction over the subject matter of this proceeding by the provisions of Chapter 366, Florida Statutes (F.S.), including Sections 366.04, 366.05, and 366.06, F.S.

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<sup>3</sup>Order No. PSC-15-0537-FOF-EI, issued November 19, 2015, in Docket No. 150148-EI, *In re: Petition for approval to include in base rates the revenue requirement for the CR3 regulatory asset, by Duke Energy Florida, Inc.*, and Docket No. 150171-EI, *In re: Petition for issuance of nuclear asset-recovery financing order, by Duke Energy Florida, Inc. d/b/a Duke Energy*.

## Discussion of Issues

**Issue 1:** Should the Commission modify DEF's currently-approved fuel factors for the purpose of addressing a currently-projected under-recovery of fuel costs?

**Recommendation:** Yes. Staff recommends the Commission approve adjustments to DEF's currently-approved fuel cost recovery factors for the purpose of recovering a portion of the total projected period-ending 2022 under-recovery of fuel costs in the amount of \$314,223,437. (Higgins)

**Staff Analysis:** DEF participated in the Commission's most-recent fuel hearing which took place on November 2, 2021. The Fuel Order issued with respect to DEF set forth the Company's fuel and capacity cost recovery factors effective with the first billing cycle of January 2022.<sup>4</sup> However, as discussed below, the currently-authorized fuel cost recovery factors are now projected to produce an under-recovery position at the end of 2022 of greater than 10 percent. Higher market prices for natural gas is the primary driver of the fuel cost under-recovery. Some factors influencing near-term natural gas prices include reduced storage levels, strong liquefied natural gas exports, and capital/expenditure discipline being practiced by drilling companies.

### **Fuel and Purchased Power Mid-Course Correction**

DEF filed for a mid-course correction of its fuel charges on December 17, 2021.<sup>5</sup> The Company's petition and supporting documentation satisfies the filing requirements of Rule 25-6.0424(1)(b), F.A.C.<sup>6</sup>

Preceding the filing of its MCC Petition and in accordance with the noticing requirement of Rule 25-6.0424(2), F.A.C., DEF filed a letter on October 18, 2021, informing the Commission that it was projecting an under-recovery position of greater than 10 percent for the recovery period ending on December 31, 2022.<sup>7</sup> However, in analyzing settlement prices for natural gas, the Company determined that the continuing price volatility warranted deferring a decision to file for a mid-course correction, but would update the Commission later in the year. As indicated by the MCC filing, DEF determined that a mid-course correction of its 2022 fuel factors was ultimately necessary.

The Company developed its proposed mid-course correction factors using twelve months of forecasted sales data (March 2022 through February 2023). However the exact factors proposed in this proceeding are currently contemplated to be charged for 10 months in 2022. As is typical procedure, later this year newly-developed 12-month-applicable factors will be proposed for authorization to begin with the first billing cycle of January 2023.<sup>8</sup>

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<sup>4</sup>Order No. PSC-2021-0442-FOF-EI and Order No. PSC-2021-0442A-FOF-EI.

<sup>5</sup>Document No. 13092-2021.

<sup>6</sup>Document No. 13092-2021 and Document No. 00053-2022.

<sup>7</sup>Document No. 12188-2021.

<sup>8</sup>Document No. 00053-2022, filed January 4, 2022, DEF's Responses to Staff's Second Data Request, No. 3(a. through d.).

### **Projected Period-Ending 2021 Fuel Cost Recovery Position**

DEF's 2022 fuel cost projection filing contained an adjustment to its previously-filed 2021 actual/estimated true-up that reflected an updated under-recovery of (\$246,837,576).<sup>9</sup> Normally, this specific true-up amount would have been included in the following year's factors. However, due to a "Rate Mitigation Agreement" between DEF and the Office of Public Counsel, the Florida Industrial Power Users Group, the Florida Retail Federation, Nucor Steel Florida, Inc., the Southern Alliance for Clean Energy, and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate, only half of the then-estimated 2021 under-recovery amount, or (\$123,418,788), was proposed to be collected in 2022.<sup>10</sup> The second half was proposed to be collected in 2023. The Commission ultimately approved this Rate Mitigation Agreement/recovery schedule.<sup>11</sup> Staff notes that DEF's first mid-course correction in 2021, which the Commission ultimately approved in the amount of (\$39,503,838), was reflected in the derivation of the above-discussed 2021 actual/estimated true-up.<sup>12</sup> However, as indicated by the instant MCC Petition, DEF now estimates an additional 2021 under-recovery of (\$168,620,747), bringing the total estimated period-ending under-recovery to (\$415,458,323).<sup>13</sup> The additional 2021 under-recovery of (\$168,620,747) is being proposed for collection as part of this mid-course correction.

Increased pricing for natural gas is the primary driver of the total under-recovery discussed above. More specifically, through its 2021 actual/estimated filing, the Company estimated an annual natural gas cost of \$4.50 per million British thermal unit (MMBtu).<sup>14</sup> However, as indicated in the MCC Petition, DEF now estimates its average 2021 cost of natural gas will be \$5.29 per MMBtu, representing an increase of 17.6 percent.<sup>15</sup>

### **Projected 2022 Fuel Cost Recovery Position**

DEF's 2022 fuel cost projection filed for the purposes of cost recovery was on September 3, 2021.<sup>16</sup> The underlying market-based natural gas price data used for the 2022 fuel cost projection was sourced on July 21, 2021.<sup>17</sup> This data was used to produce an estimated average 2022 natural gas cost of \$5.01 MMBtu.<sup>18</sup> Staff notes this figure includes delivery costs. However, as indicated in its MCC Petition, DEF now estimates its average cost of delivered natural gas in

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<sup>9</sup>Document No. 10081-2021.

<sup>10</sup>Document No. 10082-2021, filed in Docket No. 20210001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*, Docket No. 20210097-EI, *In re: Petition for Limited Proceeding for Recovery of Incremental Storm Restoration Costs Related to Hurricane Eta and Isaias*, by Duke Energy Florida, LLC, and Docket No. 20210010-EI, *In re: Storm Protection Plan Cost Recovery Clause*. This motion was ultimately adjudicated in Docket No. 20210158-EI.

<sup>11</sup>Order No. PSC-2021-0425-FOF-EI, issued November 16, 2021, in Docket No. 20210158-EI, *In re: Limited proceeding to consider Duke Energy Florida, LLC's unopposed motion to approve rate mitigation agreement*. For the 2022 fuel cost recovery authorization, please see Order Nos. PSC-2021-0442-FOF-EI and PSC-2021-0442A-FOF-EI.

<sup>12</sup>Order No. PSC-2021-0328-PCO-EI, issued August 30, 2021, in Docket No. 20210001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

<sup>13</sup>Document No. 13092-2021.

<sup>14</sup>Document No. 08364-2021.

<sup>15</sup>Document No. 13092-2021.

<sup>16</sup>Document No. 10081-2021.

<sup>17</sup>*Id.*

<sup>18</sup>*Id.*

2022 will be \$5.20 per MMBtu, representing an increase of 3.8 percent.<sup>19</sup> The updated cost estimate was based on natural gas futures sourced on December 13, 2021.<sup>20</sup>

Staff compared the February through December 2022 commodity-only, i.e., excluding delivery cost, price projection for natural gas underlying the Company's mid-course correction filing with current market prices.<sup>21</sup> Staff observes the arithmetic average of DEF's commodity-only natural gas price projection for the 11-month period, or February through December 2022, is \$3.76 per MMBtu.<sup>22</sup> As previously indicated, DEF's pricing information was sourced on December 13, 2021. Using more-current data, or information sourced on January 14, 2022, staff calculates an average natural gas (commodity-only) price of \$4.14 per MMBtu for the same 11-month period. The results of this comparison indicate that natural gas prices over the subject period have increased since the development of the MCC Petition. However, staff notes that natural gas prices are continuously subject to numerous market (and other) forces and therefore can be volatile.

Updated pricing for coal is also driving changes to DEF's 2022 total projected fuel cost. In its September 3, 2021 filing, the Company estimated a 2022 coal cost of \$2.78 per MMBtu.<sup>23</sup> In its MCC Petition, DEF now estimates a coal cost of \$3.63 per MMBtu, representing an increase of 30.6 percent.<sup>24</sup> However, the effect of this cost increase is partially mitigated through planned resource dispatch. DEF had originally planned for coal-fired resources to account for 19.6 percent of its generation mix. However, as indicated in the MCC Petition, DEF is now planning for coal-fired resources to account for 7.4 percent of its resource mix.

Given this and other updates to DEF's 2022 total fuel cost estimate, coupled with currently-effective cost recovery rates, the Company now estimates a 2022 fuel cost under-recovery of (\$145,602,690). The estimated 2022 fuel cost under-recovery is being proposed for collection as part of this mid-course correction.

### **Mid-Course Correction Percentage**

Following the methodology prescribed in Rule 25-6.0424(1)(a), F.A.C., the mid-course percentage is equal to the estimated end-of-period total net true-up, including interest, divided by the current period's total actual and estimated jurisdictional fuel revenue applicable to period, or  $(\$314,223,437) / \$1,442,465,312$ .<sup>25</sup> This calculation results in a mid-course correction level of (21.8) percent.<sup>26</sup> Staff notes that the numerator in this calculation appropriately omits the second half of the under-recovery as contemplated by the Rate Mitigation Agreement. As shown in the

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<sup>19</sup>Document No. 13092-2021.

<sup>20</sup>*Id.*

<sup>21</sup>Staff obtained its natural gas pricing information from the CME Group Inc. CME Group pricing information with respect to natural gas can be located through the following web address: <https://www.cmegroup.com/markets/energy/natural-gas/natural-gas.quotes.html>

<sup>22</sup>Document No. 13092-2021.

<sup>23</sup>Document No. 10081-2021.

<sup>24</sup>Document No. 13092-2021.

<sup>25</sup>The mid-course correction amount being sought for recovery in this proceeding consists of the projected incremental 2021 under-recovery of (\$168,620,747), and the projected 2022 under-recovery of (\$145,602,690), for a total of (\$314,223,437).

<sup>26</sup>Document No. 00053-2022, filed January 4, 2022, DEF's Responses to Staff's Second Data Request, No. 1.

MCC Petition, the estimated end-of-period total net true-up amount at December 31, 2022 is (\$437,642,225). However, as per the terms of the Rate Mitigation Agreement, the second half of the specified under-recovery, or (\$123,418,788), will be recognized for recovery in 2023.

**Fuel Factor**

DEF’s currently-approved annual levelized fuel factor beginning with the January 2022 billing cycle is 3.986 cents per kilowatt-hour (kWh).<sup>27</sup> The Company is requesting to increase its currently-approved 2022 annual levelized fuel factor (beginning March 2022) to 4.739 cents per kWh, or by 18.9 percent.<sup>28</sup>

**Bill Impacts**

Table 1-1 below shows the bill impact to a typical residential customer using 1,000 kWh of electricity a month associated with the current and proposed service charges. In the discussion below Table 1-1, staff addresses the impacts of the proposed MCC on non-residential customers:

**Table 1-1  
 Monthly Residential Billing Detail for the First 1,000 kWh**

<b>Invoice Component</b>	<b>Currently-Approved Charges Beginning January 2022 (\$)</b>	<b>Proposed Charges Beginning March 2022 (\$)</b>	<b>Approved to Proposed Difference (\$)</b>	<b>Approved to Proposed Difference (%)</b>
Base Charge <sup>29</sup>	\$80.91	\$80.91	\$0.00	0.0%
Fuel Charge	36.81	44.69	7.88	21.4%
Capacity Charge	11.03	11.03	0.00	0.0%
Conservation Charge	2.83	2.83	0.00	0.0%
Environmental Charge	0.28	0.28	0.00	0.0%
Storm Protection Plan Charge	3.00	3.00	0.00	0.0%
Asset Securitization Charge	2.48	2.34	(0.14)	-5.6%
Gross Receipts Tax	3.62	3.82	0.20	5.5%
<b>Total</b>	<b>\$140.96</b>	<b>\$148.90</b>	<b>\$7.94</b>	<b>5.6%</b>

Source: FPSC, Division of Economics.

DEF’s current total residential charge for the first 1,000 kWh of electricity usage beginning January 2022 is \$140.96. If DEF’s mid-course correction proposal is approved, the current total residential charge for the first 1,000 kWh of electricity usage, beginning March 2022, will be

<sup>27</sup>Order Nos. PSC-2021-0442-FOF-EI and PSC-2021-0442A-FOF-EI.

<sup>28</sup>Document No. 13092-2021. Recovery factor shown on “Exhibit A,” Schedule E1-D, line 8.

<sup>29</sup>DEF’s 2022 base rate represents a weighted average consisting of the actual December through February charge of \$88.68, and the actual March through November charge of \$78.32.

\$148.90. This represents an increase of 5.6 percent. For non-residential customers, DEF reported that based on average levels of usage and specific rate schedules, bill increases for small- and medium-size commercial customers would be 19.9 percent, bill increases for large-size commercial customers would be 16.3 percent, and 14.3 percent for industrial customers.<sup>30</sup> DEF's proposed tariff is shown on Appendix A to this recommendation.

### **Summary**

Staff recommends DEF's fuel cost recovery factors be adjusted to incorporate a portion of its projected 2022 end-of-year fuel cost under-recovery. The revised fuel factors associated with staff's recommendation are shown on Appendix A.

### **Conclusion**

Staff recommends the Commission approve adjustments to DEF's currently-approved fuel cost recovery factors for the purpose of recovering a portion of the total projected period-ending 2022 under-recovery of fuel costs in the amount of \$314,223,437.

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<sup>30</sup>Document No. 00053-2022, filed January 4, 2022, DEF's Responses to Staff's Second Data Request, No. 6.



**Issue 2:** If approved by the Commission, what is the appropriate effective date for DEF's revised fuel cost recovery factors?

**Recommendation:** Staff recommends that the fuel cost recovery factors as shown on Appendix A become effective with the March 2022 billing cycle. (Coston, Brownless)

**Staff Analysis:** In its petition, DEF has requested that the revised fuel cost recovery factors become effective with the March 2022 billing cycle.

Over the last 20 years in the Fuel Clause docket, the Commission has considered the effective date of rates and charges of revised fuel cost recovery factors on a case-by-case basis. The Commission has approved fuel cost recovery factor rate decreases effective sooner than the next full billing cycle after the date of the Commission's vote with the range between the vote and the effective date being from 25 to 2 days. The rationale for that action being that it was in the customers' best interests to implement the lower rate as soon as possible.<sup>31</sup> With regard to fuel cost recovery factor rate increases, the Commission has approved an effective date of the revised factors ranging from 14 to 29 days after the vote.<sup>32</sup> In two of these cases, the Commission noted that the utility had given its customers 30 days' written notice before the date of the vote that a fuel cost recovery factor increase had been requested and provided the proposed effective date of the higher fuel factors.<sup>33</sup>

In its MCC Petition, DEF proposes to collect the current under-recovery of fuel costs beginning with the first billing cycle of March 2022. The exact beginning date of DEF's March 2022 billing cycle is February 28, 2022. In the instant case, there are 27 days between the

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<sup>31</sup>Order No. PSC-08-0825-PCO-EI, issued December 22, 2008, in Docket No. 080001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-09-0254-PCO-EI, issued April 27, 2009, in Docket No. 090001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-11-0581-PCO-EI, issued on December 19, 2011, in Docket No. 110001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-12-0342-PCO-EI, issued July 2, 2012, in Docket No. 120001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-2012-0082-PCO-EI, issued February 24, 2012, in Docket No. 120001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-15-0161-PCO-EI, issued April 30, 2015, in Docket No. 150001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-2018-0313-PCO-EI, issued June 18, 2018, in Docket No. 20180001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order PSC-2020-0154-PCO-EI, issued May 14, 2020, in Docket No. 20200001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

<sup>32</sup>Order No. PSC-03-0381-PCO-EI, issued March 19, 2003, in Docket No. 030001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-03-0382-PCO-EI, issued March 19, 2003, in Docket No. 030001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-03-0400, issued March 24, 2003, in Docket No. 030001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-03-0849-PCO-EI, issued July 22, 2003, in Docket No. 030001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-09-0213-PCO-EI, issued April 9, 2009, in Docket No. 090001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*; Order No. PSC-2019-0109-PCO-EI, issued March 22, 2019, in Docket No. 20190001-EI, *In re: Fuel and purchased power cost recovery clause with generating performance incentive factor*.

<sup>33</sup>Order No. PSC-09-0213-PCO-EI; Order No. PSC-2019-0109-PCO-EI.

Commission's vote on February 1, and the beginning of DEF's March billing cycle (February 28).<sup>34</sup>

Concerning customer advisement of the instant request, DEF states that it will notify its customers of the proposed rate changes through bill inserts in its February 2022 invoices. Additionally, on December 17, 2021, which is the same day DEF submitted its MCC Petition, the Company posted a "press release" to its website while also issuing the information to various media outlets describing the proposal.<sup>35</sup>

### **Conclusion**

Staff recommends that the fuel cost recovery factors as shown on Appendix A become effective with the March 2022 billing cycle.

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<sup>34</sup>Document No. 00053-2022, filed January 4, 2022, DEF's Responses to Staff's Second Data Request, No. 5.

<sup>35</sup>Document No. 00053-2022, filed January 4, 2022, DEF's Responses to Staff's Second Data Request, No. 7.

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

**Recommendation:** No. The 20220001-EI docket is an on-going proceeding and should remain open. (Brownless)

**Staff Analysis:** The fuel docket is on-going and should remain open.



SECTION NO. VI  
 NINETY-~~FIFTH~~SIXTH REVISED SHEET NO. 6.105  
 CANCELS NINETY-~~FOURTH~~FIFTH REVISED SHEET NO. 6.105

RATE SCHEDULE BA-1 BILLING ADJUSTMENTS										Page 1 of 3
<b>Applicable:</b>										
To the Rate Per Month provision in each of the Company's filed rate schedules which reference the billing adjustments set forth below.										
COST RECOVERY FACTORS										
Rate Schedule/Metering Level	ECCR <sup>(2)</sup>		CCR <sup>(3)</sup>		ECRC <sup>(4)</sup>	ASC <sup>(5)</sup>	SPPCRC <sup>(6)</sup>		SCRS <sup>(7)</sup>	
	¢/ kWh	\$/ kW	¢/ kWh	\$/ kW	¢/ kWh	¢/ kWh	¢/ kWh	\$/ kW	¢/ kWh	
RS-1, RST-1, RSL-1, RSL-2, RSS-1 (Sec.) < 1000 > 1000	0.283	-	1.103	-	0.028	<del>0.249</del> <u>0.234</u>	0.300	-	-	
GS-1, GST-1 Secondary	0.255	-	0.966	-	0.027	<del>0.244</del> <u>0.204</u>	0.253	-	-	
Primary	0.252	-	0.956	-	0.027	<del>0.242</del> <u>0.202</u>	0.250	-	-	
Transmission	0.250	-	0.947	-	0.026	<del>0.236</del> <u>0.200</u>	0.248	-	-	
GS-2 (Sec.)	0.194	-	0.683	-	0.024	<del>0.447</del> <u>0.148</u>	0.121	-	-	
GSD-1, GSDT-1, SS-1*										
Secondary	-	0.77	-	2.85	0.025	<del>0.402</del> <u>0.178</u>	-	0.63	-	
Primary	-	0.76	-	2.82	0.025	<del>0.400</del> <u>0.176</u>	-	0.61	-	
Transmission	-	0.75	-	2.79	0.025	<del>0.488</del> <u>0.174</u>	-	0.14	-	
CS-1, CST-1, CS-2, CST-2, CS-3, CST-3, SS-3*										
Secondary	-	0.35	-	1.19	0.022	<del>0.428</del> <u>0.112</u>	-	0.59	-	
Primary	-	0.35	-	1.18	0.022	<del>0.427</del> <u>0.111</u>	-	0.58	-	
Transmission	-	0.34	-	1.16	0.022	<del>0.426</del> <u>0.110</u>	-	0.58	-	
IS-1, IST-1, IS-2, IST-2, SS-2*										
Secondary	-	0.64	-	2.26	0.023	<del>0.460</del> <u>0.144</u>	-	0.53	-	
Primary	-	0.63	-	2.24	0.023	<del>0.458</del> <u>0.143</u>	-	0.41	-	
Transmission	-	0.63	-	2.21	0.023	<del>0.457</del> <u>0.141</u>	-	0.11	-	
LS-1 (Sec.)	0.108	-	0.285	-	0.020	<del>0.939</del> <u>0.065</u>	0.190	-	-	
*SS-1, SS-2, SS-3										
Monthly										
Secondary	-	0.074	-	0.274	-	-	-	0.057	-	
Primary	-	0.073	-	0.271	-	-	-	0.056	-	
Transmission	-	0.073	-	0.268	-	-	-	0.056	-	
Daily										
Secondary	-	0.035	-	0.130	-	-	-	0.027	-	
Primary	-	0.035	-	0.129	-	-	-	0.027	-	
Transmission	-	0.034	-	0.127	-	-	-	0.026	-	
GSLM-1, GSLM-2	See appropriate General Service rate schedule									

Fuel Cost Recovery <sup>(1)</sup>					
Rate Schedule/Metering Level	Levelized	On-Peak	Off-Peak	Super-Off-Peak	
	¢/ kWh	¢/ kWh	¢/ kWh	¢/ kWh	¢/ kWh
RS-1 Only < 1,000	<del>3.68</del> <u>4.489</u>	N/A	N/A	N/A	N/A
RS-1 Only > 1,000	<del>4.76</del> <u>5.539</u>	N/A	N/A	N/A	N/A
LS-1 Only Secondary	<del>3.799</del> <u>4.437</u>	N/A	N/A	N/A	N/A
All Other Rate Schedules Secondary	<del>3.992</del> <u>4.787</u>	<del>6.114</del> <u>6.132</u>	<del>3.928</del> <u>4.710</u>	<del>2.922</del> <u>3.504</u>	<del>2.803</del> <u>3.469</u>
All Other Rate Schedules Primary	<del>3.052</del> <u>4.739</u>	<del>5.062</del> <u>6.071</u>	<del>2.894</del> <u>4.663</u>	<del>2.803</del> <u>3.469</u>	<del>2.803</del> <u>3.469</u>
All Other Rate Schedules Transmission	<del>3.912</del> <u>4.691</u>	<del>6.014</del> <u>6.009</u>	<del>2.849</del> <u>4.616</u>	<del>2.843</del> <u>3.434</u>	<del>2.843</del> <u>3.434</u>

(Continued on Page No. 2)

ISSUED BY: Thomas G. Foster, Vice President, Rates & Regulatory Strategy – FL

EFFECTIVE: ~~January 1, 2022~~March 1, 2022

# Item 6A

FILED 1/25/2022  
DOCUMENT NO. 00677-2022  
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-**

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**DATE:** January 25, 2022

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

**FROM:** Division of Accounting and Finance (Higgins) *ALM*  
Division of Engineering (Ellis, Phillips, Wooten) *TB*  
Office of the General Counsel (Brownless) *JSC*

**RE:** Docket No. 20220001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

**AGENDA:** 02/01/22 – Regular Agenda – Motion for Reconsideration – Oral Argument Requested – Participation is Dependent on the Commission’s Vote on Issue 1

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** La Rosa

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

As part of the continuing fuel and purchased power adjustment and generating performance incentive factor clause proceedings, an administrative hearing was held on November 2, 2021. At the hearing, certain stipulated issues for Duke Energy Florida, LLC (DEF or Company), Florida Power & Light Company (FPL), Florida Public Utilities Company (FPUC), Gulf Power Company (Gulf), and Tampa Electric Company (TECO), were approved by bench decision. The Commission approved stipulations on all but one of the issues before it concerning each of the investor-owned utilities (IOUs) actual and projected fuel and capacity costs. The only issue left outstanding was Issue 1C, the recoverability of replacement power costs associated with the January 2021 through April 2021 forced outage of Crystal River Unit No. 4 (CR4). At the hearing Joseph Simpson testified on behalf of DEF regarding the CR4 outage and was cross-examined by the parties. On November 15, 2021, DEF, the Florida Industrial Power Users

Docket No. 20220001-EI

Date: January 25, 2022

Group (FIPUG), the Florida Retail Federation (FRF), the Office of Public Counsel (OPC), and White Springs Agricultural Chemicals, Inc. d/b/a PCS Phosphate – White Springs (PCS Phosphate) filed briefs addressing Issue 1C.

By Order No. PSC-2021-0466-FOF-EI, issued December 21, 2021, the Commission found that the replacement power costs for the CR4 outage of \$14.4 million should be shared equally by DEF's retail customers and DEF. On January 5, 2022, OPC timely filed a Motion for Reconsideration (Motion) of this order and the next day filed a Request for Oral Argument on its Motion for Reconsideration. DEF timely filed its Response in Opposition to OPC's Motion for Reconsideration and Response in Opposition to OPC's Request for Oral Argument on January 12, 2022.

The Commission is vested with jurisdiction over the subject matter of this proceeding by the provisions of Chapter 366, Florida Statutes (F.S.), including Sections 366.04, 366.05, and 366.06, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission grant the Office of Public Counsel’s Request for Oral Argument on its Motion for Reconsideration?

**Recommendation:** Yes. The Commission should grant OPC’s Request for Oral Argument on its Motion for Reconsideration and each side should be given five minutes to present their oral argument. (Brownless, Wooten)

**Staff Analysis:** OPC filed its Request for Oral Argument on its Motion for Reconsideration on January 6, 2022, one day after it filed its Motion. OPC states that oral argument would “provide an opportunity for Citizens to answer any questions that Commissioners may have” and “further elaborate on the arguments made within the motion.” OPC concedes that it did not file its request concurrently with its Motion as required by Rule 25-22.0022(1), Florida Administrative Code (F.A.C.), but argues that it would be unfair to deny its oral argument request based on just a one day delay in filing. OPC has requested that each side be allowed to speak for 10 minutes.

DEF counters that OPC’s request for oral argument should be denied for two reasons. First, it is untimely since it was filed one day after OPC’s Motion and subject to the mandatory waiver language of Rule 25-22.0022(1), F.A.C. Second, OPC’s Motion does not state with particularity the reasons that oral argument would assist the Commissioners in understanding and evaluating whether its decision on CR4’s replacement power costs should be modified. The ability to answer questions and further elaborate on arguments do not, according to DEF, specifically identify why oral argument would benefit the Commissioners. DEF further argues that if oral argument is granted that it be limited to 3 minutes, not the 10 minutes OPC has requested.

