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 August 2, 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-

DATE: July 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Day, Deas, ^{CH}Fogleman)
Office of the General Counsel (Imig, Jones, Trierwieler) ^{TLT}

RE: Applications for Certificate of Authority to Provide Telecommunications Service

AGENDA: 8/2/2022 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

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

| <u>DOCKET NO.</u> | <u>COMPANY NAME</u> | <u>CERT. NO.</u> |
|-------------------|-----------------------|------------------|
| 20220104-TX | Ubiquity Florida, LLC | 8973 |
| 20220109-TX | Accelecom GA LLC | 8974 |
| 20220116-TL | Gold Data USA Inc. | 8975 |

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

Item 2

State of Florida



Public Service Commission

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

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

DATE: July 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Harper) *SMC*
Office of Commission Clerk (Teitzman) *AJT*
Division of Administrative and IT Services (Kissell) *LK*

RE: Docket No. 20220127-PU – Proposed repeal of Chapter 25-25, F.A.C., concerning purchasing procedures; proposed repeal of Rule 25-22.002, F.A.C., Agenda of Meetings; proposed repeal of Rules 25-22.100, 25-22.101, 25-22.1035, 25-22.104, 25-22.105, and 25-22.107, F.A.C., concerning management of records; and proposed repeal of Rule 25-22.033, F.A.C., Communications Between Commission Employees and Parties.

AGENDA: 08/02/22 – Rule Proposal – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

RULE STATUS: Proposal May Be Deferred

SPECIAL INSTRUCTIONS: None

Case Background

The Joint Administrative Procedures Committee (JAPC) staff recently reviewed, pursuant to Section 120.545, Florida Statutes (F.S.), the Commission's rules in Chapter 25-25, Florida Administrative Code (F.A.C.), Purchasing – General Purchasing Procedures, and Chapter 25-22, F.A.C., Rules Governing Practice and Procedure, and submitted letters to the Commission, questioning the authority, necessity, and form of certain rules in those chapters.

Rules 25-25.001 through 25-25.030, F.A.C., address the Commission's procurement and purchase procedures of goods and services.¹ The Commission has statutory authority to implement procedures for the purchase of goods and services pursuant to Section 350.0603, F.S., and Chapter 287, F.S.² In the 1980s and early 1990s, Rules 25-25.001 through 25-25.030, F.A.C.,³ (Chapter 25-25 or purchasing rules) were adopted to implement the Commission-specific purchasing procedures.

On February 4, 2022, the Commission received a letter from JAPC staff, requesting that the Commission review and respond as to whether certain purchasing rules require amendment or repeal. At the time it received the JAPC letter, Commission staff was already in the process of reviewing the entire chapter of the Commission's purchasing rules and had concluded that the entirety of Chapter 25-25, F.A.C., should be repealed.

Rule 25-22.002, F.A.C., Agenda of Meetings, was adopted in 1981 and has not been amended since 1999. The rule provides that a majority vote of a quorum of the Commission is required to modify the presiding officer's decision to make a specific change in the agenda. On May 26, 2022, the Commission received a letter from JAPC⁴ indicating that it is unclear what statute this rule implements and questioned the rulemaking authority for this rule. Because the rule is outdated and the content of this rule is already addressed by the Administrative Procedures Manual (APM) 2.11-6 "Changes Affecting Agenda Items," staff is recommending that this rule be repealed.

Rules 25-22.100, .101, .1035, .104, .105, and .107, F.A.C., address management of Commission records and orders as set forth by the Department of State archives rules. On June 28, 2022, the Commission received a letter from JAPC stating that the Commission may lack rulemaking authority for these rules and that the rules contain unnecessary and obsolete requirements. The

¹ This recommendation does not address every provision required for state agency contracts contained in Chapters 110, 121, 215, 216, and 252, F.S. Rather, the focus of this rulemaking is the purchasing statutes that relate to Rules 25-25.001 through 25-25.030, F.A.C., only.

² Because the Commission is not an executive agency, not all of Chapter 287, Florida Statutes, is applicable to the Commission. However, the Commission follows the Chapter 287 purchasing procedures and corresponding DMS rules that address competitive bidding.