Rule 25-22.0022(1), (F.A.C.), states, in part, as follows:

(1) Oral argument must be sought by separate written request filed concurrently with the motion on which argument is requested, or no later than 10 days after exceptions to a recommended order are filed. *Failure to timely file a request for oral argument shall constitute waiver thereof. . . . The request for oral argument shall state with particularity why oral argument would aid the Commissioners, the Prehearing Officer, or the Commissioner appointed by the Chair to conduct a hearing in understanding and evaluating the issues to be decided, and the amount of time requested for oral argument.*

[Emphasis added.]

While it is true that failure to file a request for oral argument contemporaneously with a request for reconsideration waives a party’s right to request oral argument on its motion, the Commission has the independent authority to grant oral argument on its own motion should it deem argument appropriate. Due to the detailed nature of the facts in this case, and the importance of the facts in supporting the Commission’s action, staff believes that oral argument will aid the Commission in understanding and evaluating OPC’s Motion. For that reason, the staff recommends that oral argument be granted for a period of 5 minutes for each side.



**Issue 2:** Should the Commission grant the Office of Public Counsel’s Motion for Reconsideration of Order No. PSC-2021-0466-FOF-EI?

**Recommendation:** No. Office of Public Counsel’s (OPC) Motion for Reconsideration should be denied because it does not meet the required standard for a motion for reconsideration. OPC has failed to identify any point of fact or law that was overlooked or that the Commission failed to consider in rendering Order No. PSC-2021-0466-FOF-EI, Order Approving Crystal River Unit 4 Replacement Power Costs for Duke Energy Florida, LLC. (Brownless, Wooten)

**Staff Analysis:**

**Standard of Review**

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

**OPC’s Motion for Reconsideration**

OPC agrees that the legal standard stated above is the appropriate standard by which to evaluate a final order of the Commission. OPC argues that when evaluating whether replacement power associated with an outage should be assessed to ratepayers, as is the case here, the standard to be applied in making that prudence determination is “what a reasonable utility manager would have done, in light of the conditions and circumstances that were known, or should [have] been known, at the time the decision was made.”<sup>1</sup> OPC states that DEF has the burden to prove by a preponderance of the evidence that it has met this standard.<sup>2</sup> Looking at these requirements, OPC argues that a prudence determination is binary, either “yes” or “no.” Which in this case means that either DEF recovers none of the \$14.4 million replacement power costs or all of the replacement power costs. According to OPC, there is no room for the Commission to “mitigate,” i.e., to evaluate the actions taken by DEF and apportion these costs based on its assessment of the prudence of these individual actions. Finally, OPC contends that there is no “quantifiable evidence, data, or case law” to support an allocation of replacement power costs between DEF and its customers.

**DEF’S Response**

While DEF does not agree with the Commission’s decision to allocate \$7.2 million in replacement power costs to DEF, DEF counters that OPC has raised no point of law or any record fact that this Commission overlooked or failed to take into consideration in reaching its decision. DEF characterizes OPC’s argument as an attempt to constrain the Commission’s broad authority and discretion to set fair and reasonable rates and charges.<sup>3</sup> Nor does DEF agree with

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<sup>1</sup> *Southern Alliance for Clean Energy v. Graham*, 113 So. 3d 742, 750 (Fla. 2013).

<sup>2</sup> *Department of Transportation v. J.W.C. Company*, 396 So. 2d 778, 788 (Fla. 1<sup>st</sup> DCA 1981).

<sup>3</sup> Section 366.05(1)(a), F.S.; *Citizens of Florida v. Public Service Commission*, 425 So. 2d 534, 540 (Fla. 1982)(This Court has consistently recognized the broad legislative grant of authority which these statutes [Section 366.05(1)

OPC's contention that there is no Commission precedent for "mitigation" in a prudence determination citing *In re: Petition on Behalf of Citizens of the State of Florida to Require Progress Energy Florida, Inc. to Refund Customers \$143 million* (Progress Energy).<sup>4</sup> In *Progress Energy*, the Commission found that the utility was imprudent in purchasing from its affiliated companies only higher cost bituminous coal and synfuel for its Crystal River Units 4 and 5 (CR4 and CR5) from 2001 to 2005 and excluding the purchase of Powder River Basin (PRB) to be used in a 50/50 blend with bituminous coal. However, due to the fact that it would have taken Progress Energy 14 months to obtain a Title V permit amendment to burn PRB blended coal in CR4 and CR5, the Commission limited the replacement fuel cost refund to the period from 2003 until 2005. Given these facts, DEF argues that it is clear that the Commission has modified fuel cost recovery prudence determination amounts when justified by the evidence of record.

Finally, DEF argues that OPC has not raised any law or fact that was overlooked by the Commission in reaching its finding. Nor has OPC cited any statute, rule, or precedent prohibiting an allocation of replacement power costs once a determination of imprudence is made. On the contrary, DEF contends that OPC simply disagrees with the conclusion reached by the Commission and wants the Commission to reweigh the evidence presented to it at hearing and reach a different conclusion.

### **Analysis**

In this case all parties agree that the standard to be applied in evaluating whether reconsideration should be granted is whether the motion for reconsideration identifies a point of fact or law that was overlooked or that the Commission failed to consider in rendering its Final Order. The parties' disagreement centers on whether mitigating factors can be taken into account once a finding of imprudence is made. OPC argues that either the facts support a finding of imprudence, in which case 100 percent of replacement power costs are charged to the utility, or the utility acted prudently, in which case 100 percent of the replacement power costs are charged to the ratepayers. Staff disagrees.

Rate setting for electric utilities is a legislative function delegated to the Commission pursuant to the provisions of Chapters 350 and 366, F.S.<sup>5</sup> The delegation of legislative and judicial power to agencies and commissions is recognized by both case law and Section 1, Article V of the 1968 Constitution.<sup>6</sup> The Commission's orders must be based on competent, substantial evidence. The ability to weigh the evidence in the record and craft an appropriate remedy is solely within the Commission's discretion.

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and 366.06(2), F.S.] confer and the considerable license the Commission enjoys as a result of this delegation."); *Storey v. Mayo*, 217 So. 2d 304, 307 (Fla. 1968)("The powers of the Commission over these privately-owned utilities is omnipotent within the confines of the statute and the limits of organic law.")

<sup>4</sup> Order No. PSC-2007-0816-FOF-EI, issued October 10, 2007, in Docket No. 20060658-EI.

<sup>5</sup> *In re: Advisory Opinion to the Governor*, 223 So. 2d 35, 38 (Fla. 1969); *United Telephone Company of Florida v. Mayo*, 345 So. 2d 648, 654 (Fla. 1977)("The fixing of rates is not a judicial function; hence our right to review the conclusion of the legislature or of an administrative body acting upon authority delegated by the legislature is limited.")

<sup>6</sup> *Id.* at pp. 38-39.

There is evidence of record to support an apportionment of replacement power costs in this case. DEF did not follow the Standard Operating Procedure (SOP) for synchronizing CR4 to the grid using either automatic or manual methods. Upon the failure of the automatic synchronization three times, the operator attempted to reset the synchronization circuit to permit automatic synchronization, a process that was not contained in the SOP but that he had successfully done several times before. This reset process relied upon the Beckwith Manual Sync Check Relay (relay) being operational. The operator believed the relay to be operational based on his past experience, his training, and the fact that the relay had been tested repeatedly over the last several years. Unfortunately, the relay did not work and the unit was damaged. However, the operator had no way of knowing that the relay would not work. Had it done so, there would have been no damage to the unit. Under these circumstances, DEF acted both unreasonably in failing to follow either an automatic or manual synchronization SOP, and reasonably in using a method that had successfully been used before under similar circumstances to reset the synchronization circuit under the assumption the relay was operational. The Commission recognized these circumstances and adjusted the replacement power costs accordingly. Just as the Commission recognized that Progress Energy could not have burned PRB blended coal without a permit change, and reduced the replacement power cost period to a two year period, the Commission here has recognized that the employee's expectation that the relay was operational was reasonable and made appropriate adjustments.<sup>7</sup>

Finally, OPC does not identify a point of fact or law that was overlooked or failed to be considered by the Commission in reaching its final decision. OPC simply would have reached a different conclusion given the facts in the record. As stated above, motions for reconsideration are not vehicles to reargue your case in order to obtain a more favorable decision.<sup>8</sup>

## Conclusion

Staff recommends that the Office of Public Counsel's Motion for Reconsideration be denied because it does not meet the required standard for a motion for reconsideration. OPC has failed to identify any point of fact or law that was overlooked or that the Commission failed to consider in rendering Order No. PSC-2021-0466-FOF-EI, Order Approving Crystal River Unit 4 Replacement Power Costs for Duke Energy Florida, LLC.

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<sup>7</sup> The Commission's ability to craft a reasonable alternative based on the evidence of record was also recognized by the Court in *Gulf Power Company v. Florida Public Service Commission (Gulf)*, 453 So. 2d 799 (Fla 1984). In *Gulf*, the Commission rejected both Gulf's calculations of coal inventory based on Gulf's 60-day nameplate capacity and Commission staff's calculations based on 90-day projected burn level as both being without sufficient empirical support. Faced with this scenario, the Commission used the facts in the record to "reduce the Company's proposed 60-day nameplate value by one-half of the difference between it and the Staff's proposed 90-day projected burn value, \$8,994,424." *Gulf*, 453 So. 2d at 805. The Commission reduced Gulf's requested amount "to a level that we believe to be within a zone of reasonableness" because "we cannot permit the Company to benefit from its failure to carry its burden of proof." *Id.* The Court upheld the Commission's action finding that the Commission was "within its discretionary authority on this issue." *Id.*

<sup>8</sup> *Diamond Cab Company v. King*, 146 So. 2d 889, 891 (Fla. 1964).

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

**Recommendation:** No, this docket is a continuing docket and should remain open.  
(Brownless)

**Staff Analysis:** No, this docket is a continuing docket and should remain open.

# 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:** January 20, 2022

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

**FROM:** Division of Engineering (M. Watts, Ramos) *TB*  
Division of Accounting and Finance (Blocker, Fletcher) *ALM*  
Division of Economics (Bruce) *JGH*  
Office of the General Counsel (J. Crawford) *JSC*

**RE:** Docket No. 20210093-WS – Application for transfer of water and wastewater systems of Aquarina Utilities, Inc., water Certificate No. 517-W, and wastewater Certificate No. 450-S to CSWR-Florida Utility Operating Company, LLC, in Brevard County.

**AGENDA:** 02/01/22 – Regular Agenda – Proposed Agency Action for Issues 2 and 3 - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Please place item on Agenda immediately before Docket No. 20210095-WU.

### Case Background

Aquarina Utilities, Inc. (AUI, Utility, or Seller) is a Class B water and wastewater utility providing water and wastewater services in Brevard County to 320 potable water, 119 non-potable water, and 342 wastewater customers. The service territory is located in the St. Johns River Water Management District (SJRWMD) and is in a Water Resource Caution Area. In its 2020 Annual Report, AUI reported operating revenues of \$216,791 for potable water, \$203,867 for non-potable water, and \$234,542 for wastewater service. The Utility's rates and charges were

last approved in a 2020 limited alternative rate case.<sup>1</sup> The Utility's last staff assisted rate case was in 2019.<sup>2</sup>

The Utility has been providing service to customers in Brevard County since 1984. In 1989, the Commission granted the Utility original Certificate Nos. 517-W and 450-S.<sup>3</sup> Since its certification, the Utility has experienced two territory amendments, a corporate reorganization, a name change, two transfers of majority organizational control, and a transfer.<sup>4</sup>

On May 3, 2021, CSWR-Florida Utility Operating Company, LLC (CSWR-Aquarina or Buyer) filed an application with the Commission for the transfer of Certificate Nos. 517-W and 450-S from AUI to CSWR-Aquarina in Brevard County. The sale will close after the Commission has voted to approve the transfer. In its application, the Buyer has requested a positive acquisition adjustment, which is discussed in Issue 3.

Intervention by the Office of Public Counsel (OPC) was acknowledged on August 24, 2021. OPC and staff have issued a number of discover or data requests to CSWR-Aquarina in this docket.

This recommendation addresses the transfer of the water and wastewater systems and Certificate Nos. 517-W and 450-S, the appropriate net book value of the water and wastewater systems for transfer purposes, and the request for an acquisition adjustment. The Commission has jurisdiction pursuant to Sections 367.071 and 367.081, Florida Statutes (F.S.).

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<sup>1</sup> Order No. PSC-2020-0158-PAA-WS, issued May 15, 2020, in Docket No. 20190080-WS, *In re: Application for limited proceeding rate increase in Brevard County, by Aquarina Utilities, Inc.*

<sup>2</sup> Order No. PSC-2019-0139-PAA-WS, issued April 22, 2019, in Docket No. 20150010-WS, *In re: Application for staff-assisted rate case in Brevard County by Aquarina Utilities, Inc.*, Order approving Phase II rates for potable water and wastewater.

<sup>3</sup> Order No. 22075, issued October 19, 1989, in Docket No. 19880595-WS, *In re: Objections to application by Service Management Systems, Inc. for water and sewer certificates in Brevard County.*

<sup>4</sup> Order No. 23059, issued June 11, 1990, in Docket No. 19900167-WS, *In re: Application for amendment of Certificates Nos. 517-W and 450-S in Brevard County by Aquarina Developments, Inc.*; Order No. PSC-92-0119-FOF-WS, issued March 30, 1992, in Docket No. 19911129-WS, *In re: Application for amendment of Certificates Nos. 517-W and 450-S in Brevard County by Aquarina Developments, Inc.*; Order No. PSC-97-0206-FOF-WS, issued February 21, 1997, and Order No. PSC-97-0206A-FOF-WS, issued March 5, 1997, in Docket No. 19960095-WS, *In re: Application for name change on Certificates Nos. 517-W and 450-S in Brevard County from Aquarina Developments, Inc. to Service Management Systems, Inc.*; Order No. PSC-97-0918-FOF-WS, issued August 4, 1997, in Docket No. 19970093-WS, *In re: Application for approval of transfer of majority organizational control of Certificates Nos. 517-W and 450-S in Brevard County from Service Management Systems, Inc. to Petrus Group, L.P.*; Order No. PSC-03-0787-FOF-WS, issued July 2, 2003, and Order No. PSC-03-1098-FOF-WS, issued October 2, 2003, in Docket No. 20020091-WS, *In re: Application for transfer of majority organizational control of Service Management Systems, Inc., holder of Certificates Nos. 517-W and 450-S in Brevard County, from Petrus Group, L.P. to IRD Osprey, LLC d/b/a Aquarina Utilities*; Order No. PSC-12-0577-PAA-WS, issued October 25, 2012, in Docket No. 20110061-WS, *In re: Application for authority to transfer assets and Certificate Nos. 517-W and 450-S of Service Management Systems, Inc. to Aquarina Utilities, Inc., in Brevard County.*

## Discussion of Issues

**Issue 1:** Should the transfer of Certificate Nos. 517-W and 450-S in Brevard County from Aquarina Utilities, Inc. to CSWR-Florida Utility Operating Company, LLC be approved?

**Recommendation:** Yes. The transfer of the water and wastewater systems and Certificate Nos. 517-W and 450-S is in the public interest and should be approved effective the date that the sale becomes final. The resultant Order should serve as the Buyer's certificate and should be retained by the Buyer. The Buyer should submit the executed and recorded deed for continued access to the land upon which its facilities are located and copies of its permit transfer applications to the Commission within 60 days of the Order approving the transfer, which is final agency action. If the sale is not finalized within 60 days of the transfer Order, the Buyer should file a status update in the docket file. The Utility's existing rates and charges, including the modification to miscellaneous service charges pursuant to Rule 25-30.460, Florida Administrative Code (F.A.C.), should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. The Seller is current with respect to annual reports and regulatory assessment fees (RAFs) through December 31, 2020. The Seller should be responsible for filing annual reports and paying RAFs for 2021, and the Buyer should be responsible for filing the annual reports and paying RAFs for all future years. (M. Watts, Blocker, Bruce)

**Staff Analysis:** On May 3, 2021, CSWR-Aquarina filed an application for the transfer of Certificate Nos. 517-W and 450-S from AUI to CSWR-Aquarina in Brevard County. The application is in compliance with Section 367.071, F.S., and Commission rules concerning applications for transfer of certificates. The sale to CSWR-Aquarina will become final after Commission approval of the transfer, pursuant to Section 367.071(1), F.S.

### Noticing, Territory, and Land Ownership

CSWR-Aquarina provided notice of the application pursuant to Section 367.071, F.S., and Rule 25-30.030, F.A.C. No objections to the transfer were filed, and the time for doing so has expired. The application contains a description of the service territory which is appended to this recommendation as Attachment A. In its response to staff's August 16, 2021 deficiency letter, CSWR-Aquarina provided a copy of an unrecorded warranty deed as evidence that the Buyer will have rights to long-term use of the land upon which the treatment facilities are located pursuant to Rule 25-30.037(2)(s), F.A.C. CSWR-Aquarina should submit the executed and recorded deed to the Commission within 60 days of the Order.

### Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(g), (h), and (i), F.A.C., the application contains a statement regarding financing and a copy of the purchase and sale agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. There are no guaranteed revenue contracts, customer advances, or debt of AUI that must be disposed of with regard to the transfer. CSWR-Aquarina will review all leases and developer agreements and will assume or renegotiate those agreements on a case-by-case basis prior to closing. Any customer deposits will be refunded to customers by the Seller prior to the closing. According to the purchase and sale



agreement, the total purchase price for the assets is \$2,500,000. The Seller has allocated \$825,000, \$775,000, and \$900,000 of the purchase price to potable water, non-potable water, and wastewater systems, respectively. According to the Buyer, the closing has not yet taken place and is dependent on Commission approval of the transfer, pursuant to Section 367.071(1), F.S.

### **Facility Description and Compliance**

The AUI water system consists of three potable wells and is permitted by the SJRWMD to withdraw 0.43 million gallons per day (MGD) on an annual average basis. However, only two wells are currently connected to the water system and in production. The two production wells have a combined capacity of 2.0 MGD. Both wells pump water into the non-potable storage tank. Water for the potable system is pumped from the non-potable storage tank into a reverse-osmosis (RO) system for purification. The water is then chlorinated, pumped into a potable ground storage tank, and ultimately drawn into a hydro-pneumatic tank for distribution to the potable water system. Water for the non-potable irrigation system is distributed directly from the non-potable storage tank via two pumps that service the fire protection and common area irrigation systems.

The wastewater treatment plant is permitted to treat .099 MGD on an annual average daily flow. The wastewater treatment plant is authorized to accept and treat RO reject water from the existing Aquarina RO water treatment plant. Flows, including RO reject water, are limited to .099 MGD, the permitted capacity of the existing disposal system. CSWR-Aquarina provided copies of the Utility's current permits from the Florida Department of Environmental Protection (DEP) and SJRWMD pursuant to Rule 25-30.037(2)(r)1, F.A.C. The Buyer should provide copies of its permit transfer applications, reflecting the change in ownership, to the Commission, within 60 days of the Order.

Staff reviewed the most recent sanitary survey and water quality tests submitted to the DEP, and the water treatment system appears to be in compliance with all applicable standards set by the DEP. Staff also reviewed the DEP compliance evaluation inspections (CEI) for the wastewater treatment plant. The DEP's November 1, 2019, CEI characterized all elements of the inspection as "in-compliance." In Exhibit G of the Buyer's application, CSWR-Aquarina provides its assessment of AUI's water and wastewater treatment plants, and lists several improvements and repairs it recommends be made to the systems. The Buyer's suggested repairs and improvements, which do not appear to be required by a governmental authority, are discussed further in Issue 3.

### **Technical and Financial Ability**

Pursuant to Rule 25-30.037(2)(l) and (m), F.A.C., the application contains statements describing the technical and financial ability of the Buyer to provide service to the proposed service area. As referenced in the transfer application, the Buyer will fulfill the commitments, obligations, and representation of the Seller with regards to utility matters. CSWR-Aquarina's application states that it owns and operates more than 257 water/wastewater systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, and Tennessee that currently serve more than 48,860 water and 77,595 wastewater customers. The Buyer plans to use qualified and licensed contractors to provide routine operation and maintenance of the systems, as well as to handle billing and customer service. Staff reviewed the financial statements of CSWR-Aquarina and believes the Buyer has documented adequate resources to support the Utility's water and wastewater

operations.<sup>5</sup> Based on its review, staff recommends that the Buyer has demonstrated the technical and financial ability to provide service to the existing service territory.

### **Rates and Charges**

The Utility's rates and charges were last approved in a 2020 limited alternative rate case.<sup>6</sup> The Commission approved the Utility's late payment charge in 2014.<sup>7</sup> The miscellaneous service charges and service availability charges were amended in 2016.<sup>8</sup> Since the Utility's last rate case, the rates have been changed by two price index rate increases for water and one price index rate increase for wastewater. The Utility had a rate decrease to remove an expired rate case expense amortization. Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a Utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by the Commission. Therefore, staff recommends that the Utility's existing rates and service availability charges as shown on Schedule No. 1-A, remain in effect, until a change is authorized by the Commission in a subsequent proceeding.

With respect to miscellaneous service charges, effective June 24, 2021, Rule 25-30.460, F.A.C., was amended to remove initial connection and normal reconnection charges.<sup>9</sup> The definitions for initial connection charges and normal reconnection charges were subsumed in the definition of the premises visit charge. It was envisioned that utility tariffs would be reviewed by staff on a prospective basis to ensure conformance with the amended rule.

The Utility's current tariff contains an initial connection charge (\$26), a normal reconnection charge (\$38), and a premises visit charge (\$26). The normal reconnection charge is more than the premises visit charge. Since the premises visit now entails a broader range of tasks, staff believes the premises visit charge should be revised to reflect the amount of the normal reconnection charge of \$38. Therefore, staff recommends that the initial connection and normal reconnection charges be removed, the premises visit charge be revised to \$38, and the definition for the premises visit charge be updated. The appropriate miscellaneous service charges are shown on Schedule No. 1-B.

### **Regulatory Assessment Fees and Annual Report**

Staff has verified that the Utility is current on the filing of annual reports and RAFs through December 31, 2020. The Seller will be responsible for filing the Utility's annual report and paying RAFs for 2021, and the Buyer will be responsible for filing the Utility's annual reports and paying RAFs for all future years.

### **Conclusion**

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<sup>5</sup> Document No. 03889-2021 (Confidential), filed May 4, 2021.

<sup>6</sup> Order No. PSC-2020-0158-PAA-WS, issued May 15, 2020, in Docket No. 20190080-WS, *In re: Application for limited proceeding rate increase in Brevard County, by Aquarina Utilities, Inc.*

<sup>7</sup> Order No. PSC-14-0105-TRF-WS, issued February 20, 2014, in Docket No. 20130288-WS, *In re: Request for approval of late payment charge in Brevard County by Aquarina Utilities, Inc.*

<sup>8</sup> Order No. PSC-16-0583-PAA-WS, issued December 29, 2016, in Docket No. 20150010-WS, *In re: Application for staff-assisted rate case in Brevard County by Aquarina Utilities, Inc.*

<sup>9</sup> Order No. PSC-2021-0201-FOF, issued June 4, 2020, in Docket No. 20200240-WS, *In re: Proposed amendment of Rule 25-30.460, F.A.C., Application for Miscellaneous Service Charges.*

Based on the foregoing, staff recommends the transfer of the water and wastewater systems and Certificate Nos. 517-W and 450-S is in the public interest and should be approved effective the date that the sale becomes final. The resultant Order should serve as the Buyer's certificate and should be retained by the Buyer. The Buyer should submit the executed and recorded deed for continued access to the land upon which its facilities are located and copies of its permit transfer applications to the Commission within 60 days of the Order approving the transfer, which is final agency action. If the sale is not finalized within 60 days of the transfer Order, the Buyer should file a status update in the docket file. The Utility's existing rates and charges including the modification to miscellaneous service charges pursuant to Rule 25-30.460, F.A.C., should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. The Seller is current with respect to annual reports and RAFs through December 31, 2020. The Seller should be responsible for filing annual reports and paying RAFs for 2021, and the Buyer should be responsible for filing the annual reports and paying RAFs for all future years.

**Issue 2:** What is the appropriate net book value for the CSWR-Aquarina potable water, non-potable water, and wastewater systems for transfer purposes?

**Recommendation:** For transfer purposes, the net book value (NBV) of potable water, non-potable water, and wastewater systems is \$278,878, \$262,867, and \$82,768, respectively, as of August 16, 2021. Within 90 days of the date of the Consummating Order, CSWR-Aquarina should be required to notify the Commission in writing, that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in CSWR-Aquarina's 2022 Annual Report when filed. (Blocker)

**Staff Analysis:** Rate base was last established on December 29, 2016, in Order No. PSC-2016-0583-PAA-WS.<sup>10</sup> The purpose of establishing NBV for potable water, non-potable water, and wastewater systems for transfers is to determine whether an acquisition adjustment should be approved. CSWR-Aquarina's request for a positive acquisition adjustment is addressed in Issue 3. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. The Utility's NBV has been updated to reflect balances as of August 16, 2021.<sup>11</sup> Staff's recommended NBV, as described below, is shown on Schedule No. 2.

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

According to the Utility's general ledger, the potable water, non-potable water, and wastewater UPIS balances were \$1,735,739, \$1,120,935, and \$1,686,513, respectively, as of August 16, 2021. Staff auditors reviewed the Utility's records since the last rate case and determined that several Commission-ordered adjustments were incorrectly recorded. Additionally, staff auditors reviewed plant additions and retirements to UPIS from December 31, 2014, to August 16, 2021, and determined that several other adjustments are necessary. Accordingly, staff recommends that the UPIS balances for potable water, non-potable water, and wastewater be reduced by \$140,084, \$42,946, and \$51,566, respectively, as of August 16, 2021.

### **Land**

The Utility's general ledger reflected potable water, non-potable water, and wastewater land balances of \$37,582, \$24,498, and \$33,680, respectively, as of August 16, 2021. There have been no additions to land since December 31, 2014. Therefore, staff recommends no adjustments to its land balances.

### **Accumulated Depreciation**

The Utility's general ledger reflected potable water, non-potable water, and wastewater accumulated depreciation balances of \$1,331,136, \$852,057, and \$1,487,140, respectively, as of August 16, 2021. Staff reviewed the Utility's records since the last rate case and determined that Commission-ordered adjustments were incorrectly recorded. Additionally, the Utility did not record any accumulated depreciation in 2017 or any retirements since the last rate case. Staff recalculated depreciation accruals for all water and wastewater accounts since that last rate case

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<sup>10</sup> Order No. PSC-16-0583-PAA-WS, issued December 29, 2016, in Docket No. 20150010-WS, *In re: Application for staff-assisted rate case in Brevard County by Aquarina Utilities, Inc.*

<sup>11</sup> Net book value is calculated through the date of the closing. According to the Utility's application, the closing will not occur until after the transaction receives Commission approval. Therefore, staff is relying on the most current information provided to staff auditors at the time of the filing.

through August 16, 2021, using audited UPIS balances and the depreciation rates established by Rule 25-30.140, F.A.C. Accordingly, staff recommends that the accumulated depreciation balances for potable water, non-potable water, and wastewater be reduced by \$140,848, \$30,533, and \$49,009, respectively, as of August 16, 2021.

### **Contributions-in-Aid-of-Construction (CIAC) and Accumulated Amortization of CIAC**

The Utility's general ledger reflected potable water, non-potable water, and wastewater CIAC balances of \$362,028, \$35,785, and \$605,133, respectively, as of August 16, 2021. The Utility's general ledger also reflected potable water, non-potable water, and wastewater accumulated amortization of CIAC balances of \$201,870, \$23,662, and \$428,254, respectively, as of August 16, 2021. Staff traced CIAC and accumulated amortization of CIAC balances from December 31, 2014, to August 16, 2021, using supporting documentation. Staff determined that the Utility did not start with the Commission-approved balances in Order No. PSC-16-0583-PAA-WS.<sup>12</sup> Staff recalculated CIAC using the audited plant balances and depreciation rates established by Rule 25-30.140(2), F.A.C. Staff also recalculated accumulated amortization of CIAC using the audited CIAC balances and the rates established by Rule 25-30.140(2), F.A.C. Accordingly, staff recommends that the CIAC balances for potable water, non-potable water, and wastewater be increased by \$11,495, \$11,851, and \$7,362, respectively, as of August 16, 2021. Staff also recommends that the accumulated amortization of CIAC balances for potable water, non-potable water, and wastewater be increased by \$7,582, \$5,878, and \$36,514, respectively, as of August 16, 2021.

### **Net Book Value**

The Utility's general ledger reflected a NBV of \$282,027, \$281,253, and \$56,174 for potable water, non-potable water, and wastewater, respectively, as of August 16, 2021. Based on the adjustments described above, staff recommends a NBV of \$278,878, \$262,867, and \$82,768 for CSWR-Aquarina's potable water, non-potable water, and wastewater systems, respectively, as of August 16, 2021. Staff's recommended NBV and the National Association of Regulatory Utility Commissioners, Uniform System of Accounts (NARUC USOA) balances for UPIS and accumulated depreciation are shown on Schedule No. 2 as of August 16, 2021. As addressed in Issue 3, a positive acquisition adjustment should not be recognized for rate making purposes.

### **Conclusion**

Based on the above, staff recommends that for transfer purposes the NBV of CSWR-Aquarina's potable water, non-potable water, and wastewater systems is \$278,878, \$262,867, and \$82,768, respectively, as of August 16, 2021. Within 90 days of the date of the Consummating Order, the Buyer should be required to notify the Commission in writing, that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in CSWR-Aquarina's 2022 Annual Report when filed.

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<sup>12</sup> Order No. PSC-16-0583-PAA-WS, issued December 29, 2016, in Docket No. 20150010-WS, *In re: Application for staff-assisted rate case in Brevard County by Aquarina Utilities, Inc.*

**Issue 3:** Should a positive acquisition adjustment be recognized for ratemaking purposes?

**Recommendation:** No. Pursuant to Rule 25-30.0371, F.A.C., a positive acquisition adjustment should not be granted as the Buyer failed to demonstrate extraordinary circumstances. (Blocker, M. Watts)

**Staff Analysis:** In its filing, the Buyer requested a positive acquisition adjustment be included in the calculation of CSWR-Aquarina's rate base. An acquisition adjustment results when the purchase price differs from the NBV of the assets at the time of acquisition. Pursuant to Rule 25-30.0371, F.A.C., a positive acquisition adjustment results when the purchase price is greater than the NBV and a negative acquisition adjustment results when the purchase price is less than the NBV. A positive acquisition adjustment, if approved, increases rate base.

According to the purchase agreement, the Buyer purchased the Utility for \$2,500,000. The Buyer has allocated \$825,000, \$775,000, and \$900,000 of the purchase price to potable water, non-potable water and wastewater, respectively. As discussed in Issue 2, staff is recommending a total NBV for the potable water, non-potable water and wastewater systems of \$624,513 (\$278,878 + \$262,867 + \$82,768). This would result in a total positive acquisition adjustment of \$1,875,487.

Any entity that believes a full or partial positive acquisition adjustment should be made has the burden to prove the existence of extraordinary circumstances. Rule 25-30.0371(2), F.A.C., states:

In determining whether extraordinary circumstances have been demonstrated, the Commission shall consider evidence provided to the Commission such as anticipated improvements in quality of service, anticipated improvements in compliance with regulatory mandates, anticipated rate reductions or rate stability over a long-term period, anticipated cost efficiencies, and whether the purchase was made as part of an arms-length transaction.

One of the Buyer's justifications for the purchase price is to ensure sale proceeds are sufficient to pay off the Seller's long-term debt obligations. While the factors listed in the rule are listed by way of example and other evidence may be offered, the purpose of the rule is to provide incentive for the acquisition of small, troubled systems, the elimination of substandard operating conditions, and allow customers to receive benefits which amount to a better quality of service at a reasonable rate. Order No. PSC-02-0997-FOF-WS, issued July 23, 2002, in Docket No. 20001502-WS, *In re: Proposed Rule 25-30.0371, F.A.C., Acquisition Adjustment*. The items enumerated in the rule are consistent with the promotion of benefits to customers and bringing troubled systems into regulatory compliance; paying off the Seller's long-term debt obligation is not.

Staff believes the Buyer failed to demonstrate the extraordinary circumstances necessary to support the inclusion of a positive acquisition adjustment, as discussed below.

### **Improvements in Quality of Service and Compliance with Regulatory Mandates**

In its application, CSWR-Aquarina listed six business practices that it believes will improve the quality of service to its customers: (1) provision of 24-hour emergency service phone numbers; (2) on-call emergency service personnel who are required to respond to emergency service calls within prescribed time limits; (3) a computerized maintenance management system; (4) access to resources not usually available to comparably sized systems and the ability to supplement local personnel with resources owned by the parent and sister companies; (5) online bill payment options; and (6) an updated website for customer communication, bulletins, procedures, etc.

Staff reviewed the complaints filed with the Commission for the five-year period prior to the application, May 2016 to May 2021. The Commission recorded a total of 31 complaints out of its approximately 330 customers, pertaining to billing (3 complaints), quality of service (5 complaints), outages (15 complaints), water quality/pressure (2 complaints), repair (3 complaints), or delay in connection (3 complaints). Twenty of the 31 total complaints were received on May 8 and 9, 2017, and were related to a single event at the water treatment plant caused by a power surge due to a faulty transformer, which was replaced by Florida Power & Light Company. In 2017, AUI made some improvements to its nonpotable water system to address the problems that caused the complaints relating to that system, for which it requested recovery as part of a limited proceeding in 2019.<sup>13</sup> There were no complaints involving the wastewater treatment system. Based on the foregoing analysis, AUI appears to respond and resolve customer complaints in a timely manner. Additionally, a majority of the Utility's customer complaints were attributable to a single event beyond the Utility's control. As discussed in Issue 1, the Utility is currently in compliance with the DEP's rules and regulations. Staff also reviewed the DEP inspection reports for the three years prior to the Utility's transfer application and found that the Utility was also in compliance during that time frame after correcting minor deficiencies identified by the DEP. There was no record of DEP compliance enforcement action within the past three years and there appears to be no pending regulatory requirements from any governmental authority.

Based on the Commission's complaint data and the DEP's reports, it does not appear that AUI currently has issues with respect to quality of service and regulatory compliance such that they would warrant extraordinary efforts to remedy. For this reason, staff does not believe the Utility has demonstrated extraordinary circumstances for its requested positive acquisition adjustment. Instead, staff believes that the proposed anticipated improvements in quality of service and compliance with regulatory mandates demonstrates CSWR-Aquarina's intention to responsibly execute its obligations as a utility owner. While staff does not believe the Utility's anticipated improvements justify its requested positive acquisition adjustment, these improvements may be considered for prudence and cost recovery in a future rate proceeding.

### **Anticipated Cost Efficiencies**

In its application, the Buyer stated that based on its size and anticipated consolidation of many small systems under one financial and managerial entity would result in operational cost efficiencies particularly in the areas of:

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<sup>13</sup> Order No. PSC-2020-0158-PAA-WS, issued May 15, 2020, in Docket No. 20190080-WS, *In re: Application for limited proceeding rate increase in Brevard County, by Aquarina Utilities, Inc.*

- PSC and environmental regulatory reporting
- Managerial and operational oversight
- Utility asset planning
- Engineering planning
- Ongoing utility maintenance
- Utility record keeping
- Customer service responsiveness
- Improved access to capital necessary to repair and upgrade Aquarina to ensure compliance with all health and environmental requirements and ensure service to customers remains safe and reliable

The Buyer also stated that CSWR-Aquarina would bring long-term rate stability to the Utility, should the transfer be approved. Staff agrees that economies of scale and potential consolidation of several systems in Florida, as proposed by CSWR-Aquarina, could bring some amount of long-term rate stability. However, absent specific and detailed support for these assertions, the Buyer has failed to meet its burden for demonstrating extraordinary circumstances. Instead, much of the information provided by the Buyer lacks specificity and was provided nearly verbatim in each of the other two CSWR-Florida Utility Operating Company, LLC transfer dockets.<sup>14</sup>

Staff and OPC made several requests for quantifiable information to support the Buyer's assertions, such as anticipated rate impact and potential/projected cost efficiencies. The Buyer repeatedly stated that it was unable to provide quantitative information at the granularity requested by staff. However, staff does not believe its requests were unreasonable given that the burden of proof to support a positive acquisition adjustment lies with the Buyer. This is particularly true in the instant case when the requested relief is a positive acquisition adjustment of \$1,875,487, which is approximately three times greater than the system's current NBV of \$624,513. Further, in response to staff's first data request for an estimate and breakdown of projected operation and maintenance (O&M) expenses, the Buyer stated that the benefit from the increase in economies of scale and other advantages provided by CSWR-Aquarina would not necessarily be reflected in cost savings compared to current Aquarina operations.

Staff's recommendation is also consistent with the Commission's decision in Order No. PSC-2020-0458-PAA-WS.<sup>15</sup> In that docket, Royal Waterworks, Inc. (RWI) identified estimates of anticipated cost efficiencies, including a reduction in O&M expense and a reduction of cost of capital that would result from the transfer. Additionally, RWI provided several improvements it made to the water treatment plant and wastewater lift station since acquisition to improve the quality of service and compliance with regulatory mandates. While the Commission

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<sup>14</sup> Docket No. 20210095-WU, *In re: Application for transfer of water facilities of Sunshine Utilities of Central Florida, Inc. and Water Certificate No. 363-W to CSWR-Florida Utility Operating Company, LLC, in Marion County*, and Docket No. 20210133-SU, *In re: Application for transfer of water facilities of North Peninsula Utilities Corporation and Wastewater Certificate No. 249-S to CSWR-Florida Utility Operating Company, LLC, in Volusia County*.

<sup>15</sup> Order No. PSC-2020-0458-PAA-WS, issued November, 23, 2020, in Docket No. 20190170-WS, *In re: Application for transfer of facilities and Certificate Nos. 259-W and 199-S in Broward County from Royal Utility Company to Royal Waterworks, Inc.*



acknowledged that RWI accomplished cost savings, it did not believe the actions performed demonstrated extraordinary circumstances that would justify approval of a positive acquisition adjustment.<sup>16</sup>

### **Conclusion**

Pursuant to Rule 25-30.0371, F.A.C., staff believes a positive acquisition adjustment should not be granted as the Buyer did not demonstrate extraordinary circumstances. Staff believes the Buyer's anticipated improvements in quality of service and compliance with regulatory mandates does not illustrate extraordinary circumstances and instead demonstrates CSWR-Aquarina's intentions to responsibly execute its obligations as a utility owner. Additionally, the Seller's long-term debt is not a persuasive factor to be considered in the request of a positive acquisition adjustment pursuant to Rule 25-30.0371(2), F.A.C.

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<sup>16</sup> Although decided prior to the adoption of the acquisition adjustment rule in 2010, the Commission has previously denied a requested positive acquisition adjustment, stating that the utility relied primarily upon the improvement of service as a basis for a positive acquisition adjustment; however, "compliance with wastewater treatment standards is a requirement of statute and rule, and not an extraordinary circumstance which would warrant the allowance of a positive acquisition adjustment." Order No. 13578, issued August 9, 1984, in Docket No. 19830568-SU, *In re: Application of P.I. Utilities Co., Inc., for a Certificate to Operate a Sewer Utility in Volusia County, Florida, and Petition of Peninsula Utilities, Inc., to Substitute Applicant.*

**Issue 4:** Should this docket be closed?

**Recommendation:** Yes. If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the Order, a Consummating Order should be issued and the docket should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed, the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision, that the Buyer has submitted the executed and recorded warranty deed and that the Buyer has submitted copies of its applications for permit transfers to the DEP and the SJRWMD, within 60 days of the Commission's Order approving the transfer. (Crawford)

**Staff Analysis:** If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the Order, a Consummating Order should be issued and the docket should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed, the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision, that the Buyer has submitted the executed and recorded warranty deed and that the Buyer has submitted copies of its applications for permit transfers to the DEP and the SJRWMD, within 60 days of the Commission's Order approving the transfer.

**TERRITORY DESCRIPTION**  
**CSWR-Florida Utility Operating Company, LLC**  
**Brevard County**  
**Water and Wastewater Service**

A PORTION OF SECTIONS 25, 26, 35 AND 36, TOWNSHIP 29 SOUTH, RANGE 38 EAST, AND SECTION 31, TOWNSHIP 29 SOUTH, RANGE 39 EAST, BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE WEST 1/4 CORNER OF SAID SECTION 25 AND RUN N00°18'50"W ALONG THE WEST LINE OF SAID SECTION 25 A DISTANCE OF 1,340.83 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF SAID SECTION 25; THENCE RUN S88°31'07"E ALONG NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF SECTION 25 A DISTANCE OF 1,351 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE ATLANTIC OCEAN; THENCE RUN SOUTHERLY ALONG SAID MEAN HIGH WATER LINE THROUGH SAID SECTIONS 25, 36, AND 31 A DISTANCE OF 9,203 FEET MORE OR LESS TO THE EASTERLY EXTENSION OF THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH 1/2 OF SAID SECTION 36; THENCE RUN N88°23'42"W ALONG SAID LINE AND THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH 1/2 OF SECTION 36 A DISTANCE OF 790 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF THE INDIAN RIVER; THENCE RUN NORTHERLY ALONG THE MEAN HIGH WATER LINE OF THE INDIAN RIVER AND MULLET CREEK 8,315 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SECTION 26; THENCE RUN S88°22'47"E ALONG THE SOUTH LINE OF SAID SECTION 26 A DISTANCE OF 982 FEET TO THE COMMON CORNER OF SAID SECTIONS 25, 26, 35 AND 36; THENCE RUN ALONG THE WEST LINE OF SAID SECTION 25 N00°19'34"W 1,327.58 FEET TO THE SOUTHEAST CORNER OF GOVERNMENT LOT 3 OF SAID SECTION 26; THENCE RUN N88°30'25"W ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT 3 A DISTANCE OF 1,276 FEET MORE OR LESS TO THE MEAN HIGH WATER LINE OF MULLET CREEK; THENCE RUN NORTHERLY ALONG THE MEAN HIGH WATER LINE OF MULLET CREEK 1,903 FEET MORE OR LESS TO THE NORTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 26; THENCE RUN S88°31'12"E ALONG THE NORTH LINE OF THE SOUTHEAST 1/4 OF SECTION 26 A DISTANCE OF 2,431 FEET MORE OR LESS TO THE POINT OF BEGINNING.

**FLORIDA PUBLIC SERVICE COMMISSION  
authorizes  
CSWR-Florida Utility Operating Company, LLC  
pursuant to  
Certificate Number 517-W**

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

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
Order No. 22075	10/19/89	19880595-WS	Original Certificate
Order No. 23059	06/11/90	19900167-WS	Territory Amendment
PSC-92-0119-FOF-WS	03/30/92	19911129-WS	Territory Amendment
PSC-97-0206-FOF-WS	02/21/97	19960095-WS	Name Change
PSC-97-0206A-FOF-WS	03/05/97	19960095-WS	Amendatory Order
PSC-97-0918-FOF-WS	08/04/97	19970093-WS	Transfer Majority Control
PSC-03-0787-FOF-WS	07/02/03	20020091-WS	Transfer Majority Control
PSC-03-1098-FOF-WS	10/02/03	20020091-WS	Amendatory Order
PSC-10-0329-FOF-WS	05/24/10	20100094-WS	Receiver Appointed
PSC-12-0577-PAA-WS	10/25/12	20110061-WS	Transfer
*	*	20210093-WS	Transfer

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

**FLORIDA PUBLIC SERVICE COMMISSION  
authorizes  
CSWR-Florida Utility Operating Company, LLC  
pursuant to  
Certificate Number 450-S**

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

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
Order No. 22075	10/19/89	19880595-WS	Original Certificate
Order No. 23059	06/11/90	19900167-WS	Territory Amendment
PSC-92-0119-FOF-WS	03/30/92	19911129-WS	Territory Amendment
PSC-97-0206-FOF-WS	02/21/97	19960095-WS	Name Change
PSC-97-0206A-FOF-WS	03/05/97	19960095-WS	Amendatory Order
PSC-97-0918-FOF-WS	08/04/97	19970093-WS	Transfer Majority Control
PSC-03-0787-FOF-WS	07/02/03	20020091-WS	Transfer Majority Control
PSC-03-1098-FOF-WS	10/02/03	20020091-WS	Amendatory Order
PSC-10-0329-FOF-WS	05/24/10	20100094-WS	Receiver Appointed
PSC-12-0577-PAA-WS	10/25/12	20110061-WS	Transfer
*	*	20210093-WS	Transfer

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

**CSWR – Florida Utility Operating Company, LLC  
(Aqarina Utilities, Inc.)  
Monthly Water Rates**

**Residential and General Service**

Base Facility Charge by Meter Size

5/8" x 3/4"	\$23.10
3/4"	\$34.65
1"	\$57.75
1 1/2"	\$115.50
2"	\$184.80
3"	\$369.60
4"	\$577.50
6"	\$1,155.00

Charge Per 1,000 gallons – General Service \$8.37

**Irrigation Service**

Base Facility Charge by Meter Size

5/8" x 3/4"	\$11.47
3/4"	\$17.21
1"	\$28.68
1 1/2"	\$57.35
2"	\$91.76
3"	\$200.73
4"	\$286.75
6"	\$573.50
8"	\$1,032.30

Charge Per 1,000 gallons – Irrigation Service \$1.60

**Initial Customer Deposits**

**Residential Service and General Service**

5/8" x 3/4" \$82.00  
All over 5/8" x 3/4" 2x Average Estimated Bill

**Service Availability Charges**

**Potable Service**

Main Extension Charge

Residential per ERC (350 GPD)	\$500.00
All others per gallon	\$1.43

Meter Installation Charge

5/8" x 3/4"	\$150.00
All other meter sizes	Actual Cost

Plant Capacity Charge

Residential per ERC (350 GPD)	\$780.00
All others per gallon	\$2.23

**Non-Potable Service**

Main Extension Charge

Residential per ERC (350 GPD)	\$50.00
All others per gallon	\$0.14

Meter Installation Charge

5/8" x 3/4"	\$150.00
All other meter sizes	Actual Cost

Plant Capacity Charge

Residential per ERC (350 GPD)	\$250.00
All others per gallon	\$0.71

**CSWR – Florida Utility Operating Company, LLC  
(Aquarina Utilities, Inc.)  
Monthly Wastewater Rates**

**Residential Service**

Base Facility Charge – All Meter Sizes	\$29.70
Charge Per 1,000 gallons 8,000 gallon cap	\$6.44
Flat Rate (Residential wastewater only service)	\$46.53

**General Service**

Base Facility Charge by Meter Size	
5/8" x 3/4"	\$29.70
3/4"	\$44.55
1"	\$74.25
1 1/2"	\$148.49
2"	\$237.58
3"	\$475.17
4"	\$742.45
6"	\$1,484.90
Charge Per 1,000 gallons	\$7.73

**Initial Customer Deposits**

**Residential Service and General Service**

5/8" x 3/4"	\$87.00
All over 5/8" x 3/4"	2x Average Estimated Bill



**Existing Miscellaneous Service Charges**

	<u>Normal Hours</u>	<u>After Hours</u>
Initial Connection Charge	\$26.00	\$32.00
Normal Reconnection Charge	\$38.00	\$47.00
Violation Reconnection Charge (water)	\$38.00	\$47.00
Violation Reconnection Charge (wastewater)	Actual Cost	Actual Cost
Premises Visit Charge	\$26.00	\$99.00
Late Payment Charge		\$7.00
Direct Debit Charge		\$1.36
NSF Check Charge		Pursuant to Section 68.065, F.S.

**Staff Recommended  
Miscellaneous Service Charges**

	<u>Normal Hours</u>	<u>After Hours</u>
Premises Visit Charge	\$38.00	\$99.00
Violation Reconnection Charge (water)	\$38.00	\$47.00
Violation Reconnection Charge (wastewater)	Actual Cost	Actual Cost
Late Payment Charge		\$7.00
Direct Debit Charge		\$1.36
NSF Charges		Pursuant to Section 68.065, F.S.

**CSWR-Florida Utility Operating Company, LLC  
 (Aquarina Utilities, Inc.)**

**Potable Water System  
 Schedule of Net Book Value as of August 16, 2021**

<u>Description</u>	<u>Balance Per Utility</u>	<u>Adjustments</u>		<u>Staff</u>
Utility Plant in Service	\$1,735,739	(\$140,084)	A	\$1,595,655
Land & Land Rights	37,582	-		37,582
Accumulated Depreciation	(1,331,136)	140,848	B	(1,190,288)
CIAC	(362,028)	(11,495)	C	(373,523)
Accumulated Amortization of CIAC	<u>201,870</u>	<u>7,582</u>	D	<u>209,452</u>
<b>Total</b>	<u>\$282,027</u>	<u>(\$3,149)</u>		<u>278,878</u>

**Non-Potable Water System**

<u>Description</u>	<u>Balance Per Utility</u>	<u>Adjustments</u>		<u>Staff</u>
Utility Plant in Service	\$1,120,935	(\$42,946)	A	\$1,077,989
Land & Land Rights	24,498	-		24,498
Accumulated Depreciation	(852,057)	30,533	B	(821,524)
CIAC	(35,785)	(11,851)	C	(47,636)
Accumulated Amortization of CIAC	<u>23,662</u>	<u>5,878</u>	D	<u>29,540</u>
<b>Total</b>	<u>\$281,253</u>	<u>(\$18,386)</u>		<u>\$262,867</u>

**Wastewater System**

<u>Description</u>	<u>Balance Per Utility</u>	<u>Adjustments</u>		<u>Staff</u>
Utility Plant in Service	\$1,686,513	(\$51,566)	A	\$1,634,947
Land & Land Rights	33,680	-		33,680
Accumulated Depreciation	(1,487,140)	49,009	B	(1,438,131)
CIAC	(605,133)	(7,362)	C	(612,495)
Accumulated Amortization of CIAC	<u>428,254</u>	<u>36,514</u>	D	<u>464,768</u>
<b>Total</b>	<u>\$56,174</u>	<u>\$26,595</u>		<u>\$82,769</u>

**CSWR-Florida Utility Operating Company, LLC  
(Aquarina Utilities, Inc.)**

**Potable Water System**

**Explanation of Adjustments to Net Book Value as of as of August 16, 2021**

<b>Explanation</b>	<b>Amount</b>
A. Utility Plant in Service To reflect the appropriate amount of UPIS.	(\$140,084)
B. Accumulated Depreciation To reflect the appropriate amount of accumulated depreciation.	140,848
C. Contributions in Aid of Construction To reflect the appropriate amount of CIAC.	(11,495)
D. Accumulated Amortization of CIAC To reflect the appropriate amount of accumulated amortization of CIAC.	<u>7,582</u>
Total Adjustments to Net Book Value as of May 31, 2021	<u>(\$3,149)</u>

**CSWR-Florida Utility Operating Company, LLC  
(Aquarina Utilities, Inc.)**

**Non-Potable Water System**

**Explanation of Adjustments to Net Book Value as of as of August 16, 2021**

<b>Explanation</b>	<b>Amount</b>
E. Utility Plant in Service To reflect the appropriate amount of UPIS.	(\$42,946)
F. Accumulated Depreciation To reflect the appropriate amount of accumulated depreciation.	30,533
G. Contributions in Aid of Construction To reflect the appropriate amount of CIAC.	(11,851)
H. Accumulated Amortization of CIAC To reflect the appropriate amount of accumulated amortization of CIAC.	<u>5,878</u>
Total Adjustments to Net Book Value as of May 31, 2021	<u>(\$18,386)</u>

**CSWR-Florida Utility Operating Company, LLC  
(Aquarina Utilities, Inc.)**

**Wastewater System**

**Explanation of Adjustments to Net Book Value as of as of August 16, 2021**

<b>Explanation</b>	<b>Amount</b>
I. Utility Plant in Service To reflect the appropriate amount of UPIS.	(\$51,566)
J. Accumulated Depreciation To reflect the appropriate amount of accumulated depreciation.	49,009
K. Contributions in Aid of Construction To reflect the appropriate amount of CIAC.	(7,362)
L. Accumulated Amortization of CIAC To reflect the appropriate amount of accumulated amortization of CIAC.	<u>36,514</u>
Total Adjustments to Net Book Value as of May 31, 2021	<u>\$26,595</u>

**CSWR-Florida Utility Operating Company, LLC  
(Aquarina Utilities, Inc.)**

**Potable Water System**

**Explanation of Adjustments to Net Book Value as of August 16, 2021**

<b>Account No.</b>	<b>Description</b>	<b>UPIS</b>	<b>Accumulated Depreciation</b>
301	Organization	\$397	\$370
304	Structures & Improvements	30,660	6,144
307	Wells & Springs	116,507	116,507
309	Supply Mains	2,057	389
311	Pumping Equipment	54,958	18,208
320	Water Treatment Equipment	357,287	297,383
330	Distribution Reservoirs & Standpipes	625,448	625,448
331	Transmission & Distribution Mains	163,984	71,013
333	Services	53,661	(24,864)
334	Meters & Meter Installations	140,002	33,407
336	Backflow Prevention Devices	4,408	2,388
339	Other Plant & Miscellaneous Equipment	1,530	636
341	Transportation Equipment	40,596	40,596
343	Tools, Shop, & Garage Equipment	900	401
344	Laboratory Equipment	2,000	1,000
348	Other Tangible Plant	<u>1,261</u>	<u>1,261</u>
	Total	<u>\$1,595,655</u>	<u>\$1,190,288</u>

**CSWR-Florida Utility Operating Company, LLC  
(Aquarina Utilities, Inc.)**

**Non-Potable Water System**

**Explanation of Adjustments to Net Book Value as of August 16, 2021**

<b>Account No.</b>	<b>Description</b>	<b>UPIS</b>	<b>Accumulated Depreciation</b>
301	Organization	\$653	\$608
304	Structures & Improvements	811	154
307	Wells & Springs	115,430	115,430
309	Supply Mains	23,143	17,903
311	Pumping Equipment	115,351	25,750
320	Water Treatment Equipment	39,669	39,669
330	Distribution Reservoirs & Standpipes	512,792	512,792
331	Transmission & Distribution Mains	153,779	92,698
334	Meters & Meter Installations	105,681	10,323
335	Hydrants	10,050	5,955
339	Other Plant & Miscellaneous Equipment	<u>631</u>	<u>242</u>
	Total	<u>\$1,077,989</u>	<u>\$821,524</u>

**CSWR-Florida Utility Operating Company, LLC  
(Aquarina Utilities, Inc.)**

**Wastewater System**

**Explanation of Adjustments to Net Book Value as of August 16, 2021**

<b>Account No.</b>	<b>Description</b>	<b>UPIS</b>	<b>Accumulated Depreciation</b>
351	Organization	\$1,050	\$1,049
354	Structures & Improvements	31,971	12,196
360	Collection Sewers - Force	169,985	164,230
361	Collection Sewers - Gravity	328,394	208,725
363	Services to Customers	170,960	164,840
371	Pumping Equipment	50,256	50,256
380	Treatment and Disposal - Equipment	709,777	666,831
382	Outfall Sewer Lines	144,908	144,908
389	Other Plant & Miscellaneous Equipment	3,333	954
391	Transportation Equipment	20,298	20,298
394	Laboratory Equipment	565	396
398	Other Tangible Plant	<u>3,449</u>	<u>3,449</u>
	Total	<u>\$1,634,947</u>	<u>\$1,438,131</u>



# 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-**

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**DATE:** January 20, 2022

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

**FROM:** Division of Engineering (Maloy, Ramos) *TB*  
Division of Accounting and Finance (Blocker, Fletcher) *ALM*  
Division of Economics (Sibley) *JGH*  
Office of the General Counsel (Lherisson) *JSC*

**RE:** Docket No. 20210095-WU – Application for transfer of water facilities of Sunshine Utilities of Central Florida, Inc. and Water Certificate No. 363-W to CSWR-Florida Utility Operating Company, LLC, in Marion County.