³ These rules are 25-25.001, Purpose; 25-25.002, Intent; 25-25.003, Definitions; 25-25.004, Procurement Organization; 25-25.005, Delegation of Authority; 25-25.006, Formal Bids Required; 25-25.0061, Purchasing Threshold Amounts and Procedures for Automatic Annual Adjustments; 25-25.007, Legal Advertisements; 25-25.008, Contracts for Class Printing; 25-25.009, Source Selection, Bid Openings and Contract Awards; 25-25.010, Single Source Procurement; 25-25.011, Emergency Procurement, 25-25.012, Responsibility of Bidders and Offertory; 25-25.013, Multi-term Contracts; 25-25.014, Cancellation Clause; 25-25.015, Installment Sale and Purchase Contracts; 25-25.016, Exemptions from Competitive Bid Requirements; 25-25.017, Bid Borrowing; 25-25.018, Use of the Terms "or equivalent" and "no substitute"; 25-25.019, Purchases Not Requiring Formal Bids; 25-25.020, Determinations; 25-25.021, Protest of Commission Decision; 25-25.022, Acquisition of Printing, Duplicating and Reproduction Equipment; 25-25.023, Vendors and Suppliers; 25-25.024, Contractual Services; 25-25.025, Minority Business Companies; and 25-25.030, Leases for Real Property.

⁴ The May 26, 2022 letter from JAPC also discusses the staff communication rule, Rule 25-22.033, F.A.C., which is addressed by this recommendation. With regard to the other Chapter 25-22, F.A.C., rules that JAPC commented on in its letter (Rules 25-22.001, 25-22.0021, 25-22.0022, 25-22.006, 25-22.029, 25-22.030, 25-22.032, 25-22.036, 25-22.0376, F.A.C), staff consulted with and responded to JAPC that no amendments to the rules were required, and, in some instances, technical amendments would be made to the rules. Technical amendments can be made to the rules without going through the rulemaking process in Section 120.54, F.S.

rules have not been amended since the 1990s, and Commission staff was already in the process of reviewing Rules 25-22.100 through 25-22.107, F.A.C. Staff concluded that these rules should be repealed.

Rule 25-22.033, F.A.C., addresses communications between commission employees and parties. The letter from JAPC indicated that Rule 25-22.033, F.A.C., lacks statutory authority, contains unnecessary and obsolete requirements, and does not appear to implement statutes for which the Commission has rulemaking authority. Staff is recommending that the rule be repealed.

This recommendation addresses whether Rules 25-25.001 through 25-25.030, F.A.C., Rule 25-22.002, F.A.C., Rules 25-22.100, .101, .1035, .104, .105, and .107, F.A.C., and Rule 25-22.033, F.A.C., should be repealed. The publication of a notice of rule development in the Florida Administrative Register is not required to initiate rulemaking for the proposed repeal of rules.⁵ The Commission has jurisdiction pursuant to Section 120.54, F.S.

⁵ Section 120.54(2)(a), F.S.

Discussion of Issues

Issue 1: Should the Commission propose the repeal all of the rules in Chapter 25-25, F.A.C.?

Recommendation: Yes. The Commission should repeal all of the rules in Chapter 25-25, F.A.C., as set forth in Attachment A. (Harper, Kissell)

Staff Analysis: The bulk of JAPC's comments concerning Chapter 25-25, F.A.C., pertain to references in the rules to old and repealed DMS rules, and JAPC questions whether the rules require updating.

The Commission has statutory authority to implement its purchasing procedures pursuant to Section 350.0603, F.S., which provides:

The Florida Public Service Commission may adopt rules and procedures for purchases of commodities and services, including procurement of vehicles, office space, and contractual services necessary for efficient operation. These procedures must recognize that fair and open competition is a basic tenet of public procurement and that both documentation of the acts taken and effective monitoring mechanisms are important to the process.

Although the Commission has authority to adopt its own purchasing rules and procedures pursuant to Section 350.0603, F.S., the Commission follows the procurement procedures in Sections 287.056, 287.057, 287.017, and 287.058, F.S., which together provide a framework for agency purchases and include thresholds that trigger competitive bidding and requests for proposals (RFPs). These statutes have corresponding Department of Management Services (DMS) Rules 60A-1.002 and 60A-1.045, F.A.C., which the Commission also follows. This statutory framework provides for the competitive bid or "RFP" process for purchases greater than \$35,000 total, as well as exceptions to the RFP process for "sole source," "alternative contract services," or "state term" contracts.

Historically, most of the Commission's purchases of goods and services have been below the \$35,000 threshold amount that triggers competitive bidding under Chapter 287, F.S. For these purchases, the Commission purchase order (P.O.) or "P-Card" procedure is consistent with the requirements of Chapter 287, F.S., and the DMS rules. The Commission does not utilize any of the Chapter 25-25, F.A.C., rules in order to make P.O. or P-card purchases.

Although outdated, Rules 25-25.001 through 25-25.030, F.A.C., in large part attempt to reiterate the DMS purchasing rules along with the Commission's APM procedures with one notable exception, Rule 25-25.016, F.A.C. Rule 25-25.016, F.A.C. provides an exception to competitive bidding for the Commission and states, in relevant part:

(2) When the Central Procurement Officer finds that *commodities equivalent to those offered on state contracts can be purchased at less than state contract prices, such commodities may be purchased, without advertising, through the informal bid procedure* defined in subsection 25-25.003(10), F.A.C. This procedure may be used regardless of commodity pricing but all such purchases

must have prior approval of the Agency Head, or his designee, and be clearly designated as exceptions to the state contracts awarded by the Department of Management Services.

(emphasis added). While the Commission has statutory authority pursuant to Section 350.0603, F.S., to implement this rule, the rule is no longer used for practical reasons because there are now more cost-effective purchasing mechanisms that do not require the use of the PSC's exception in Rule 25-25.016, F.A.C. The rule has therefore become obsolete.

Because the Commission's Chapter 25-25, F.A.C., purchasing rules are not being used and contain issues as noted by JAPC, staff believes that the purchasing rules are unnecessary and outdated and that the repeal of the chapter would result in a more streamlined procurement process. For the above-stated reasons, staff recommends that Rules 25-25.001 through 25-25.030 should be repealed.

Statement of Estimated Regulatory Costs (SERC)

Before the adoption, amendment, or repeal of any rule, an agency is encouraged to prepare a statement of estimated regulatory costs (SERC) of the proposed rule, as provided in Section 120.541, F.S. Pursuant to Section 120.54(3)(b), F.S., a SERC is required when the proposed rules will have an adverse impact on small business or the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule. Staff determined that the repeal of Chapter 25-25, F.A.C., does not trigger the requirements for a SERC pursuant to Section 120.541, F.S., because Chapter 25-25, F.A.C., has no affect on small businesses or on regulatory costs. Staff also determined that a SERC is not necessary because the rules proposed for repeal do not exceed the regulatory cost threshold of Section 120.541(1)(b), F.S. Moreover, the repeal of Chapter 25-25 does not require legislative ratification pursuant to Section 120.541(3), F.S. For these reasons, a SERC has not been prepared for this rulemaking.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., the agency head must certify for each rule filed for adoption whether any part of the rule is designated as a rule the violation of which would be a minor violation. The Commission maintains a list of minor violation rules on its website. The Chapter 25-25 rules are currently listed as minor violation rules. Thus, staff recommends once the rules are repealed that the Commission remove the rules from the list of minor violation rules.

Conclusion

Based on the foregoing, staff recommends that the Commission should propose the repeal of all of the rules in Chapter 25-25, F.A.C., as set forth in Attachment A.

Issue 2: Should the Commission propose the repeal of Rules 25-22.002, 25-22.100 through 25-22.107, and 25-22.033, F.A.C.?

Recommendation: Yes. The Commission should propose the repeal of Rules 25-22.002, 25-22.100 through 25-22.107, and 25-22.033, F.A.C., as set forth in Attachment A. (Harper, Teitzman)

Staff Analysis: JAPC's letter also addresses a number of rules in Chapter 25-22, F.A.C., which pertain to the Commission's practice and procedure.