**AGENDA:** 02/01/22 – Regular Agenda – Proposed Agency Action for Issues 2 and 3 - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** Please place item on Agenda immediately after Docket No. 20210093-WS.

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**Case Background**

Sunshine Utilities of Central Florida, Inc. (SUCF, Utility, or Seller) is a Class A water utility providing service to approximately 3,934 residential customers in Marion County. The Utility is comprised of 23 water systems and is located in the St. Johns River Water Management District (SJRWMD) in the Water Resource Caution Area. Wastewater service is provided by septic tanks. In its 2020 Annual Report, SUCF reported total operating revenues of \$1,104,634.

The Florida Public Service Commission (Commission) granted an original water certificate to Sunshine Utility Company in 1982.<sup>1</sup> Subsequently, the Commission approved 21 certificate amendments and transfers, including the Quail Run system in 2002,<sup>2</sup> the Sandy Acres system in 2002,<sup>3</sup> and the Ponderosa Pines system in 2003.<sup>4</sup> The rates for the Utility were last set by the Commission in 2012.<sup>5</sup>

On May 5, 2021, CSWR-Florida Utility Operating Company, LLC (CSWR-Sunshine or Buyer) filed an application with the Commission for the transfer of Certificate No. 363-W from SUCF to CSWR-Sunshine in Marion County. The sale will close after the Commission has voted to approve the transfer. In its application, the Buyer has requested a positive acquisition adjustment, which is discussed in Issue 3.

Intervention by the Office of Public Counsel (OPC) was acknowledged on August 26, 2021. OPC and staff have issued a number of discovery or data requests to CSWR-Sunshine in this docket.

This recommendation addresses the transfer of the water system and Certificate No. 363-W, the appropriate net book value of the water system for transfer purposes, and the request for an acquisition adjustment. The Commission has jurisdiction pursuant to Sections 367.071 and 367.081, Florida Statutes (F.S.).

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<sup>1</sup> Order No. 11138, issued September 3, 1982, in Docket Nos. 19810386-W, *In re: Application of Sunshine Utility Company for a certificate to operate a utility in Marion County, Florida.*

<sup>2</sup> Order No. PSC-02-1292-PAA-WU, issued September 23, 2002, in Docket No. 20020256-WU, *In re: Application for transfer of Certificate No. 380-W from A. P. Utilities, Inc. in Marion County to Sunshine Utilities of Central Florida, Inc., holder of Certificate No. 363-W, for amendment of Certificate No. 363-W, and for cancellation of Certificate No. 380-W.*

<sup>3</sup> Order No. PSC-02-1832-PAA-WU, issued December 20, 2002, in Docket No. 20011632-WU, *In re: Application for transfer of Certificate No. 364-W from Linadale Water Company in Marion County to Sunshine Utilities of Central Florida, Inc.*

<sup>4</sup> Order No. PSC-03-1333-PAA-WU, issued November 24, 2003, in Docket No. 20030340-WU, *In re: Application for transfer of facilities of Community Water Co-Op, Inc., an exempt utility in Marion County, to Sunshine Utilities of Central Florida, Inc. (holder of Certificate No. 363-W); and for amendment of Certificate No. 363-W to add territory.*

<sup>5</sup> Order Nos PSC-12-0357-PAA-WU and PSC-12-0396-PAA-WU, issued July 10, 2012 and August 1, 2012, in Docket No. 20100048-WU, *In re: Application for increase in water rates in Marion County by Sunshine Utilities of Central Florida, Inc.*

## Discussion of Issues

**Issue 1:** Should the transfer of Certificate No. 363-W in Marion County from Sunshine Utilities of Central Florida, Inc. to CSWR-Florida Utility Operating Company, LLC be approved?

**Recommendation:** Yes. The transfer of the water system and Certificate No. 363-W is in the public interest and should be approved effective the date that the sale becomes final. The resultant Order should serve as the Buyer's certificate and should be retained by the Buyer. The Buyer should submit the executed and recorded deed for continued access to the land upon which its facilities are located and copies of its permit transfer applications to the Commission within 60 days of the Order approving the transfer, which is final agency action. If the sale is not finalized within 60 days of the resultant Order, the Buyer should file a status update in the docket file. The Utility's existing rates and charges, including the modification to miscellaneous service charges pursuant to Rule 25-30.460, Florida Administrative Code (F.A.C.), should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. The Seller is current with respect to annual reports and regulatory assessment fees (RAFs) through December 31, 2020. The Buyer should be responsible for filing annual reports and paying RAFs for all future years. (Maloy, Blocker, Sibley)

**Staff Analysis:** On May 5, 2021, CSWR-Sunshine filed an application for the transfer of Certificate No. 363-W from SUCF to CSWR-Sunshine in Marion County. The application complies with Section 367.071, F.S., and Commission rules concerning applications for transfer of certificates. The sale to CSWR-Sunshine will become final after Commission approval of the transfer, pursuant to Section 367.071(1), F.S.

### Noticing, Territory, and Land Ownership

CSWR-Sunshine provided notice of the application pursuant to Section 367.071, F.S., and Rule 25-30.030, F.A.C. No objections to the transfer were filed, and the time for doing so has expired. The application contains a description of the service territory, which is appended to this recommendation as Attachment A. In its response to staff's September 8, 2021 deficiency letter, CSWR-Sunshine provided an unrecorded warranty deed as evidence that the buyer will have long-term use of the land upon which the treatment facilities are located pursuant to Rule 25-30.037(2)(s), F.A.C. CSWR-Sunshine should submit the executed and recorded deed to the Commission within 60 days of the Order.

### Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(g), (h), and (i), F.A.C., the application contains a statement regarding financing and a copy of the purchase and sale agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. There are no guaranteed revenue contracts, customer advances, or debt of SUCF that must be disposed of with regard to the transfer. CSWR-Sunshine will review all leases and developer agreements and will assume or renegotiate those agreements on a case-by-case basis prior to closing. Any customer deposits will be refunded to customers by the Seller prior to the closing. According to the purchase and sale agreement, the total purchase price for the assets is \$6,000,000. According to the Buyer, the

closing has not yet taken place and is dependent on Commission approval of the transfer, pursuant to Section 367.071(1), F.S.

### **Facility Description and Compliance**

The Utility consists of 23 separate water systems. Raw water is drawn from ground well(s), is primarily treated by hypochlorination, and stored in hydropneumatic tank(s) until distribution for each of the Utility's respective water systems. The most recent inspections conducted by the Florida Department of Environmental Protection (DEP) determined all 23 systems were in compliance with DEP's rules and regulations. On December 21, 2021, Sun Ray Estates, one of the Utility's 23 systems, was issued a Warning Letter by the DEP for failure to monitor disinfection by-products (DBPs) contaminants during September 2021. Staff notes that the DEP has notified the Utility in the past of this same violation and once notified, it appears the Utility remits its monitoring reports for DBPs to the DEP as required.

CSWR-Sunshine provided copies of the Utility's current permits from the DEP and SJRWMD pursuant to Rule 25-30.037(2)(r)(1), F.A.C. The Buyer should provide copies of its permit transfer applications, reflecting the change in ownership, to the Commission within 60 days of the Order. In Exhibit G of the Buyer's application, CSWR-Sunshine provided its assessment of SUCF's water systems, and lists several improvements and repairs it recommends be made to the systems. The Buyer's suggested repairs and improvements, which do not appear to be required by a governmental authority, are discussed further in Issue 3.

### **Technical and Financial Ability**

Pursuant to Rule 25-30.037(2)(l) and (m), F.A.C., the application contains statements describing the technical and financial ability of the Buyer to provide service to the proposed service area. As referenced in the transfer application, the Buyer will fulfill the commitments, obligations, and representation of the Seller with regards to Utility matters. CSWR-Sunshine's application states that it owns and operates more than 257 water/wastewater systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, and Tennessee that service more than 48,860 water and 77,595 wastewater customers. The Buyer plans to use qualified and licensed contractors to provide routine operation and maintenance of the systems, as well as to handle billing and customer service. Staff reviewed the financial statements of CSWR-Sunshine and believes the Buyer has documented adequate resources to support the Utility's water operations. Based on the above, staff recommends that the Buyer has demonstrated the technical and financial ability to provide service to the existing service territory.

### **Rates and Charges**

Sunshine's rates and charges were last approved in a file and suspend rate case in 2012. Since the Utility's last rate case, the rates have been changed by four price index rate increases and a rate decrease to remove an expired rate case amortization.<sup>6</sup> Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by the Commission. Therefore, staff recommends that Sunshine's existing rates and charges as shown on Schedule No. 1-A, remain in effect, until a change is authorized by the Commission.

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<sup>6</sup> Order No. PSC-12-0357-PAA-WU, issued July 10, 2012, in Docket No. 20100048-WU, *In re: Application for increase in water rates in Marion County by Sunshine Utilities of Central Florida, Inc.*

With respect to miscellaneous service charges, effective June 24, 2021, Rule 25-30.460, F.A.C., was amended to remove initial connection and normal reconnection charges.<sup>7</sup> The definitions for initial connection charges and normal reconnection charges were subsumed in the definition of the premises visit charge. It was envisioned that the utility tariffs would be reviewed by staff on a prospective basis to ensure conformance with the amended rule.

The Utility's miscellaneous service charges consist of initial connection and normal reconnection charges. These charges are the same as the premises visit charge. Therefore, staff believes it is appropriate at this time to remove the initial connection and normal reconnection charges and update the definition for the premises visit charge to comply with amended Rule 25-30.460, F.A.C. The appropriate miscellaneous service charges are shown on Schedule No. 1-B.

### **Regulatory Assessment Fees and Annual Report**

Staff has verified that the Utility is current with respect to annual reports and RAFs through December 31, 2020. CSWR-Sunshine will be responsible for filing annual reports and paying RAFs upon the date of closing and thereafter.

### **Conclusion**

Based on the foregoing, staff recommends the transfer of the water system and Certificate No. 363-W is in the public interest and should be approved effective the date that the sale becomes final. The resultant Order should serve as the Buyer's certificate and should be retained by the Buyer. The Buyer should submit the executed and recorded deed for continued access to the land upon which its facilities are located and copies of its permit transfer applications to the Commission within 60 days of the Order approving the transfer, which is final agency action. If the sale is not finalized within 60 days of the transfer Order, the Buyer should file a status update in the docket file. The Utility's existing rates and charges including the modification to miscellaneous service charges pursuant to Rule 25-30.460, F.A.C., should remain in effect until a change is authorized by the Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheet, pursuant to Rule 25-30.475(1), F.A.C. The Seller is current with respect to annual reports and RAFs through December 31, 2020. CSWR-Sunshine should be responsible for filing annual reports and paying RAFs for 2021 and all future years.

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<sup>7</sup> Order No. PSC-2021-0201-FOF-WS, issued June 4, 2020, in Docket No. 20200240-WS, *In re: Proposed amended of Rule 25-30.460, F.A.C., Application for Miscellaneous Service Charges.*

**Issue 2:** What is the appropriate net book value for the CSWR-Sunshine water system for transfer purposes?

**Recommendation:** For transfer purposes, the net book value (NBV) of the water system is \$248,089 as of May 31, 2021. Within 90 days of the date of the Consummating Order, CSWR-Sunshine should be required to notify the Commission in writing, that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in CSWR-Sunshine's 2022 Annual Report when filed. (Blocker)

**Staff Analysis:** Rate base was last established on July 10, 2012, by Order No. PSC-12-0357-PAA-WU.<sup>8</sup> The purpose of establishing NBV for transfers is to determine whether an acquisition adjustment should be approved. CSWR-Sunshine's request for a positive acquisition adjustment is addressed in Issue 3. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. The Utility's NBV has been updated to reflect balances as of May 31, 2021.<sup>9</sup> Staff's recommended NBV, as described below, is shown on Schedule No. 2.

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

According to the Utility's general ledger, the total UPIS balance was \$3,331,335 as of May 31, 2021. Staff auditors reviewed the Utility's records since the last rate case and determined that several Commission-ordered adjustments were incorrectly recorded. Additionally, staff auditors reviewed plant additions and retirements to UPIS from December 31, 2010, to May 31, 2021, and determined that several other adjustments are necessary. Accordingly, staff recommends that the UPIS balance be reduced by \$131,410 as of May 31, 2021.

### **Land**

The Utility's general ledger reflected a land balances of \$80,777 as of May 31, 2021. There have been no additions to land since December 31, 2010. Therefore, staff recommends no adjustments to its land balances.

### **Accumulated Depreciation**

According to the Utility's general ledger, the total accumulated depreciation balance was \$2,686,158 as of May 31, 2021. Staff auditors recalculated depreciation accruals for all water accounts since that last rate case through May 31, 2021, using audited UPIS balances and the depreciation rates established by Rule 25-30.140, F.A.C. Accordingly, staff recommends that the accumulated depreciation balance be increased by \$50,210 as of May 31, 2021.

### **Contributions-in-Aid-of-Construction (CIAC) and Accumulated Amortization of CIAC**

According to the Utility's general ledger, the balances for CIAC and accumulated amortization of CIAC were \$2,036,044, and \$1,574,029, respectively, as of May 31, 2021. Staff auditors traced CIAC and accumulated amortization of CIAC balances from December 31, 2010, to May 31, 2021, using supporting documentation. Staff determined that the Utility did not start with the

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<sup>8</sup> Order No. PSC-12-0357-PAA-WU, issued July 10, 2012, in Docket No. 20100048-WU, *In re: Application for increase in water rates in Marion County by Sunshine Utilities of Central Florida, Inc.*

<sup>9</sup> Net book value is calculated through the date of the closing. According to the Utility's application, the closing will not occur until after the transaction receives Commission approval. Therefore, staff is relying on the most current information provided to staff auditors at the time of the filing.

Commission-approved balances in Order No. PSC-12-0357-PAA-WU.<sup>10</sup> Staff recalculated CIAC using the audited plant balances and depreciation rates established by Rule 25-30.140(2), F.A.C. Staff also recalculated accumulated amortization of CIAC using the audited CIAC balances and the rates established by Rule 25-30.140(2), F.A.C. Accordingly, staff recommends that the CIAC balance be reduced by \$3,015 as of May 31, 2021. Staff also recommends that the accumulated amortization of CIAC balance be increased by \$162,755 as of May 31, 2021.

### **Net Book Value**

The Utility's general ledger reflected a NBV of \$263,939 as of May 31, 2021. Based on the adjustments described above, staff recommends a NBV of \$248,089 as of May 31, 2021. Staff's recommended NBV and the National Association of Regulatory Utility Commissioners, Uniform System of Accounts (NARUC USOA) balances for UPIS and accumulated depreciation are shown on Schedule No. 2 as of May 31, 2021. As addressed in Issue 3, a positive acquisition adjustment should not be recognized for rate making purposes.

### **Conclusion**

Based on the above, staff recommends a NBV of \$248,089 as of May 31, 2021, for transfer purposes. Within 90 days of the date of the Consummating Order, the Buyer should be required to notify the Commission in writing, that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in CSWR-Sunshine's 2022 Annual Report when filed.

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<sup>10</sup> Order No. PSC-12-0357-PAA-WU, issued July 10, 2012, in Docket No. 20100048-WU, *In re: Application for increase in water rates in Marion County by Sunshine Utilities of Central Florida, Inc.*



**Issue 3:** Should a positive acquisition adjustment be recognized for ratemaking purposes?

**Recommendation:** No. Pursuant to Rule 25-30.0371, F.A.C., a positive acquisition adjustment should not be granted as CSWR-Sunshine failed to demonstrate extraordinary circumstances. (Blocker, Maloy)

**Staff Analysis:** In its filing, the Utility requested a positive acquisition adjustment be included in the calculation of CSWR-Sunshine's rate base. An acquisition adjustment results when the purchase price differs from the NBV of the assets at the time of acquisition. Pursuant to Rule 25-30.0371, F.A.C., a positive acquisition adjustment results when the purchase price is greater than the NBV and a negative acquisition adjustment results when the purchase price is less than the NBV. A positive acquisition adjustment, if approved, increases rate base.

According to the purchase agreement, the Buyer will purchase the Utility for \$6,000,000. As discussed in Issue 2, staff is recommending a total NBV of \$248,089. This would result in a total positive acquisition adjustment of \$5,751,911.

Any entity that believes a full or partial positive acquisition adjustment should be made has the burden to prove the existence of extraordinary circumstances. Rule 25-30.0371(2), F.A.C., states:

In determining whether extraordinary circumstances have been demonstrated, the Commission shall consider evidence provided to the Commission such as anticipated improvements in quality of service, anticipated improvements in compliance with regulatory mandates, anticipated rate reductions or rate stability over a long-term period, anticipated cost efficiencies, and whether the purchase was made as part of an arms-length transaction.

One of the Buyer's justifications for the purchase price is to ensure sale proceeds are sufficient to cover the fair market value of the Utility's land. While the factors listed in the rule are listed by way of example and other evidence may be offered, the purpose of the rule is to provide incentive for the acquisition of small, troubled systems, the elimination of substandard operating conditions, and allow customers to receive benefits which amount to a better quality of service at a reasonable rate. Order No. PSC-02-0997-FOF-WS, issued July 23, 2002, in Docket No. 20001502-WS, *In re: Proposed Rule 25-30.0371, F.A.C., Acquisition Adjustment*. The items enumerated in the rule are consistent with the promotion of benefits to customers and bringing troubled systems into regulatory compliance; covering the fair market value of land is not.

Staff believes the Buyer failed to demonstrate the extraordinary circumstances necessary to support the inclusion of a positive acquisition adjustment, as discussed below.

### **Improvements in Quality of Service and Compliance with Regulatory Mandates**

In its application, CSWR-Sunshine listed six business practices that it believes will improve the quality of service to its customers: (1) provision of 24-hour emergency service phone numbers; (2) on-call emergency service personnel who are required to respond to emergency service calls within prescribed time limits; (3) a computerized maintenance management system; (4) access to resources not usually available to comparably sized systems and the ability to supplement local

personnel with resources owned by the parent and sister companies; (5) online bill payment options; and (6) an updated website for customer communication, bulletins, procedures, etc. In response to staff's data requests, CSWR-Sunshine provided a list of several improvements it plans to make after its acquisition which it believes will improve both quality of service and compliance with regulatory mandates relating to the Utility's chemical storage, electrical system, ground well, as well as the installation of new flow meters on wells, blow off valves in distribution systems, and remote monitoring system.<sup>11</sup>

Staff reviewed the complaints filed with the Commission for the five-year period prior to the application, May 2016 to May 2021. For the five-year period, the Commission recorded a total of 13 complaints, out of its approximately 3,934 customers, of which pertaining to billing (7 complaints), communication with customers (3 complaint), outages caused by electrical issues (2 complaints), or safety issues (1 complaint). Of the 3 communication-related customer complaints, 2 were regarding the timing of a boil water notice and the third was regarding a situation where the utility was digging in the right-of-way near the customer's residence, and the customer was not provided advanced notice of the digging. In response, the Utility provided its contact information to these customers to improve future communications. There were 2 customer complaints attributable to incoming power fluctuations which caused outages; the Utility installed adjustable voltage controls in the pumps to remedy the unstable electricity. Further, in the analyzed period, 1 customer reported a safety concern with a plastic water meter cover that was damaged from vehicle traffic and the Utility replaced it with a concrete cover and installed a pole in front of the meter box to resolve this issue. Based on the foregoing analysis, the Utility appears to respond and resolve customer complaints in a timely manner. As discussed in Issue 1, the Utility is currently in compliance with the DEP's rules and regulations. Staff also reviewed the DEP inspection reports for the three years prior to the Utility's transfer application and found that the Utility was also in compliance during that time frame. If an area of concern was identified by the DEP, it was corrected promptly by SUCF. There was no record of DEP compliance enforcement action within the past three years and there appears to be no pending regulatory requirements from any governmental authority, with the exception of the recently issued DEP Warning Letter regarding a monitoring violation, as discussed previously in Issue 1.

Based on the Commission's complaint data and the DEP's reports, it does not appear that the Utility currently has issues with respect to quality of service and regulatory compliance, such that they would warrant extraordinary efforts to remedy. For this reason, staff does not believe CSWR-Sunshine has demonstrated extraordinary circumstances for its requested positive acquisition adjustment. Instead, staff believes that the proposed anticipated improvements in quality of service and compliance with regulatory mandates demonstrates CSWR-Sunshine's intention to responsibly execute its obligations as a utility owner. While staff does not believe the Utility's anticipated improvements justify its requested positive acquisition adjustment, these improvements may be considered for prudence and cost recovery in a future rate proceeding.

## **Anticipated Cost Efficiencies and Rates**

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<sup>11</sup> Document Nos. 11931-2021 and 12743-2021.

In its application, the Buyer stated that based on its size and anticipated consolidation of many small systems under one financial and managerial entity would result in operational cost efficiencies particularly in the areas of:

- PSC and environmental regulatory reporting
- Managerial and operational oversight
- Utility asset planning
- Engineering planning
- Ongoing utility maintenance
- Utility record keeping
- Customer service responsiveness
- Improved access to capital necessary to repair and upgrade Sunshine's systems to ensure compliance with all health and environmental requirements and ensure service to customers remains safe and reliable

The Buyer also stated that CSWR-Sunshine would bring long-term rate stability to the Utility, should the transfer be approved. Staff agrees that economies of scale and potential consolidation of several systems in Florida, as proposed by CSWR-Sunshine, could bring some amount of long-term rate stability. However, absent specific and detailed support for these assertions, the Buyer has failed to meet its burden for demonstrating extraordinary circumstances. Instead, much of the information provided by the Buyer lacks specificity and was provided nearly verbatim in each of the other two CSWR-Sunshine transfer dockets.<sup>12</sup>

Staff and OPC made several requests for quantifiable information to support the Buyer's assertions, such as anticipated rate impact and potential/projected cost efficiencies. The Buyer repeatedly stated that it was unable to provide quantitative information at the granularity requested by staff. However, staff does not believe its requests were unreasonable given that the burden of proof lies with the Buyer. This is particularly true in the instant case when the requested relief is a positive acquisition adjustment of \$5,751,911, which is approximately 23 times greater than the system's current NBV of \$248,089. Further, in response to staff's first data request for an estimate and breakdown of projected operation and maintenance (O&M) expenses, the Buyer stated that the benefit from the increase in economies of scale and other advantages provided by CSWR-Sunshine would not necessarily be reflected in cost savings compared to current Sunshine operations.

Staff's recommendation is also consistent with the Commission's decision in Order No. PSC-2020-0458-PAA-WS.<sup>13</sup> In that docket, Royal Waterworks, Inc. (RWI) identified estimates of anticipated cost efficiencies, including a reduction in O&M expense and a reduction of cost of

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<sup>12</sup> Docket No. 20210093-WS, *In re: Application for transfer of water and wastewater systems of Aquarina Utilities, Inc., Water Certificate No. 517-W, and Wastewater Certificate No. 450-S to CSWR-Florida Utility Operating Company, LLC, in Brevard County*, and Docket No. 20210133-SU, *In re: Application for transfer of water facilities of North Peninsula Utilities Corporation and Wastewater Certificate No. 249-S to CSWR-Florida Utility Operating Company, LLC, in Volusia County*.

<sup>13</sup> Order No. PSC-2020-0458-PAA-WS, issued November, 23, 2020, in Docket No. 20190170-WS, *In re: Application for transfer of facilities and Certificate Nos. 259-W and 199-S in Broward County from Royal Utility Company to Royal Waterworks, Inc.*

capital that would result from the transfer. Additionally, RWI provided several improvements it made to the water treatment plant and wastewater lift station since acquisition to improve the quality of service and compliance with regulatory mandates. While the Commission acknowledged that RWI accomplished cost savings, it did not believe the actions performed demonstrated extraordinary circumstances that would justify approval of a positive acquisition adjustment.<sup>14</sup>

### **Conclusion**

Pursuant to Rule 25-30.0371, F.A.C., staff believes a positive acquisition adjustment should not be granted, as CSWR-Sunshine did not demonstrate extraordinary circumstances. Staff believes the Buyer's anticipated improvements in quality of service and compliance with regulatory mandates does not illustrate extraordinary circumstances and instead demonstrates CSWR-Sunshine's intentions to responsibly execute its obligations as a utility owner. Additionally, the fair market value of the Utility's land is not a factor considered in the request of a positive acquisition adjustment pursuant to Rule 25-30.0371(2), F.A.C.

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<sup>14</sup> Although decided prior to the adoption of the acquisition adjustment rule in 2010, the Commission has previously denied a requested positive acquisition adjustment, stating that the utility relied primarily upon the improvement of service as a basis for a positive acquisition adjustment; however, "compliance with wastewater treatment standards is a requirement of statute and rule, and not an extraordinary circumstance which would warrant the allowance of a positive acquisition adjustment." Order No. 13578, issued August 9, 1984, in Docket No. 19830568-SU, *In re: Application of P.I. Utilities Co., Inc., for a Certificate to Operate a Sewer Utility in Volusia County, Florida, and Petition of Peninsula Utilities, Inc., to Substitute Applicant.*

**Issue 4:** Should this docket be closed?

**Recommendation:** Yes. If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the Order, a Consummating Order should be issued and the docket should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed, the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision, that the Buyer has submitted the executed and recorded warranty deed and that the Buyer has submitted copies of its applications for permit transfers to the DEP and the SJRWMD, within 60 days of the Commission's Order approving the transfer, which is final agency action. (Lherisson)

**Staff Analysis:** If no protest to the proposed agency action is filed by a substantially affected person within 21 days of the date of the issuance of the Order, a Consummating Order should be issued and the docket should be closed administratively upon Commission staff's verification that the revised tariff sheets have been filed, the Buyer has notified the Commission in writing that it has adjusted its books in accordance with the Commission's decision, that the Buyer has submitted the executed and recorded warranty deed and that the Buyer has submitted copies of its applications for permit transfers to the DEP and the SJRWMD, within 60 days of the Commission's Order approving the transfer, which is final agency action.

In re: Application for transfer of water facilities of Sunshine Utilities of Central Florida, Inc. and Water Certificate No. 363-W to CSWR-Florida Utility Operating Company, LLC, in Marion County.

Revised Exh. E. Legal Description

DESCRIPTION OF TERRITORY SERVED

TOWNSHIP 14 SOUTH RANGE 22 EAST  
SECTION 21

SUTTON'S DUPLEXES:

THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4  
AND  
THE WEST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 21.

SECTION 27  
ELEVEN OAKS SUBDIVISION:

THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 27.

SECTION 33  
EMIL MARR:

THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 33.

FLOYD CLARK SUBDIVISION:

THE NORTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 33, AND THE WEST 3/4 OF THE SOUTH 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 33, EXCEPT THE EAST 200.00 FEET OF THE WEST 475.00 FEET, THE NORTH 50.00 FEET, AND THE SOUTH 25.00 FEET THEREOF.

HARVILLE HEIGHTS:

THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 33.

SECTION 32  
NORTHWOODS

THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 32.

TOWNSHIP 14 SOUTH, RANGE 22 EAST  
SECTION 34

PEARL BRITAIN:

THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 34.

STONEHILL SUBDIVISION:

THE SOUTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4, AND THE WEST 1 / 2 OF THE SOUTHEAST 2/4 OF THE SOUTHWEST 1/4, AND THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 34.

BOULDER HILL:

THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 AND THE SOUTHWEST 1/4 OF SAID SECTION 34.

SECTION 3 TOWNSHIP 15 SOUTH RANGE 22 EAST  
BALDWIN HEIGHTS

THE EAST 140.00 FEET OF THE WEST 465.00 FEET OF THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 3, EXCEPT THE SOUTH 200.00 FEET THEREOF.

SECTION 4  
SUNRAY SUBDIVISION

THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 4.

JASON'S LANDING

THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 AND THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 4.

SECTION 19  
BURK'S QUARDRAPLEXES

THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 19.

SECTION 24  
QAKHURST SUBDIVISION

THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 24.

SECTION 10 TOWNSHIP 17 SOUTH RANGE 22 EAST  
SUNLIGHT ACRES

THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 10.

SECTION 15 & 16 TOWNSHIP 17 SOUTH RANGE 23 EAST  
LITTLE LAKE WIER:

THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 15 AND THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 15 AND THE WEST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 15 AND THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 16 AND THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 16 AND THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 15

SECTION 4  
LAKE WEIR MOBILE HOME PARK

A PARCEL OF LAND IN THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 4 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FROM A POINT-OF-BEGINNING AT THE INTERSECTION OF THE EAST RIGHT-OFWAY LINE OF MAUD AVENUE, AS IT IS NOW CONSTRUCTED, AND THE NORTH RIGHT-OF-WAY LINE OF ALTERNATE HIGHWAY 441/27 (ALSO BAY STREET) AS IT IS NOW CONSTRUCTED THEN RUN EASTERLY FOR 375.00 FEET ALONG SAID R-O-W LINE TO A POINT AT THE INTERSECTION OF SAID LINE WITH THE WEST R-O-

W LINE OF BANANA AVENUE AS NOW CONSTRUCTED; THEN NORTHERLY ALONG SAID R-O-W LINE FOR 583.25 FEET TO A POINT AT THE INTERSECTION OF SAID R-O-W LINE AND THE SOUTH R-O-W LINE OF STRAWBERRY STREET AS NOW CONSTRUCTED; THEN WESTERLY ALONG SAID LINE FOR 375.00 FEET TO A POINT AT THE INTERSECTION OF SAID LINE AND R-O-W OF SAID MAUD AVENUE, THEN SOUTHERLY ALONG SAID LINE FOR 583.25 FEET TO THE POINT-OF-BEGINNING.

SECTIONS 4, 5, 6, AND 9  
OKLAWAHA

THE NORTH 1/2 OF SECTION 9  
AND  
THE SOUTH 1/2 AND THE NORTHWEST 1/4 OF SAID SECTION 4  
AND  
ALL OF SECTION 5 NORTH OF LAKE WEIR  
AND  
THE EAST 1/2 THE NORTHEAST 1/4 OF SAID SECTION 6 NORTH OF LAKE WEIR  
AND  
THE EAST 1/4 OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 6

ALSO IN TOWNSHIP 16 SOUTH, RANGE 24 EAST

SECTION 32  
OKLAWAHA

THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 32.

SECTION 32, TOWNSHIP 16 SOUTH, RANGE 23 EAST  
BELLEVUE OAKS I & II

THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 AND THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 32.

AND  
THE WEST 1/2 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 LYING SOUTH OF U.S. HIGHWAY 441 ALTERNATE, EXCEPT THE WEST 210 FEET AND THE WEST 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 EXCEPT THAT PART OF COUNTY ROAD 25A.

ORDER NO. PSC-00-1062-FOF-WU

TOWNSHIP 14 SOUTH, RANGE 21 EAST, SECTION 25  
TOWNSHIP 14 SOUTH, RANGE 21 EAST, SECTION 36

OAKHAVEN AND EVANS ACRES

THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 25 AND THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 36 AND THE EAST 1/3 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 36 AND THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 36 AND COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 OF SECTION 36; THENCE SOUTH 89°10'00" WEST ALONG THE NORTH BOUNDARY OF SAID SE 1/4 A DISTANCE OF 2,014.05 FEET; THENCE SOUTH 00°38'35" EAST 25.00 FEET TO A POINT ON THE WESTERLY ROW LINE OF NW 20TH AVE. (GARDNER AVE 50.00 FEET WIDE) AND THE POINT OF BEGINNING; THENCE SOUTH 00°38'35" EAST ALONG SAID WESTERLY ROW LINE 152.96 FEET TO A POINT ON THE SOUTH BOUNDARY OF LOT 1 BLOCK A OF A HOME ACRES; SAID POINT ALSO BEING ON THE NORTH BOUNDARY OF LOT 2, BLOCK A OF SAID A HOME ACRES; THENCE SOUTH 89°09'01" WEST ALONG SAID SOUTH BOUNDARY OF LOT 1 AND ALONG SAID NORTH BOUNDARY OF LOT 2, 611.86 FEET TO A POINT ON THE WEST BOUNDARY OF SAID A HOME ACRES; THENCE NORTH 00°13'06" WEST ALONG SAID WEST BOUNDARY 153.14 FEET TO A POINT ON THE SOUTH ROW LINE OF NW 42 STREET (BLOWERS LANE 50.00 FEET WIDE) THENCE NORTH 89°10'00" EAST ALONG SAID SOUTH ROW LINE 610.73 FEET TO THE POINT OF BEGINNING.



SECTION 34 TOWNSHIP 14 SOUTH RANGE 22 EAST  
SUGAR PLUM ESTATES

THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 34.  
AND  
THE NORTH 1/4 OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 34.  
AND  
THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 34.  
AND  
THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 34.  
AND  
THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 34.  
AND  
THE EAST 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 34.  
LESS  
THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4, AND THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 34.

SECTION 29 TOWNSHIP 14 SOUTH RANGE 22 EAST  
FORE OAKS

A PORTION OF THE WEST 1/2 OF THE SW 1/4 OF SAID SECTION 29, BEING MORE FULLY DESCRIBED AS FOLLOWS:

FOR A POINT OF REFERENCE COMMENCE AT THE SOUTHWEST CORNER OF SAID SECTION 29; THENCE NORTH ALONG THE WEST BOUNDARY OF SAID SECTION 29, 232.71 FEET; TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH ALONG SAID WEST BOUNDARY 681.75 FEET; THENCE EAST 85.00 FEET; THENCE NORTH 715.20 FEET; THENCE EAST 563.25 FEET; THENCE NORTH 04°40'02" EAST, 202.61 FEET; THENCE WEST 689.83 FEET TO THE EAST BOUNDARY OF THE WEST 1/2 OF THE SW 1/4 OF SAID SECTION 29; THENCE SOUTH 00°02'38" EAST ALONG SAID EAST BOUNDARY, 1313.09 FEET; THENCE SOUTH 89°51'15" WEST, 300.00 FEET; THENCE SOUTH 00° 02'38" EAST, 435.60 FEET TO THE NORTH RIGHT-OF-WAY OF COUNTY ROAD #3.0 (NE 49TH STREET); THENCE SOUTH 89°51'35" WEST ALONG SAID NORTH RIGHT-OF-WAY, 496.60 FEET; THENCE NORTH 420.00 FEET; THENCE SOUTH 89°51'35" WEST, 315.00 FEET; THENCE SOUTH, 211.29 FEET; THENCE SOUTH 89°51'35" WEST 210.00 FEET TO THE POINT OF BEGINNING.

SECTION 31 TOWNSHIP 14 SOUTH RANGE 22 EAST  
BALLARD ACRES

THE NORTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 31.

SECTION 29 TOWNSHIP 14 SOUTH RANGE 22 EAST  
COVENTRY

THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE NORTH 1/2 OF THE SOUTHWEST 1/4 OF SAID SECTION 29.

SECTION 29 TOWNSHIP 14 SOUTH RANGE 22 EAST  
ASHLEY HEIGHTS

THE WEST 1/2 OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 29.

SECTION 18 TOWNSHIP 15 SOUTH RANGE 23 EAST  
OCALA HEIGHTS

THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 18 EXCEPT THE EAST 688 FEET OF THE NORTH, 813 FEET OF SAID SECTION 18.

SILVERWOOD VILLAS

THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 18.

SPANISH PALMS AND COUNTRY AIRE

THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 18.

SECTION 17 TOWNSHIP 15 SOUTH RANGE 23 EAST  
REYNOLDS

THE WEST 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 17.

SECTION 6 TOWNSHIP 15 SOUTH RANGE 25 EAST  
WINDING WATERS

ALL OF SAID SECTION 6.

SECTION 31 TOWNSHIP 15 SOUTH RANGE 25 EAST  
WINDING WATERS

ALL OF SAID SECTION 31.

SECTION 36 TOWNSHIP 15 SOUTH RANGE 25 EAST

THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 31.

SECTION 25 TOWNSHIP 15 SOUTH RANGE 22 EAST  
WHISPERING SANDS

THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 EXCEPT THE AREA NORTH OF SOUTHEAST 28TH STREET AND THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 25.

SECTION 6 TOWNSHIP 16 SOUTH RANGE 23 EAST  
FLORIDA HEIGHTS

THE NORTHEAST 1/4 OF THE NORTH EAST 1/4 OF SAID SECTION 6.

AMENDMENT

SECTION 3 TOWNSHIP 15 SOUTH RANGE 22 EAST  
CAROL ESTATES

THAT PORTION OF THE NORTH 654.00 FEET OF THE WEST 1717.00 FEET LYING EAST OF NORTHEAST 25TH AVENUE,  
AND

THE SOUTH 804 FEET OF THE NORTH 1457 FEET OF THE WEST 1917 FEET LYING EAST OF THE  
NORTHEAST 25TH AVENUE,  
AND  
THE NORTH 330 FEET OF THE EAST 1524 FEET OF THE WEST 3772 FEET,  
AND  
THE SOUTH 1124 FEET OF THE NORTH 1454 FEET OF THE EAST 1863 FEET OF THE WEST 3781 FEET  
OF SAID SECTION 3.

SECTION 6 TOWNSHIP 17 SOUTH RANGE 23 EAST  
COUNTRY WALK

THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 6.

SECTION 2 TOWNSHIP 17 SOUTH RANGE 23 EAST  
HILLTOP

THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 2.

SECTION 29, 30, 31 AND 32  
TOWNSHIP 17 SOUTH, RANGE 26 EAST  
SANDY ACRES

THE SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29.  
THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 29.  
THE SOUTHEAST 1/4 OF SECTION 30.  
THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 31.  
THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 32.

SECTION 25 TOWNSHIP 16 SOUTH RANGE 21 EAST  
QUAL RUN

SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 25.

SECTION 2, TOWNSHIP 17 SOUTH, RANGE 23 EAST  
HILLTOP SERVICE AREA

THE SOUTHWEST 1/4; THE WEST 1/2 OF THE NORTHWEST 1/4; THE SOUTHEAST 1/4 OF THE THE  
NORTHWEST 1/4; THE SOUTH 1/2 OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4.

SECTION 19, TOWNSHIP 15 SOUTH, RANGE 25 EAST  
PONDEROSA PINES SERVICE AREA

THE SOUTH 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 AND THE SOUTHWEST 1/4 OF THE  
SOUTHEAST 1/4 AND THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 AND THE  
NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AND THE EAST 1/2 OF THE  
SOUTHWEST 1/4 OF THE NORTHEAST 1/4 OF THE SOUTHWEST 1/4 AND THE EAST 1/2 OF THE  
SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4.

SECTIONS 17 & 18 TOWNSHIP 15 SOUTH, RANGE 23 EAST  
LEXINGTON ESTATES

PARCEL 1:  
THE NW 1/4 OF THE SW 1/4 OF SECTION 17, TOWNSHIP 15 SOUTH, RANGE 23 EAST, MARION COUNTY,  
FLORIDA; LESS AND EXCEPT THE SOUTH 786 FEET OF THE WEST 40 FEET THEREOF.

PARCEL 2:

THE EASTERLY 634 FEET OF THE SOUTHERLY 350 FEET OF THE NE 1/4 OF SECTION 18, TOWNSHIP 15 SOUTH, RANGE 23 EAST AND THE EASTERLY 634 FEET OF THE NORTHERLY 534 FEET OF THE SE 1/4 OF SECTION 18, TOWNSHIP 15 SOUTH, RANGE 23 EAST, MARION COUNTY, FLORIDA.

SECTION 29 TOWNSHIP 17S RANGE 26E  
SANDY ACRES SUBDIVISION

THE NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29  
THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29  
THE SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 29

**FLORIDA PUBLIC SERVICE COMMISSION  
 authorizes  
 CSWR- Florida Utility Operating Company, LLC  
 pursuant to  
 Certificate Number 363-W**

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

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
11138	09/03/82	19810386-W (MC)	Grandfather
11680	03/07/83	19810423-W, 19810363-W, 19820409-W, 19820408-W, 19820367-W	Transfer/Amendment
14206	03/21/85	19840087-WU	Amendment
14978	09/20/85	19840089-WU	Amendment
15296	10/25/85	19850280-WU	Amendment
17161	02/06/87	19861526-WU	Amendment
17733	06/22/87	19870181-WU	Transfer/ Amendment
18081	09/01/87	19860724-WU	Amendment
20707	02/06/89	19880907-WU	Transfer
22239	11/29/89	19891177-WU	Name Change
PSC-98-0385-FOF-WU	03/11/98	19971297-WU	Amendment
PSC-99-2390-FOF -WU	12/07/99	19980543-WU	Amendment
PSC-00-1 062-FOF-WU	06/02/00	19991681-WU	Amendment
PSC-02-1832-PAA-WU	12/20/02	20011632-WU	Amendment
PSC-02-1292-PAA-WU	09/23/02	20020256-WU	Transfer/ Amendment
PSC-03-0244-FOF-WU	02/20/03	20021034-WU	Amendment
PSC-03-1099-FOF-WU	10/02/03	20030128-WU	Amendment
PSC-03-1333-PAA-WU	11/24/03	20030340-WU	Transfer/Amendment
PSC-04-1032-FOF-WU	10/25/04	20040388-WU	Amendment
PSC-06-0478-FOF-WU	06/05/06	20060283-WU	Amendment
PSC-1 0-0557-FOF-WU	09/07/10	20100156-WU	Amendment
PSC-1 0-0679-FOF-WU	11/15/10	20100377-WU	Transfer/Amendment
*	*	20210095-WU	Transfer

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

**CSWR- Florida Utility Operating Company, LLC  
(Sunshine Utilities of Central Florida, Inc.)  
Monthly Water Rates**

**Residential and General Service  
Unified Systems and Sandy Acres**

Base Facility Charge by Meter Size

5/8" x 3/4"	\$8.72
3/4"	\$13.08
1"	\$21.80
1 1/4"	\$32.70
1 1/2"	\$43.60
2"	\$69.76
3"	\$139.52
4"	\$218.00
6"	\$436.00
8"	\$784.80
10"	\$1,264.40

Charge Per 1,000 gallons (RS1)	\$2.03
0 – 5,000 gallons	\$2.21
5,001 – 10,000 gallons	\$4.42
Over 10,000 gallons	

Charge Per 1,000 gallons (GS1)	\$2.42
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**Residential and General Service  
Ponderosa Pines and Quail Run**

Base Facility Charge by Meter Size

5/8" x 3/4"	\$9.57
3/4"	\$14.36
1"	\$23.93
1 1/4"	\$35.89
1 1/2"	\$47.85
3"	\$153.12
4"	\$239.25
6"	\$478.50
8"	\$861.30
10"	\$1,387.65

Charge Per 1,000 gallons (GS2 & RS2)	\$2.53
--------------------------------------	--------

**CSWR- Florida Utility Operating Company, LLC  
(Sunshine Utilities of Central Florida, Inc.)**

**Service Availability Charges**

**Meter Installation Charge**

5/8" x 3/4"	\$115.00
1"	\$195.00
1 1/2"	\$530.00
2"	\$700.00
3"	\$1,030.00
4"	\$2,035.00
6"	\$3,560.00

**Customer Connection (Tap-in) Charge**

Same Side of Road	\$750.00
Opposite Side of Road	\$1,115.00

**Customer Deposits**

All Meter Sizes	<u>Residential Service</u>	<u>General Service</u>
	2 x Average estimated bill	2 x Average estimated bill

**CSWR- Florida Utility Operating Company, LLC  
(Sunshine Utilities of Central Florida, Inc.)**

**Miscellaneous Service Charges**

	<u>Normal Hours</u>	<u>After Hours</u>
Initial Connection Charge	\$21.00	\$42.00
Normal Reconnection Charge	\$21.00	\$42.00
Violation Reconnection Charge	\$21.00	\$42.00
Premises Visit Charge (in lieu of disconnection)	\$21.00	\$42.00
Late Payment Charge		\$5.00
Investigation of Meter Tampering Charge	\$50.00	\$50.00

**Staff Recommended  
Miscellaneous Service Charges**

	<u>Normal Hours</u>	<u>After Hours</u>
Premises Visit Charge	\$21.00	\$42.00
Violation Reconnection Charge	\$21.00	\$42.00
Late Payment Charge		\$5.00
Investigation of Meter Tampering Charge	\$50.00	\$50.00



**CSWR-Florida Utility Operating Company, LLC  
 (Sunshine Utilities of Central Florida, Inc.)  
 Water System**

**Schedule of Net Book Value as of May 31, 2021**

<u>Description</u>	<u>Balance Per Utility</u>	<u>Adjustments</u>		<u>Staff</u>
Utility Plant in Service	\$3,331,335	(\$131,410)	A	\$3,199,925
Land & Land Rights	80,777	-		80,777
Accumulated Depreciation	(2,686,158)	(50,210)	B	(2,736,368)
CIAC	(2,036,044)	3,015	C	(2,033,029)
Accumulated Amortization of CIAC	<u>1,574,029</u>	<u>162,755</u>	D	<u>1,736,784</u>
 Total	 <u>\$263,939</u>	 <u>(\$15,850)</u>		 <u>\$248,089</u>

**CSWR-Florida Utility Operating Company, LLC  
(Sunshine Utilities of Central Florida, Inc.)  
Water System**

**Explanation of Adjustments to Net Book Value as of May 31, 2021**

<b>Explanation</b>	<b>Amount</b>
A. Utility Plant in Service To reflect the appropriate amount of UPIS.	(\$131,410)
B. Accumulated Depreciation To reflect the appropriate amount of accumulated depreciation.	(50,210)
C. Contributions in Aid of Construction To reflect the appropriate amount of CIAC.	3,015
D. Accumulated Amortization of CIAC To reflect the appropriate amount of accumulated amortization of CIAC.	<u>162,755</u>
Total Adjustments to Net Book Value as of May 31, 2021	<u>(\$15,850)</u>

**CSWR-Florida Utility Operating Company, LLC  
 (Sunshine Utilities of Central Florida, Inc.)  
 Water System**

**Schedule of Staff's Recommended Account Balances as of May 31, 2021**

<b>Account No.</b>	<b>Description</b>	<b>UPIS</b>	<b>Accumulated Depreciation</b>
301	Organization	\$1,660	\$1,521
304	Structures & Improvements	11,434	4,842
307	Wells & Springs	120,006	108,291
309	Supply Mains	110,236	47,589
310	Power Generation Equip.	92,882	67,840
311	Pumping Equip.	539,881	515,322
320	Water Treatment Equip.	204,274	200,216
330	Distribution Reservoirs	120,373	41,750
331	Transmission and Distribution Mains	1,083,369	1,011,498
333	Services	149,227	58,233
334	Meters and Meter Install.	235,187	181,711
339	Other Plant And Misc.	25,858	25,858
340	Office Furniture & Equip.	79,087	52,925
341	Trans. Equip.	113,594	113,562
342	Stores Equip.	4,425	3,815
343	Tools, Shop and Garage Equip.	39,491	32,454
345	Power Operated Equip.	5,200	5,200
346	Communication Equip.	10,912	10,912
347	Misc. Equip.	17,436	17,436
348	Other Tangible Plant	<u>235,393</u>	<u>235,393</u>
	<b>Total</b>	<b><u>\$3,199,925</u></b>	<b><u>\$2,736,368</u></b>

# Item 9

FILED 1/20/2022  
DOCUMENT NO. 00381-2022  
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:** January 20, 2022

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

**FROM:** Division of Economics (Guffey) *JGH*  
Office of the General Counsel (Lacrisson) *JSC*

**RE:** Docket No. 20210170-EU – Joint petition for approval of amendment to territorial agreement in Sumter County, by Sumter Electric Cooperative, Inc. and City of Bushnell.

**AGENDA:** 02/01/22 – 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 October 29, 2021, Sumter Electric Cooperative, Inc. (SECO) and the City of Bushnell (City or Bushnell) filed a joint petition for approval of an amendment (First Amendment) to their currently effective territorial agreement (2020 Territorial Agreement) in Sumter County. In Order No. PSC-2020-0258-PAA-EU, the Florida Public Service Commission (Commission) approved the joint petitioners' currently effective agreement.<sup>1</sup> The proposed First Amendment is to accommodate three customer-driven requests. The proposed First Amendment and associated maps are included in Attachment A to this recommendation.

<sup>1</sup> Order No. PSC-2020-0258-PAA-EU, issued July 24, 2020, in Docket No. 20200138-EU, *In re: Joint petition for approval of territorial agreement in Sumter County, by Sumter Electric Cooperative, Inc. and City of Bushnell.*

Docket No. 20210170-EU

Date: January 20, 2022

During the review process, staff issued a data request to the joint petitioners, to which the response was received on December 22, 2021. The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

## Discussion of Issues

**Issue 1:** Should the Commission approve the proposed First Amendment to the 2020 Territorial Agreement in Sumter County between SECO and Bushnell?

**Recommendation:** Yes, the Commission should approve the proposed First Amendment to the 2020 Territorial Agreement in Sumter County between SECO and Bushnell. The approval of this First Amendment will enable SECO and Bushnell to redefine their existing service boundary to better serve their existing and future customers in Sumter County, and will not be a detriment to the public interest. (Guffey, Lherisson)

**Staff Analysis:** Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440(2), Florida Administrative Code (F.A.C.), the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the First Amendment to the 2020 Territorial Agreement will cause a detriment to the public interest, the First Amendment should be approved.<sup>2</sup>

### The Proposed First Amendment to the Territorial Agreement

Through this proposed First Amendment, the joint petitioners seek to modify the existing territorial boundary in Sumter County to address service needs of three customers. The proposed amendment will result in lower capital expenditure to serve each of the three customers. The first request is from a new customer seeking to construct and operate a large industrial facility in the City's service area. However, the City is unable to serve the large industrial customer without significant capital investment and construction of new facilities. After review of the customer's needs, the parties agreed that SECO is able to serve the customer with less new investment and facilities.