Rule 25-22.002, Agenda of Meetings

Rule 25-22.002, F.A.C., provides that a majority vote of a quorum of the Commission is required to modify the presiding officer's decision to make a specific change in the agenda. JAPC's letter indicated that it is unclear what statute this rule implements and that it may lack rulemaking authority. Staff agrees with JAPC that the rule lacks implementation authority. Moreover, staff believes that the content of this rule is already addressed by APM 2.11-6 "Changes Affecting Agenda Items," which is a more appropriate location for this content than in a rule. For these reasons, staff recommends that this rule should be repealed.

Rules Addressing the Clerk's Office's Recordkeeping of Orders

In addition, JAPC's letter inquired about the necessity and authority for Rules 25-22.100, .101, .1035, .104, .105, and .107, F.A.C., which address recordkeeping performed by the Commission Clerk's office. For example, Rule 25-22.100, F.A.C., addresses the indexing, management, and availability of Commission orders. Rule 25-22.101, F.A.C., simply states that the purpose of the rule is to provide public access to and availability of all Commission orders, and Rule 25-22.1035, F.A.C., provides that the official reporter of the Commission is its website. Rule 25-22.104, F.A.C., provides the criteria for numbering of Commission orders, and Rule 25-22.105, F.A.C., states how the Commission's electronic database will be available from the Commission's website and how the Commission's orders can be publicly searched there. Rule 25-22.107, F.A.C., reiterates how the Commission will make its orders accessible and available to the public.

JAPC stated that since Rules 25-22.100, .101, .1035, .104, .105, and .107, F.A.C., were adopted, changes were made to Section 120.53, F.S. These changes shifted the overall coordination of agency final orders to the Department of State, so a rule can no longer cite to Section 120.53 F.S., as its law implemented. Currently, 120.53, F.S., provides general procedures for maintaining agency orders electronically, and Section 120.533, F.S., provides the Department of State's (DOS) general procedures for management of agency final orders. Also, Rule 28-101.001(h), F.A.C., State of Agency Organization and Operation (SOAO), was enacted in 1997 after the Commission Rules 25-22.100, .101, .1035, .104, .105, and .107, F.A.C., were adopted, and it provides how an agencies' SOAO should explain where and how orders can be accessed. As such, some of the substance of these rules is duplicative of what is currently covered by the general statutes regarding DOS' recordkeeping as well as by pages 13-15 of the Commission's SOAO.

Because Rules 25-22.100, .101, .1035, .104, .105, and .107, F.A.C., largely reiterate DOS' rules, and some of the information in the rules is already addressed by the portions of the SOAO, staff believes that any information in the rules that remain pertinent to the Commission that is not yet in the SOAO can be placed there. Likewise, staff believes some of the information contained in the rules, such as how orders are indexed, is more appropriate for Section 2.1 of the Commission's APM. For these reasons, staff recommends that the Commission repeal Rules 25-22.100, .101, .1035, .104, .105, and .107, F.A.C.

Rule 25-22.033, Communications Between Commission Employees and Parties

JAPC's letter also asked the Commission to review and advise as to the Commission's authority for Rule 25-22.033, F.A.C. As statutes change, rules must be updated, changed, or repealed to meet current law. If a rule was authorized by law 20 years ago but the law changes such that the rule is no longer authorized by current law, it must be repealed. Chapter 120, F.S., the Administrative Procedure Act, requires the Commission to regularly review its rules to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.⁶ As such, a rule must cite to a statute that it is interpreting or implementing and thus, if that citation is no longer applicable and there is no statute to interpret or implement, the rule is essentially defective. Currently, there is no statute to be implemented by Rule 25-22.033, F.A.C., and, therefore, there is no rulemaking authority for this rule.

Rule 25-22.033, F.A.C., was adopted by the Commission in 1993 and has not been amended since. Changes in the law have occurred since the rule was adopted that render the rule obsolete. In 1993, Section 120.53, F.S. gave agencies authority to adopt rules of procedure for administrative hearings under 120.57, F.S., which is why Rule 25-22.033, F.A.C., cited Sections 120.569 and 120.57, F.S., as laws implemented by the rule. However, in 1996 the Florida Legislature took away agencies' authority under Section 120.53, F.S., and transferred it to the Administration Commission.⁷ The Administration Commission adopted the Uniform Rules of Procedure (Uniform Rules) to establish Chapter 120 procedures to be followed by all agencies and practitioners appearing before agencies.