The second customer request is for security lighting service within the City's service territory where electric service is not currently available and the City is unable to provide the required service without significant costs and facility extensions. SECO is able to provide the security lighting service with less new investment and less costly extension of existing facilities. The City has agreed to allow SECO to provide the security lighting service to the customer.

The third customer request is from an existing recreational vehicle (RV) park owner, served by the City, who is planning to expand the RV park to an area within SECO's service territory. Although the RV park is expanding within SECO's service territory, the specific area currently does not have electric service. SECO would require extensive capital investment and construction of new facilities to provide electricity to the proposed RV expansion area. The RV park customer desires that the City provide electric service for the expanded area and the City is able to provide the needed electric service with less expenses and facility enhancements than SECO.

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<sup>2</sup> *Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission*, 469 So. 2d 731 (Fla. 1985).

In order to provide electricity to the three customers discussed above in an efficient manner, the parties have agreed to exchange certain territorial area parcels and modify the boundary of the currently effective territorial agreement. Paragraph 7 of the First Amendment states that the proposed boundary modifications will meet the customers' needs and will eliminate uneconomic duplication of facilities, and will not cause a decrease in reliability of electric service to existing or future customers of either party.

The proposed First Amendment also asserts that the territorial areas subject to this amendment currently do not have electric service, and therefore there are no customers to be notified or customer accounts to be transferred between the two parties. Pursuant to Paragraph 4 of the petition, the proposed First Amendment to the 2020 Territorial Agreement will become effective upon the issuance of an Order by the Commission approving the First Amendment in its entirety.

### **Conclusion**

After review of the joint petition, staff believes the First Amendment to the Territorial Agreement will not cause a detriment to the public interest, will eliminate any potential uneconomic duplication of facilities, and will not cause a decrease in reliability of electric service to the present or future customers of SECO or Bushnell. Therefore, staff recommends that the Commission should approve the proposed First Amendment to the 2020 Territorial Agreement between SECO and Bushnell in Sumter County.



**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 the Consummating Order. (Lherisson)

**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 the Consummating Order.

**FIRST AMENDMENT  
TO  
TERRITORIAL AGREEMENT  
BETWEEN  
SUMTER ELECTRIC COOPERATIVE, INC.  
AND  
CITY OF BUSHNELL, FLORIDA**

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**THIS FIRST AMENDMENT TO TERRITORIAL AGREEMENT** (“First Amendment”), dated as of October 5, 2021, by and between **SUMTER ELECTRIC COOPERATIVE, INC.**, a Florida rural electric cooperative (“SECO”) and **CITY OF BUSHNELL**, a Municipal Government organized and existing under the laws of the State of Florida (“Bushnell” or the “City”) (collectively, “Parties” or individually a “Party”), and this shall become effective upon the approval of the Florida Public Service Commission (“Commission” or “PSC”).

**WHEREAS**, SECO and Bushnell are parties to an existing Territorial Agreement dated September 24, 2019, (the “Current Agreement”), which was approved by PSC Order No. PSC-2020-0258-PAA-EU, issued July 24, 2020 (the “Order”), and effective August 19, 2020, by Consummating Order No PSC-2020-0281-CO-EU issued August 19, 2020; and

**WHEREAS**, the Parties desire, pursuant to Article V, Section 5.1, to amend the Current Agreement to modify the Territorial Boundary Line to address the service and financial needs of three customers with a corresponding exchange of service Territorial Areas.

**NOW THEREFORE**, the Parties agree as follows:

1. The final territorial boundary modifications agreed to by the Parties are set forth in Exhibit A, which is incorporated herein by reference.
2. The changes in Exhibit A are driven by a new customer within the Territorial Area of Bushnell (“New Customer”) that has sought electric service for a new, large industrial plant whose service demands would require significant capital investment and construction of new facilities by the City to provide the requisite electric service to the New Customer.
3. Upon review of the demand requirements of this customer, the Parties agree that SECO can serve the New Customer with less new investment and less costly extension of facilities than Bushnell.
4. To timely meet the short-term and long-term needs of the New Customer, the Parties have entered into this First Amendment to modify the Territorial Boundary Line (see the detail reflected on Exhibit B, Page 6, which is PDF page 2, and is the larger of the two areas being transferred to SECO from Bushnell) so that the New Customer will be located within the Territorial Area of SECO. Further, to meet the immediate and temporary construction needs of the New Customer, the Parties, contemporaneously with this First Amendment, have also entered into a

ATTACHMENT A  
Page 2 of 3

temporary service agreement that would allow SECO to serve the New Customer until such time as the Commission may approve this First Amendment.

5. In addition to the foregoing customer-driven request, another Bushnell Territorial Area customer is requesting security light service for an area where there is no current electric service by the City, and which would require a significant and costly extension of facilities by the City to provide such security light service. SECO is able to provide the security light service with less new investment and less costly extension of existing facilities. Upon agreement of the Parties, Bushnell has allowed SECO to provide temporary service to this customer, subject to Commission approval of such temporary service and a Boundary Line change that would place this customer's security light service temporarily within the Territorial Area of SECO. Such Boundary Line change is reflected on Exhibit B, Page 6 (PDF page 2) as the smaller area at the top left of the map.

6. The Parties have also received a further customer-driven boundary modification request to transfer some of the existing SECO Territorial Area that currently has no customers (see the detail reflect on Exhibit B, Page 8, which is PDF page 3) to Bushnell to facilitate an existing-City-electric-customer's intent to expand its recreational vehicle ("RV") park facilities to an adjacent area within SECO's current Territorial Area (the "RV Park Customer"). The RV Park Customer desires the City to provide electric service for this expansion. Electric service to the RV Park Customer for the expansion would require significant capital investment and construction of new facilities by SECO. The City is able to provide electric service to the RV Park Customer for the expansion with less new investment and less costly extension of existing facilities than SECO.

7. The Parties agree, based on sound economic, engineering and other relevant considerations, the boundary line modifications identified herein will meet the respective customers' needs and will eliminate the uneconomic duplication of facilities. The proposed boundary line changes will not cause a decrease in the reliability of electrical service to existing or future customers of either Party.

8. Attached hereto as Exhibit A are an updated Florida Department of Transportation ("FDOT") General Highway map and a complete set of revised SECO and Bushnell Territorial Maps (the changes are shown on PDF pages 7 and 9 of this Exhibit).

9. Upon approval by the Commission, this First Amendment shall be in full force and effect, shall amend the Current Agreement as specified herein, shall have a duration coterminous with the term of the Current Agreement, and shall remain in effect until and unless either Party provides written notice of termination as provided in the Current Agreement.

**IN WITNESS WHEREOF**, each Party hereto has executed this First Amendment by their duly authorized representative on the day and year first above written.

[SIGNATURES CONTINUED NEXT PAGE]

ATTACHMENT A  
Page 3 of 3

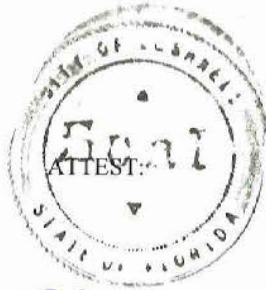
**SUMTER ELECTRIC COOPERATIVE, INC.**

ATTEST:

By James P. Duncan  
James P. Duncan, Chief Executive Officer

Joyce Anderson  
Secretary

(SEAL)



**CITY OF BUSHNELL**

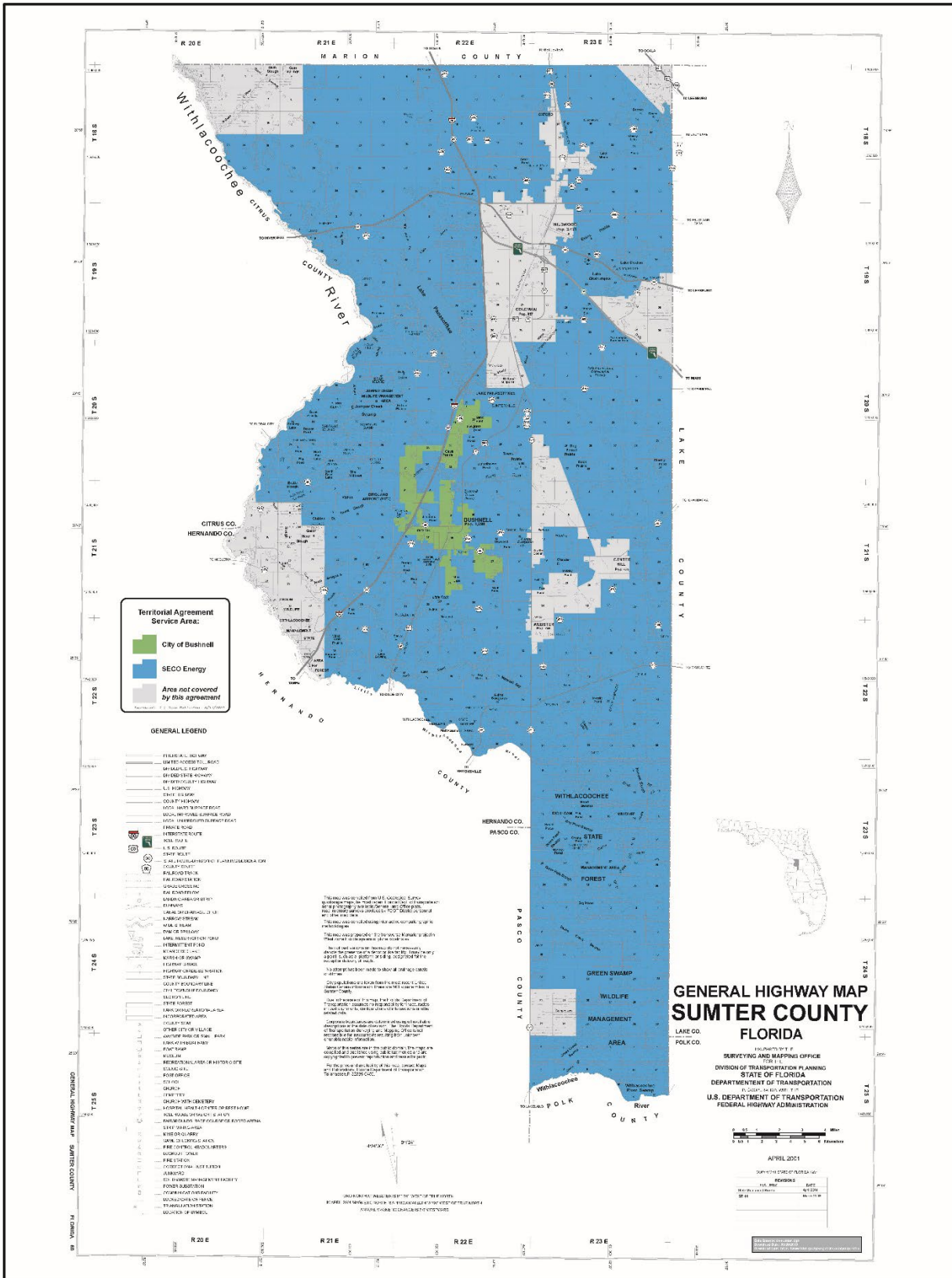
By Bil Spaude  
Bil Spaude, Mayor

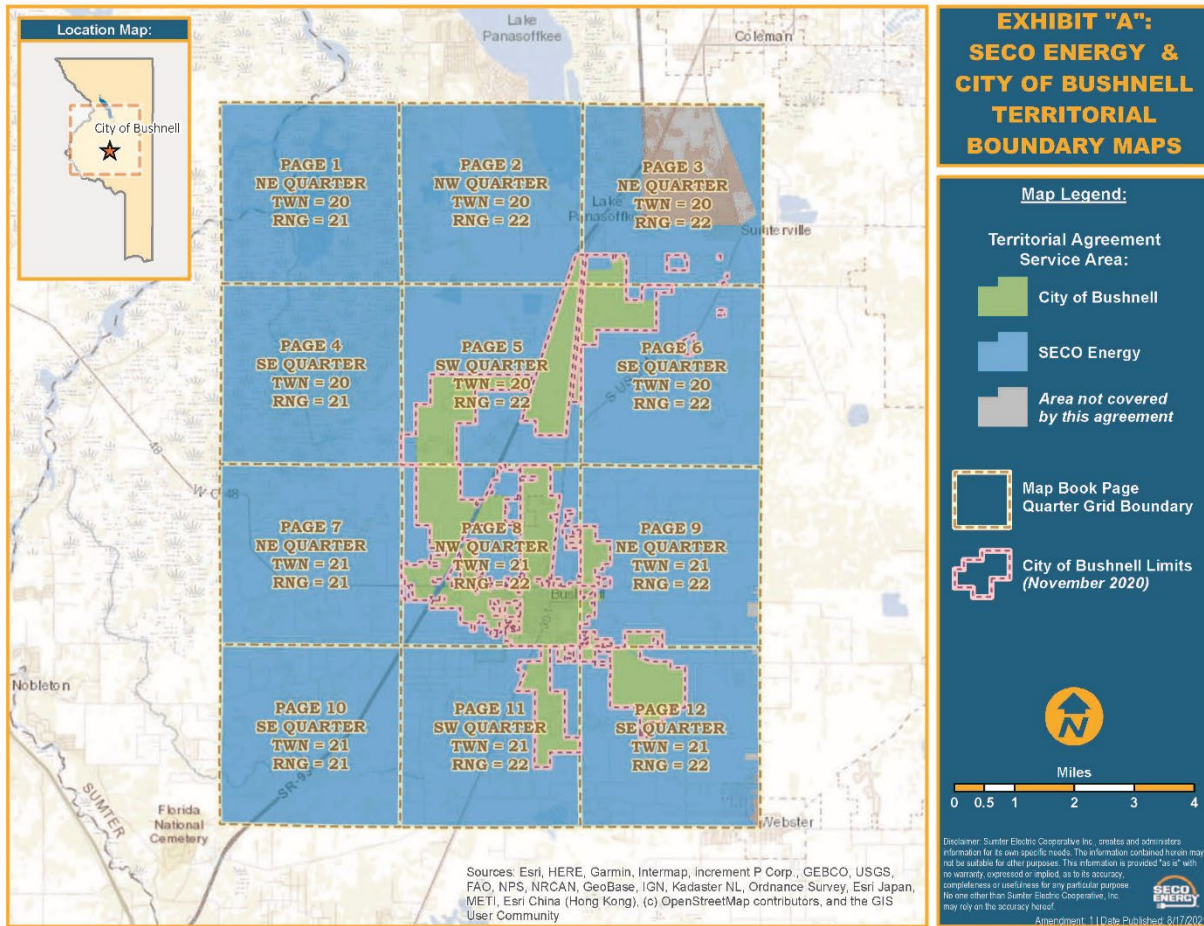
Christina Davis  
City Clerk

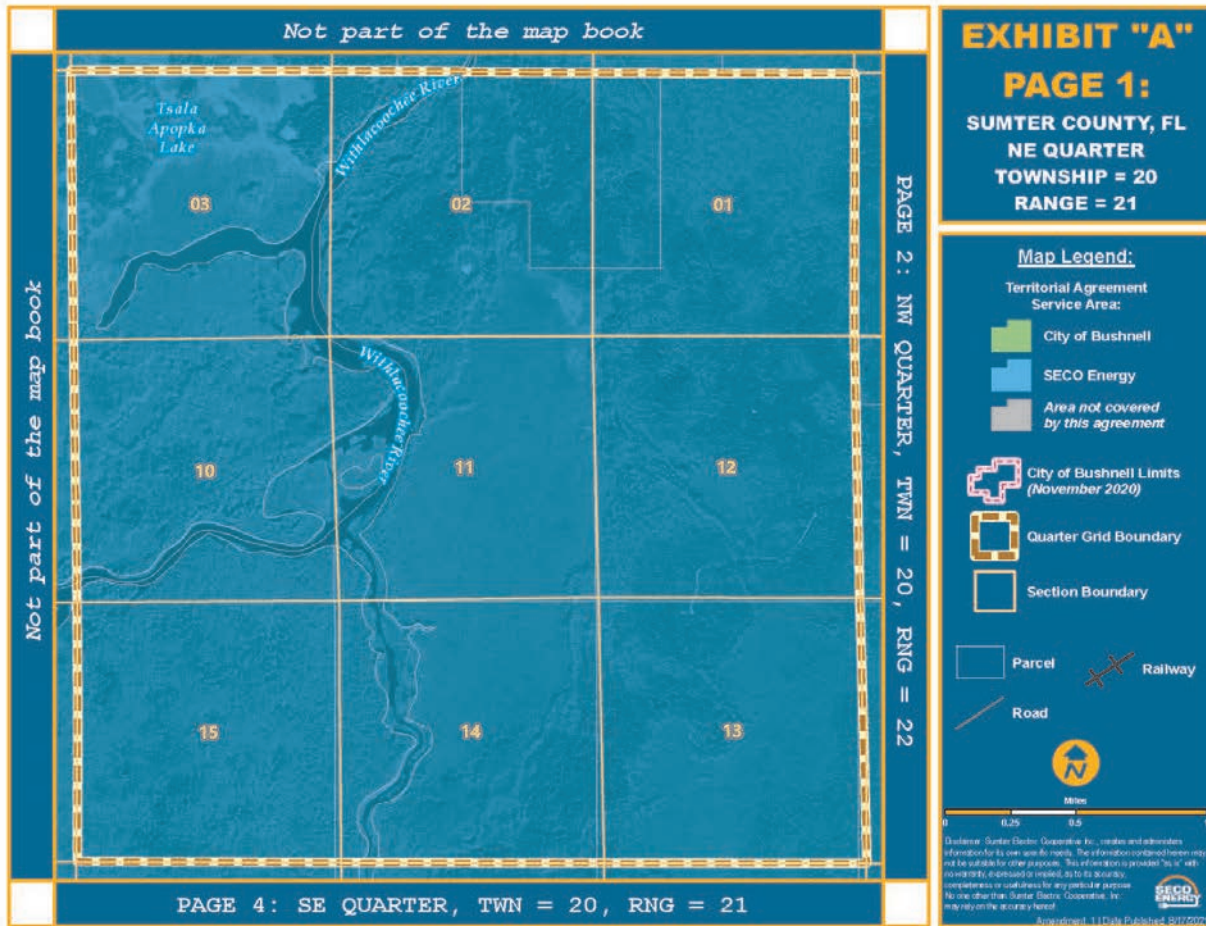
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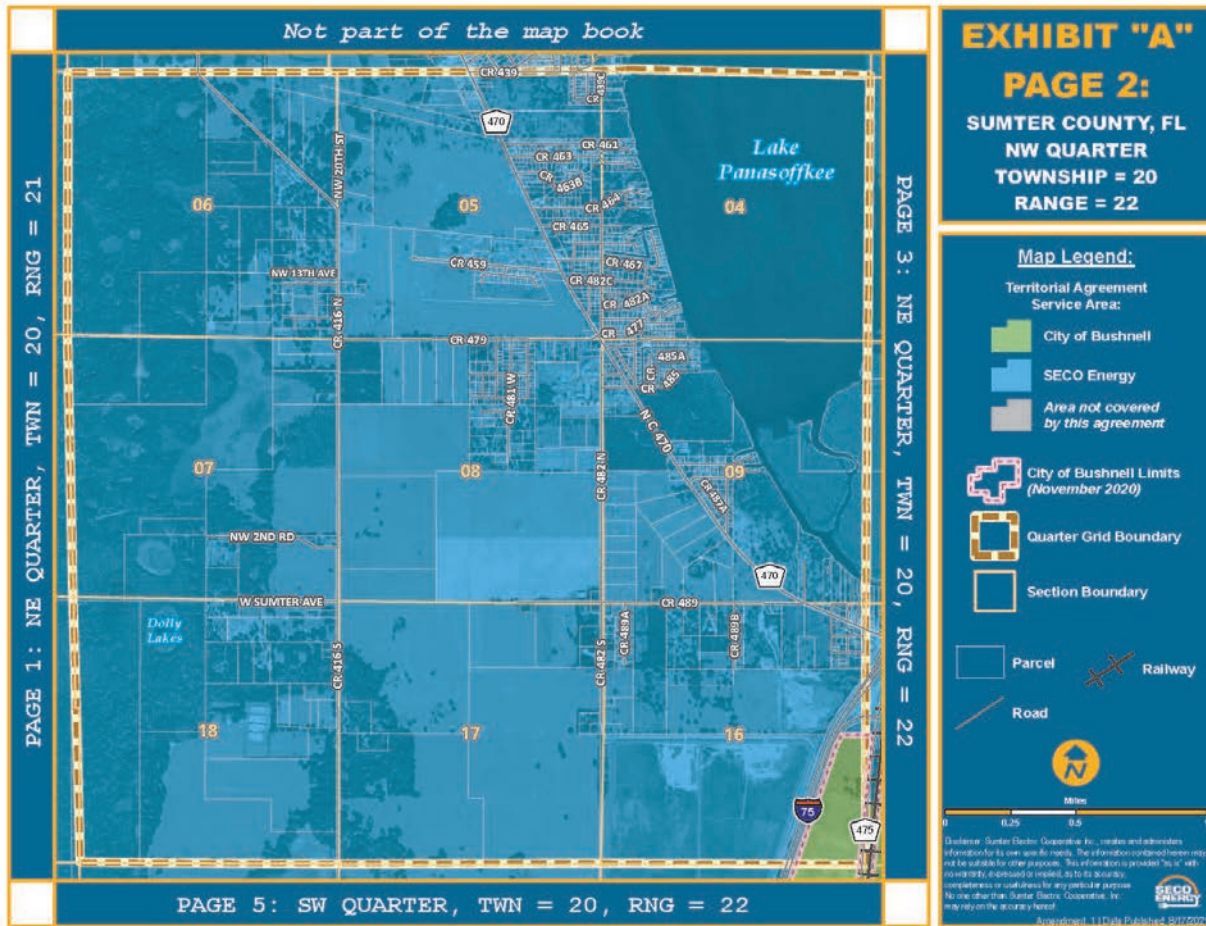
By Felix M. Adams  
Felix M. Adams, Legal Counsel to the  
City of Bushnell

By Scott A. Gerken  
Scott A. Gerken, Legal Counsel to  
Sumter Electric Cooperative, Inc.

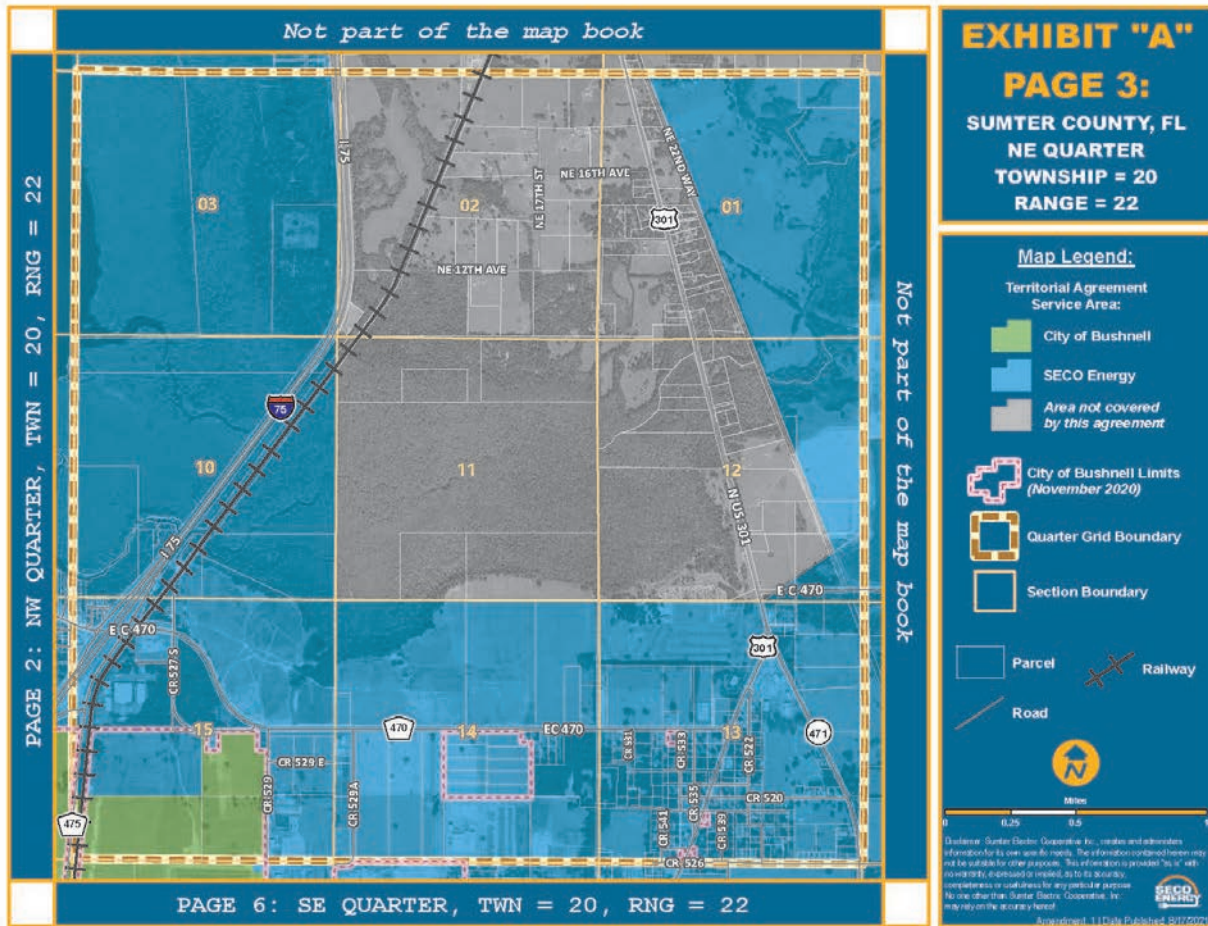


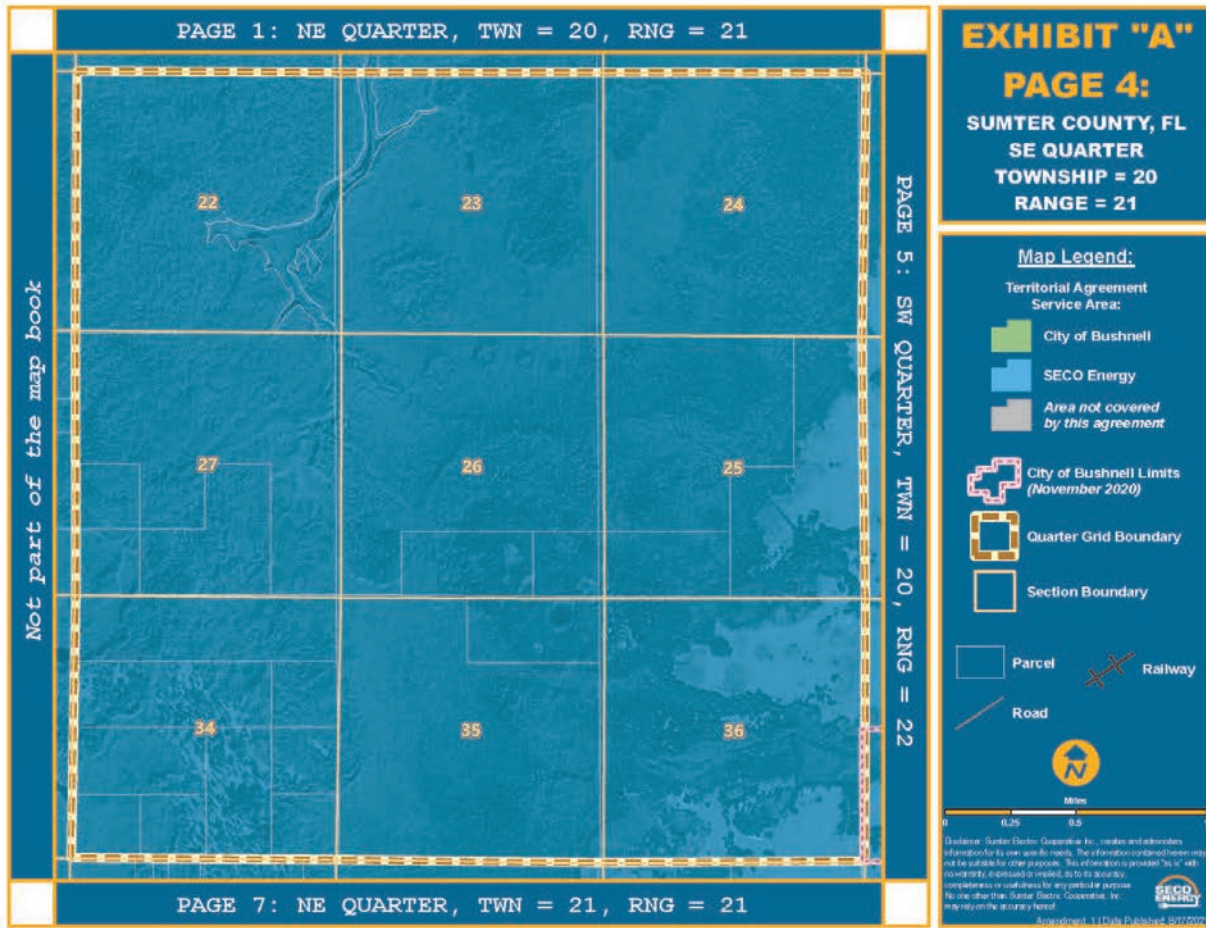


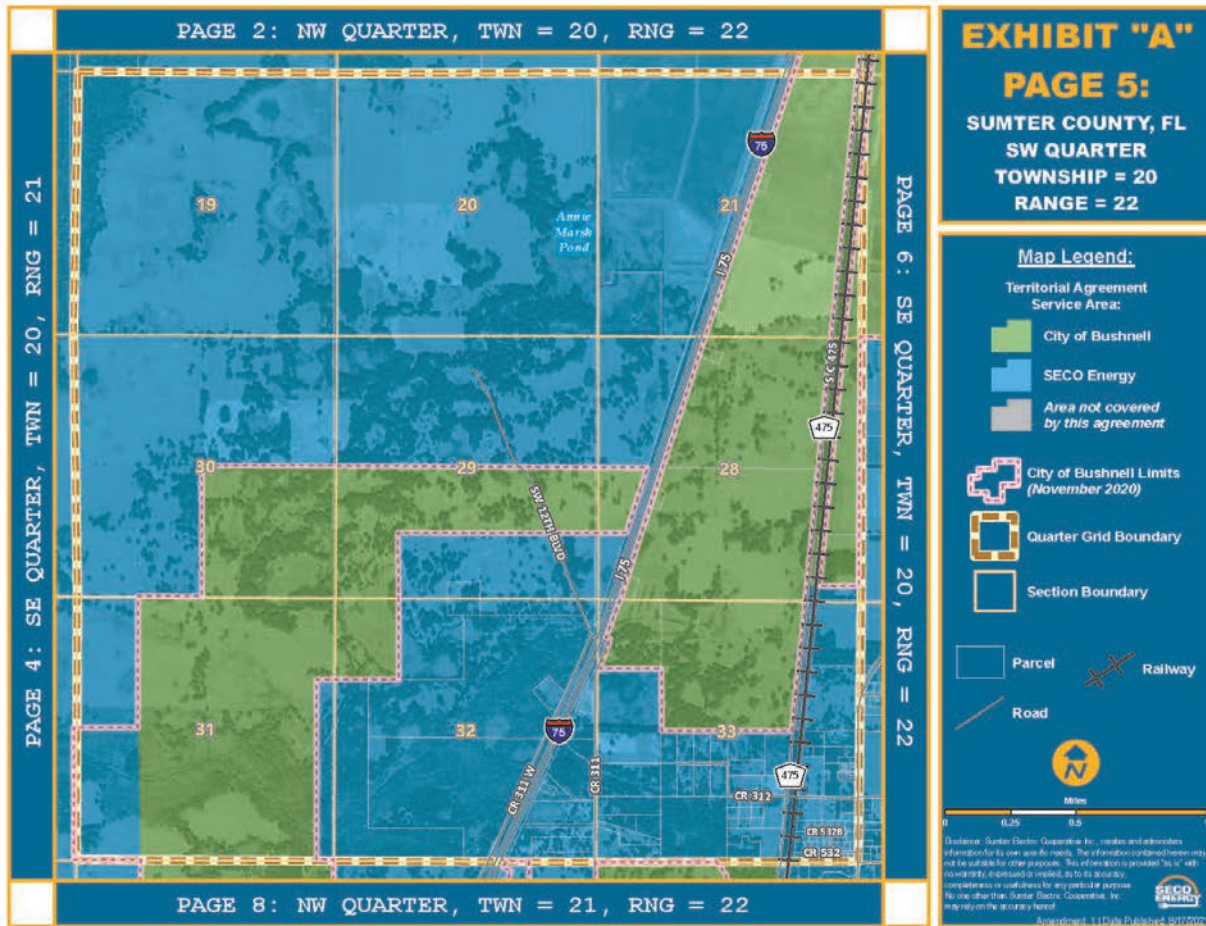


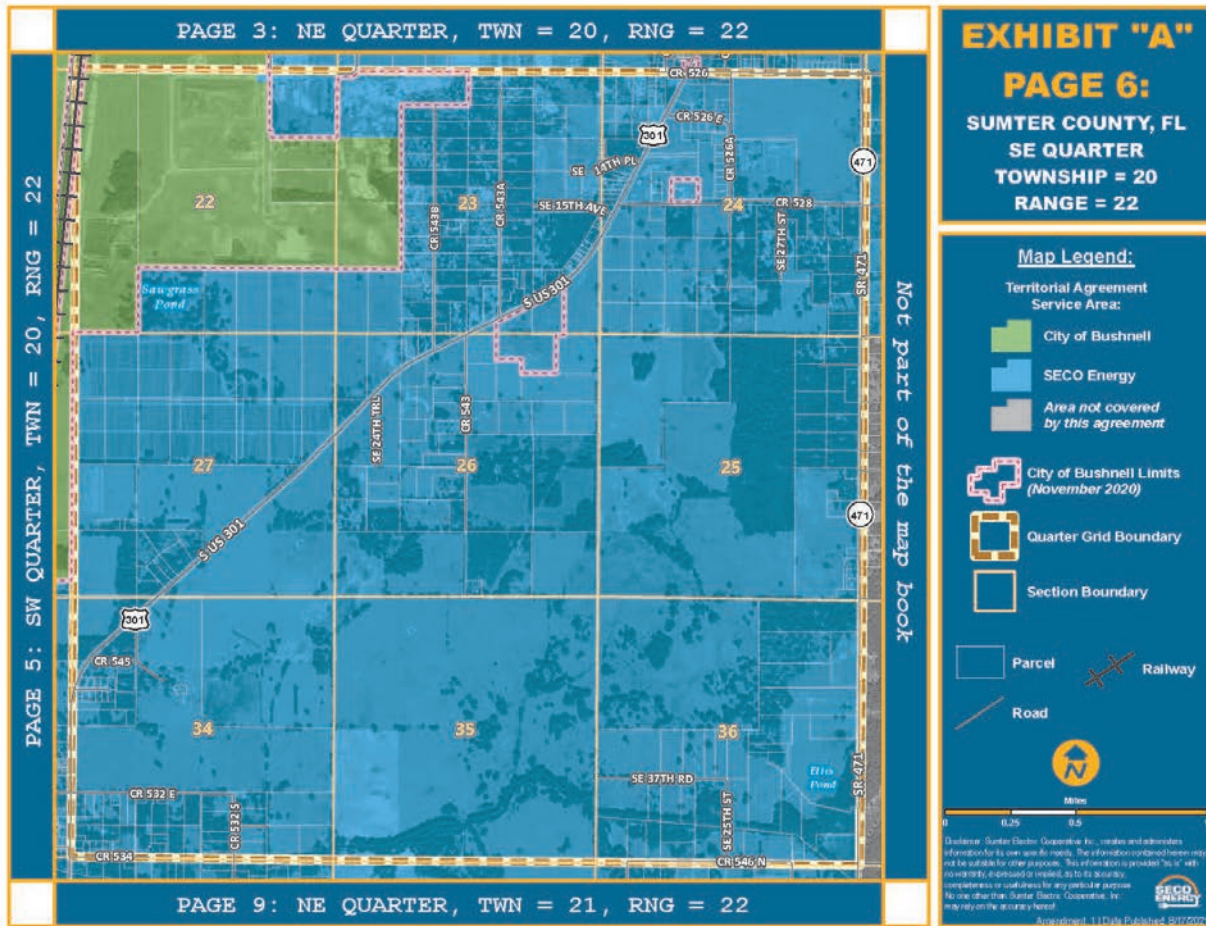


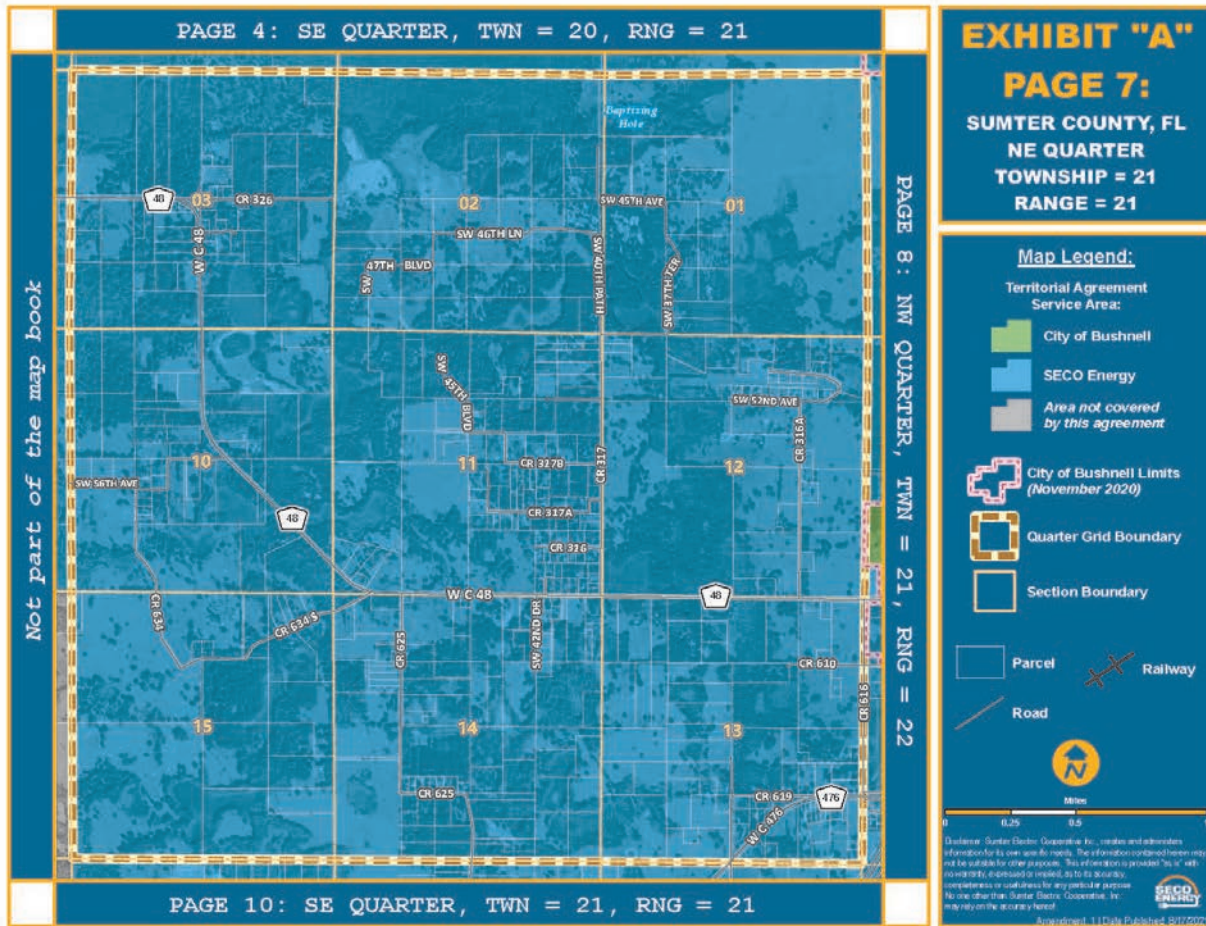


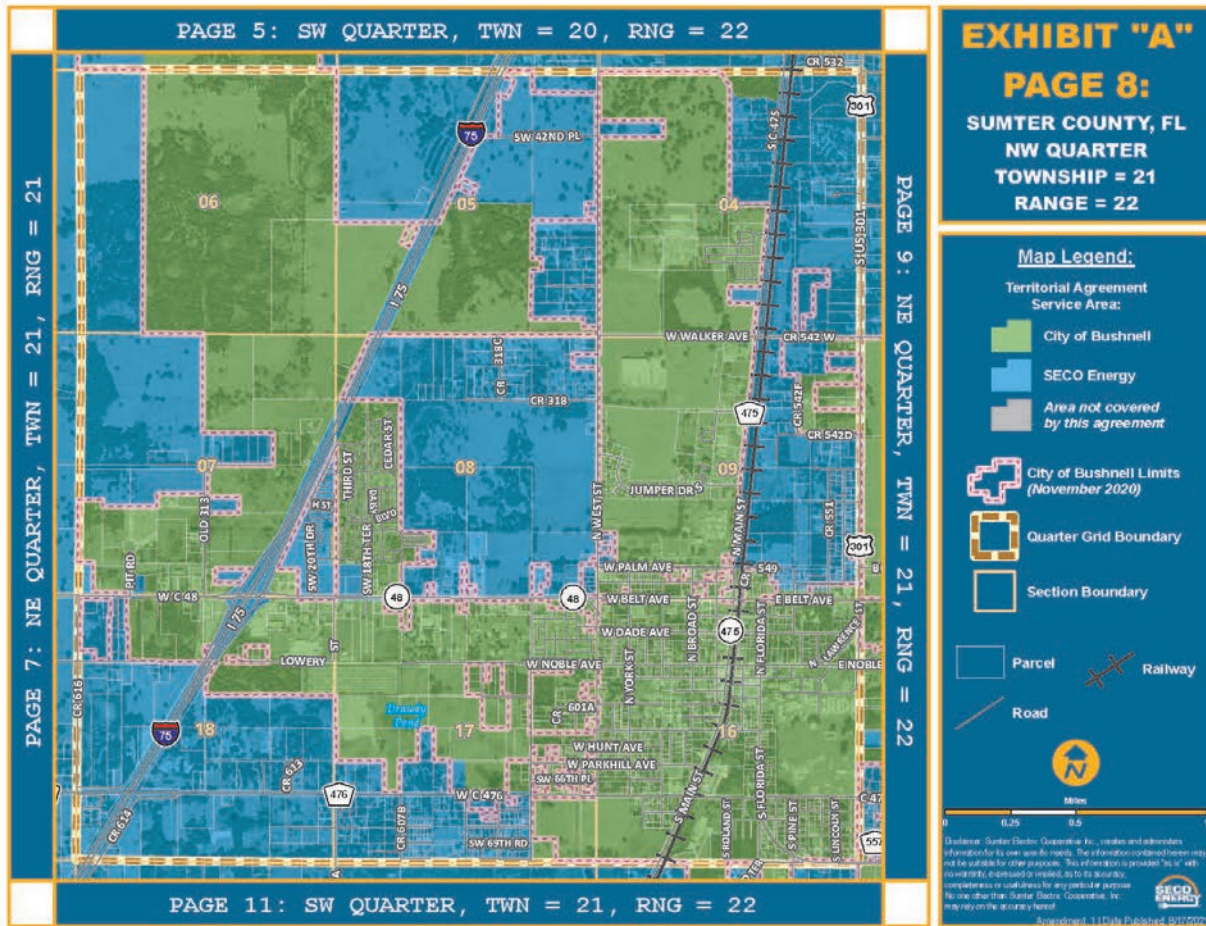


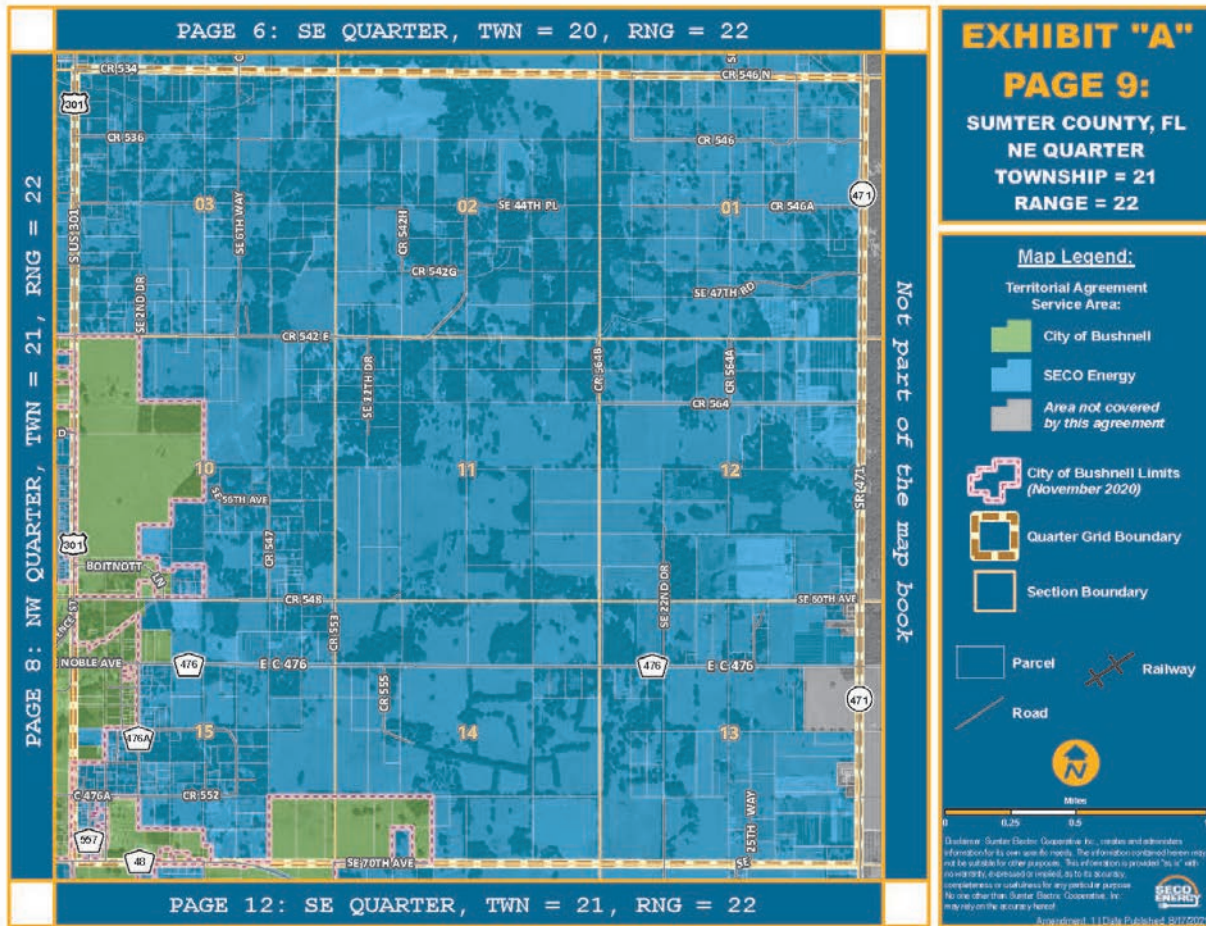


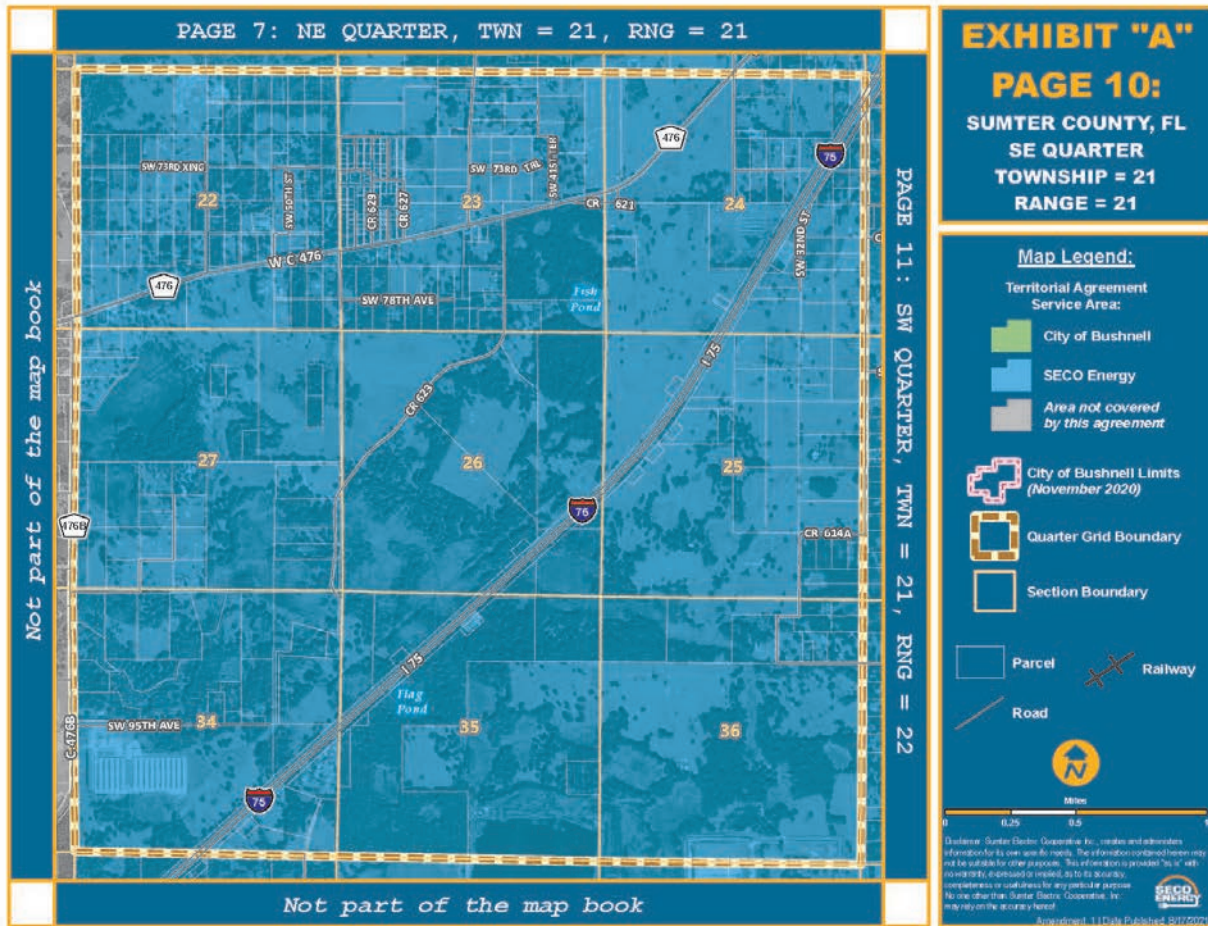




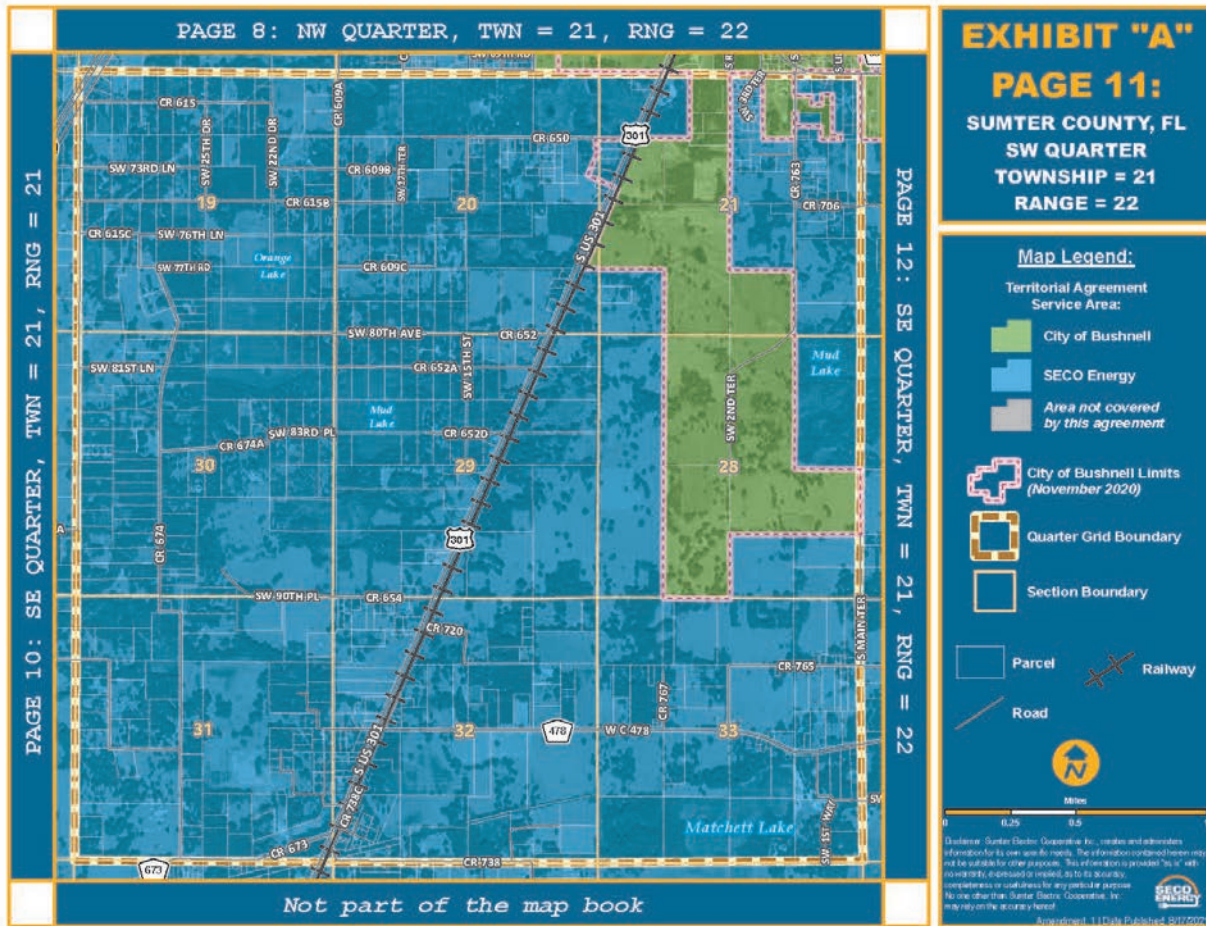


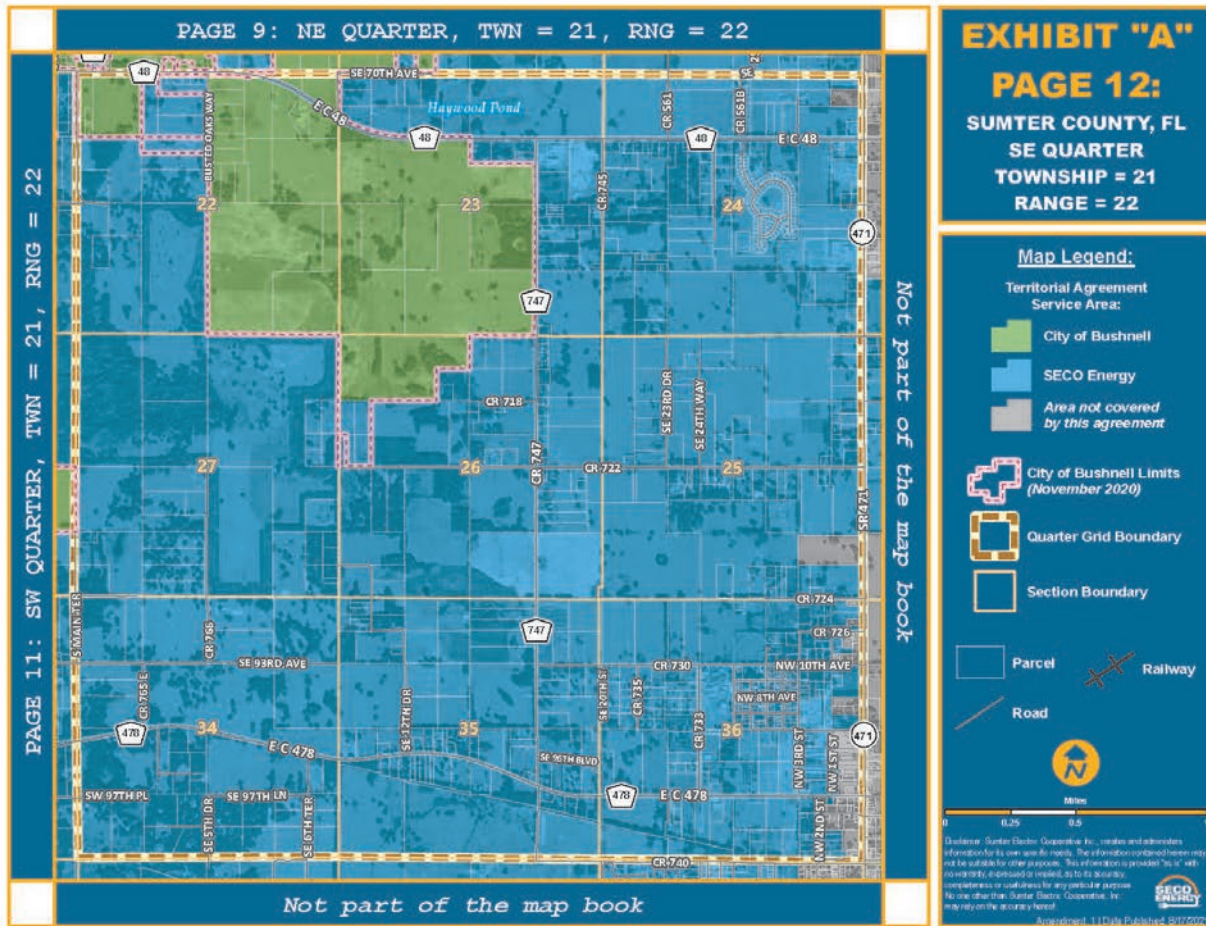


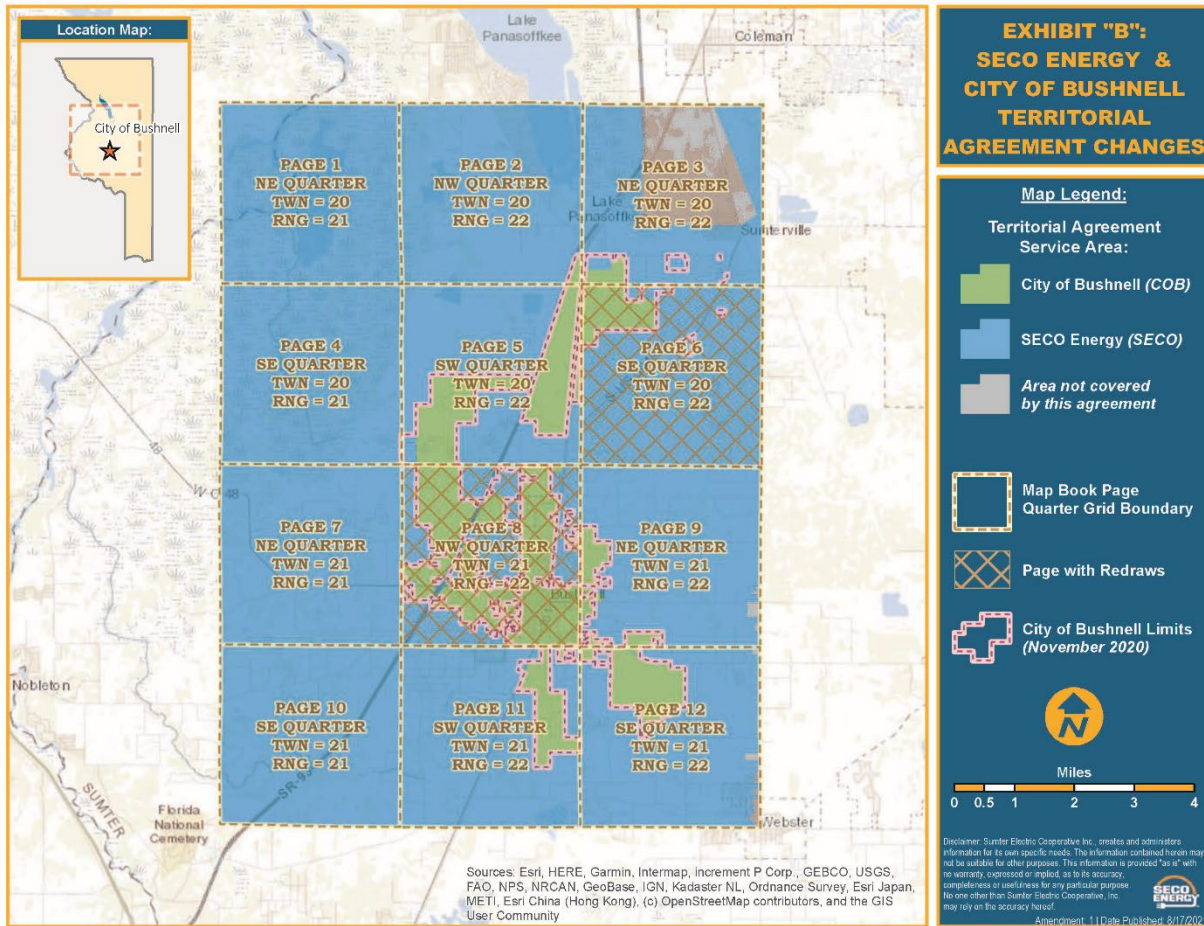


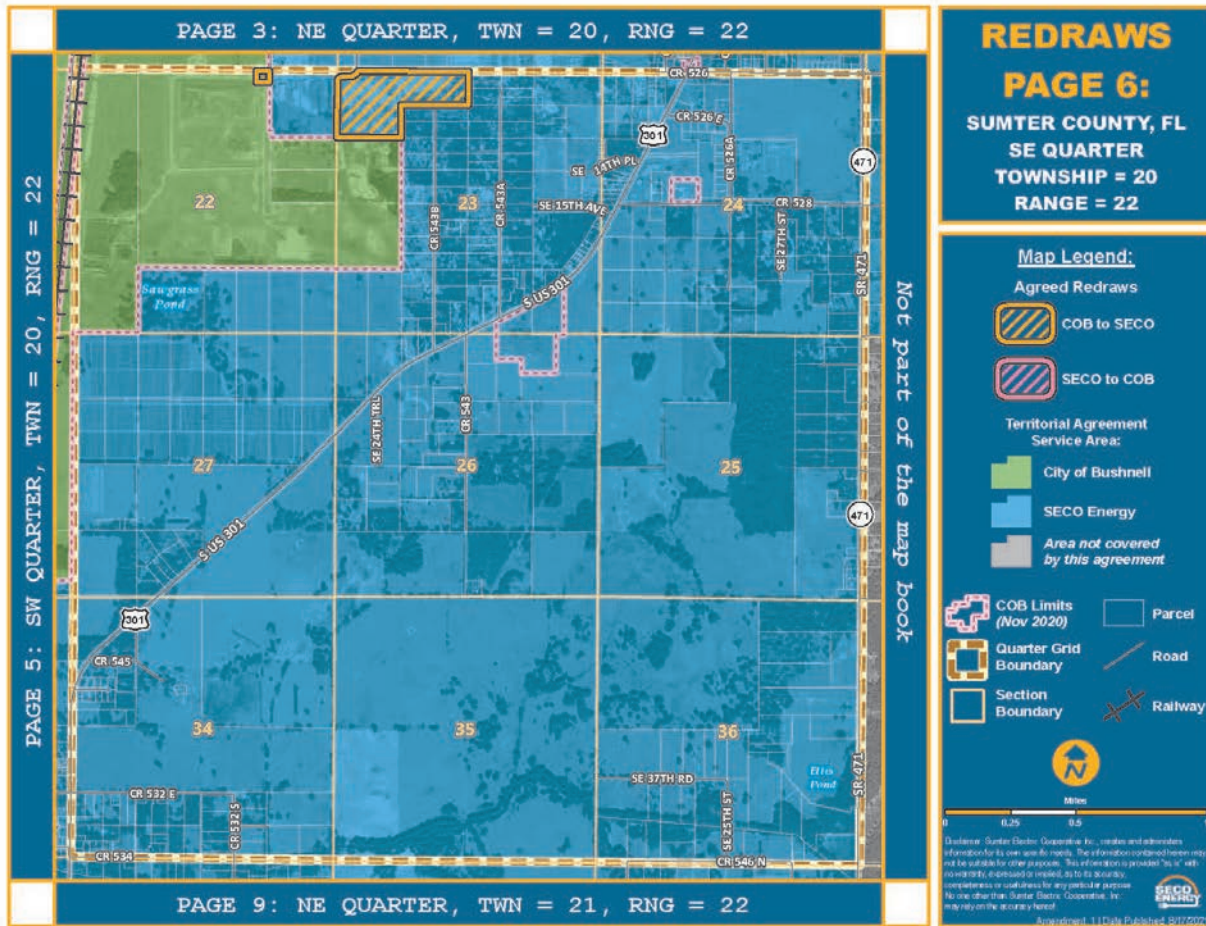


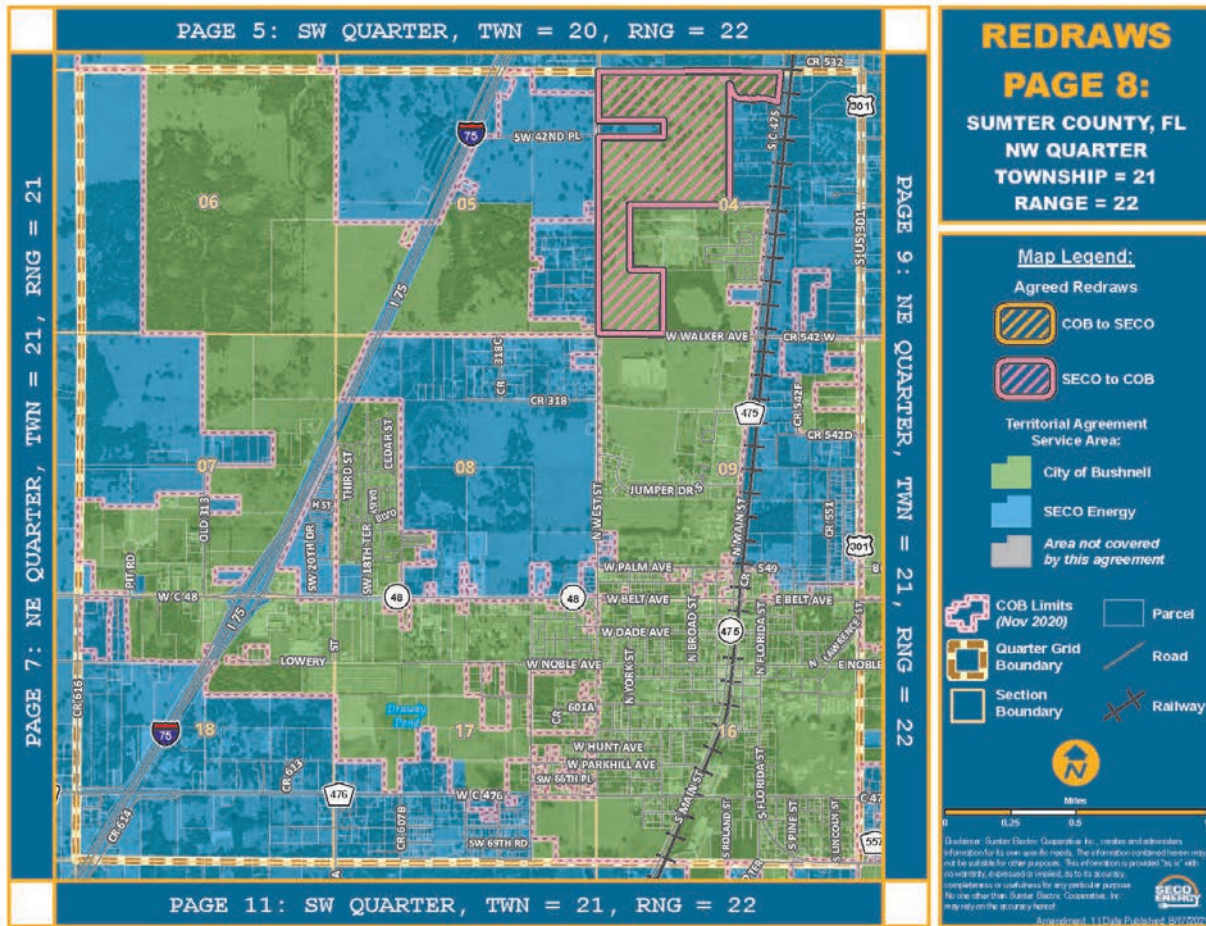












# Item 10

State of Florida



## Public Service Commission

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

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

**DATE:** January 20, 2022

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

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

**RE:** Docket No. 20210180-EI – Petition for authority to reinstate the non-firm energy program and tariff, Florida Public Utilities Company.

**AGENDA:** 02/01/22 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

### Case Background

On November 12, 2021, Florida Public Utilities Company (FPUC) filed a petition for approval to reinstate its Non-Firm Energy Program tariff. The Non-Firm Energy Program tariff was initially approved by the Commission as an experimental 15-month pilot program limited to a maximum of three participants.<sup>1</sup> Under the pilot program, FPUC purchased non-firm energy from Florida Power & Light Company (FPL), pursuant to its wholesale purchased power contract with FPL, and resold the non-firm energy to qualifying industrial customers with self-generation capabilities. The pilot program expired on December 31, 2020. After evaluating the pilot program's results, FPUC now proposes to reinstate the Non-Firm Energy Program tariff permanently and to expand the tariff to all eligible General Service – Large Demand 1 (GSLD1) and Standby customers.

<sup>1</sup> Order No. PSC-2019-0432-TRF-EI, issued October 22, 2019, in Docket No. 20190132-EI, *In re: Petition for authority for approval of non-firm energy pilot program and tariff by Florida Public Utilities Company.*

On November 30, 2021, FPUC filed corrected tariff sheets to address errors identified in the tariff sheets filed in the original petition.<sup>2</sup> At the January 11, 2022 Agenda Conference, the proposed tariff was suspended to allow staff a sufficient opportunity to gather and evaluate all pertinent information in order to present the Commission with an informed recommendation. During the evaluation of the petition, staff issued one data request to FPUC and received responses on December 14, 2021. In addition, staff held an informal conference call with FPUC representatives on January 5, 2022.

The corrected tariff sheets, as filed on November 30, 2021, are shown in Attachment A to this recommendation. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes.

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<sup>2</sup> Document No. 12897-2021, filed November 30, 2021.



## Discussion of Issues

**Issue 1:** Should the Commission approve FPUC's petition to reinstate its Non-Firm Energy Program tariff?

**Recommendation:** Yes, the Commission should approve FPUC's request to reinstate its Non-Firm Energy Program tariff. After evaluating the results of its pilot program, FPUC has demonstrated the program's benefits to the general body of ratepayers and program participants. The proposed tariff sheets are shown in Attachment A to this recommendation. (Hampson)

**Staff Analysis:** The proposed Non-Firm Energy tariff is designed for FPUC to purchase non-firm energy from FPL and sell the non-firm energy to qualifying industrial customers. Non-firm energy is purchased typically for short periods of time and may be interrupted when necessary. To qualify for the proposed tariff, customers must own dispatchable self-generation and qualify for FPUC's General Service Large-Demand 1 tariffs, Standby tariffs, or have executed a Special Contract approved by the Commission.

FPUC does not generate electricity to serve its customers; rather, FPUC currently purchases power, predominately from FPL, to serve its customers pursuant to wholesale purchased power agreements. FPUC recovers its payments for wholesale power from its customers through the fuel and purchased power cost recovery clause factors (fuel factors) the Commission approves in the annual fuel clause hearing.<sup>3</sup>

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

During the pilot program, service was limited to a maximum of three participants. Only two customers took service under the pilot program, both located in FPUC's Northeast Division on Amelia Island in Nassau County. There were no eligible customers in FPUC's Northwest Division, nor does FPUC expect there to be any potentially eligible customers in the foreseeable future. However, FPUC stated that the utility will be able to provide non-firm service under the tariff to its Northwest Division once FPL completes its transmission expansion to the former Gulf Power Company territory.<sup>4</sup>

FPUC has included minor modifications to the Non-Firm Energy Program tariff from the prior pilot program. Specifically, FPUC has proposed modifications to the tariff including: expanding participation to any eligible customers, removing references to the tariff being experimental, and clarifying that times shown are Eastern Standard Time (EST) or daylight saving time.

Customers who choose to take service under the proposed tariff agree to a minimum of 12 months of service; service will continue thereafter until the customer submits a written notice of

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<sup>3</sup> See Docket No. 20210001-EI.

<sup>4</sup> Effective, January 1, 2022, FPL and Gulf merged into one company under the FPL name.

termination to FPUC. Pursuant to the proposed tariff, FPL will notify FPUC each Friday morning of the hourly non-firm energy prices starting Sunday at midnight. FPUC will then notify the participating customers of the non-firm energy prices by Friday 10 am EST. The customers must submit to FPUC their non-firm energy purchases, or nominations, for the following week by 2 pm of the same day and FPUC will forward that information to FPL. While participating customers are not obligated to nominate non-firm energy for any specific period, they must nominate a minimum of 1,500 megawatt-hours per year.

The non-firm energy costs charged by FPL to FPUC will be directly passed by the utility to the non-firm customers. Subject to the proposed tariff sheets, the utility would not assess any administrative, energy, or demand surcharges under the proposed tariff. In response to staff's data request in Docket No. 20190132-EI, FPUC explained it expects the Non-firm Energy program's administrative costs to be minimal.<sup>5</sup> During the call with staff on January 5, 2022, FPUC confirmed that it had not incurred any additional administrative costs during the pilot program. However, if administrative charges are appropriate in the future, FPUC should petition the Commission to modify the proposed tariffs. In response to staff's first data request, FPUC stated that the cost to purchase non-firm energy from FPL and revenues received from customers participating in the Non-Firm Energy Program would not be included in the utility's annual fuel clause hearing.<sup>6</sup>

### **Pilot Program Results**

In response to staff's data request in Docket No. 20190132-EI, FPUC explained that it would determine the success or failure of the Non-Firm Energy pilot program based upon the total utilization of non-firm energy by customers participating in the pilot.<sup>7</sup> Additionally, FPUC stated in its response that the goal of the pilot program is to provide a benefit to all customers while improving the overall load factor for the electrical usage on Amelia Island.<sup>8</sup>

### ***Pilot Program Participation***

During the pilot program, FPUC provided service to two qualifying industrial customers: Rayonier Advanced Materials (Rayonier) and WestRock. Both customers produce paper and lumber products and operate on Amelia Island. Rayonier and WestRock have on-site generation that provides the majority of their energy and capacity requirements. FPUC serves as a back-up energy resource for these customers. The amount of energy Rayonier and WestRock purchase from the utility varies based on the operational status of the facilities. If approved, FPUC stated that both Rayonier and WestRock indicated they would participate in the program.

In this petition, FPUC states that the pilot program allowed the participants to purchase non-firm energy at a lower price than the cost to self-generate. In response to staff's first data request, FPUC demonstrated that electric utilization increased for non-firm energy customers during the pilot program. Specifically, in 2020 when the pilot program was effective, energy purchases

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<sup>5</sup> Responses to staff's first data request, Request No. 4, filed July 23, 2019, in Docket No. 20190132-EI (DN 05912-2019).

<sup>6</sup> Responses to staff's first data request, Request No. 5 (DN 13055-2021).

<sup>7</sup> Responses to staff's first data request, Request No. 11, filed July 23, 2019, in Docket No. 20190132-EI (DN 05912-2019).

<sup>8</sup> Load Factor is defined as the average load divided by the peak load in a specified time period.

increased by 156 percent and demand purchases increased by 3,923 percent compared to 2018.<sup>9</sup> Furthermore, allowing participants to purchase non-firm energy at a lower price than the cost to self-generate could provide a benefit to participants by reducing their production costs.

### ***Overall Load Factor on Amelia Island***

FPUC states that, prior to the pilot program, the overall load factor on Amelia Island was impacted by the demand and energy purchases of these customers.<sup>10</sup> When these customers made short term purchases of electricity from FPUC, it increased FPUC's monthly maximum demand. However, this increase in demand did not increase the total energy amount by the same percentage, which resulted in a negative impact on the utility's load factor. FPUC's load factor is considered by wholesale energy providers when negotiating the pricing contained in purchased power contracts. An improved load factor should benefit FPUC's general body of ratepayers through lower fuel factors when future agreements for wholesale power are negotiated.

In response to staff's first data request, the utility demonstrated that the Northeast Division's load factor improved as a result of the pilot program. Without the Non-Firm Energy Program the overall load factor on Amelia Island was 46 percent, while the overall load factor with the Non-Firm Program was 52 percent, using data from the 12-month period ending December 31, 2020.<sup>11</sup>

### **Conclusion**

The Commission should approve FPUC's petition to reinstate the Non-Firm Energy Program tariffs. After evaluating the results of its pilot program, FPUC has demonstrated the program's benefits to the general body of ratepayers and program participants. The proposed tariff sheets are shown in Attachment A to this recommendation.

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<sup>9</sup> Responses to staff's first data request, Request No. 2a (DN 13055-2021).

<sup>10</sup> Responses to staff's first data request, Request No. 10, filed July 23, 2019, in Docket No. 20190132-EI (DN 05912-2019).

<sup>11</sup> Responses to staff's first data request, Request No. 2b (DN 13055-2021).

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

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

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

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

~~First Original Revised~~ Sheet No. 66.1  
~~Cancels Original Sheet No. 66.1~~

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*NON-FIRM ENERGY PROGRAM NFEP-EXP (EXPERIMENTAL)*

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Availability

Available within the territory served by the Company in Jackson, Calhoun, and Liberty Counties and on Amelia Island in Nassau County. This service is limited to ~~a maximum of 3 Customers~~customers in the GSLD1 or Standby rate class. The Rate Schedule shall expire ~~on December 31, 2020~~with one year written notice by the Company to participating Customers.

Applicability

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

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

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

Monthly Rate

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

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

Monthly NF Administrative Charge:  
\$0.00 per Customer per month

(Continued on Sheet No. 66.2)

Issued by: ~~Kevin Webber~~Jeff Householder, President

Effective: ~~OCT-03-2019~~

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

~~First Original Revised~~ Sheet No. 66.2  
~~Cancels Original Sheet No. 66.2~~

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*NON-FIRM ENERGY PROGRAM NFEP-EXP (EXPERIMENTAL)*

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(Continued From Sheet No. 66.1)

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

Monthly Rate

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

Monthly NF Demand

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

Minimum Monthly Bill

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

Term of Service

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

Nomination and Acceptance Procedure

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

Nomination Recall Provisions:

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

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

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