Under current law, nothing in Chapter 120, F.S., grants agencies rulemaking authority to implement the provisions of Sections 120.569 or 120.57, F.S., unless the agency obtains an exception from the Administration Commission. Further, Rule 25-22.033, F.A.C., does not contain any specific language that implements Sections 120.569 or 120.57.

In addition to being no longer authorized by current law, Rule 25-22.033, F.A.C., no longer serves a purpose. The opening paragraph of the rule states that its intent is to "provide all parties to adjudicatory proceedings notification of and the opportunity to participate in certain communications."

Subsection (1) of Rule 25-22.033, F.A.C., provides the scope of the rule, which is to govern all communications between Commission staff and parties to docketed proceedings. In its attempt to accomplish this, Subsection (1) reiterates and paraphrases prohibitions in Section 350.042, F.S.,

⁶ Section 120.74(1)(d)2, F.S.

⁷ Section 120.54(1)(e), F.S. (Supp. 1996).

an ex parte statute which applies only to Commissioners, not staff. Section 350.042, F.S., explicitly exempts Commission staff from the ex parte communication prohibition and procedures. The Commission on Ethics (COE) has interpreted Section 350.042, F.S., and recognized that under Section 350.042, F.S., Commission staff is not subject to ex parte prohibitions and instead, staff acts as gatekeeper to protect the Commissioners from receiving ex parte information. The COE opined that if staff obtains a communication that “relates to a docketed proceeding, it should be withheld from the commissioner.” The Commission follows this procedure and will continue to do so once this rule is repealed. If a Commissioner mistakenly receives an ex parte communication, as always, there is a procedure set forth by statute for notifying parties. COE 91-33, July 19, 1991.

Subsection (2) of Rule 25-22.033, F.A.C., requires that notice of any written communication between Commission employees and parties be transmitted to all other parties at the same time as the written communication, whether by U.S. Mail or other means. When Rule 25-22.033, F.A.C., was adopted in 1993, e-mail was not widely used for communications. However, currently most communications between parties are now by e-mail, which allows for efficient and simultaneous communications. Thus, Subsection (2) of Rule 25-22.033, F.A.C., is no longer practical or necessary.

Subsection (3) of Rule 25-22.033, F.A.C., requires prior notice to all parties for any staff communications with more than one party. Likewise, Subsection (4) of the Staff Communication Rule states:

Any party to a proceeding may prepare a written response to any communication between a Commission employee and another party. Notice of any such response shall be transmitted to all parties.

Staff believes that Subsections (3) and (4) of Rule 25-22.033, F.A.C., are impractical and unnecessary. The rule’s restrictions on communication are placed solely on Commission staff while parties to the docket may communicate with each other freely. This means that in order to have a question explained by a utility to more than one staff person at a time a noticed meeting must be set in advance. This is time consuming and delays staff’s ability to efficiently understand important aspects of the case.

Moreover, staff believes that Rule 25-22.033, F.A.C., is not needed to provide parties with notification and opportunity to meaningfully participate in an adjudicatory proceeding before the Commission because the Uniform Rules of Procedure, and Sections 120.569 and 120.57, F.S., provide protections for the parties. In addition, the Commission’s internal procedures assure that all parties to proceedings are aware of written communications concerning the merits of a docket. The Commission’s APM Section 2.10 C.3., Maintenance of Docket Files, states:

Files, letters, petitions, applications, pleadings, and other communications relating to matters which may result in formal Commission proceedings are to be officially filed with CLK for recording in CMS... .

Significant documents received by staff from any party to a proceeding should be made available to all parties. Accordingly, within three working days from the receipt of such data, staff shall provide a copy of the data to CLK for placement in the official docket.

These internal procedures help ensure that all parties have access to significant communications received by staff. Thus, Subsections (4) of Rule 25-22.033, F.A.C., is impractical and unnecessary.

Subsection (5) reiterates or paraphrases prohibitions in ex parte communications found in Sections 120.66, F.S. Section 120.66, F.S., provides that in any proceedings under Sections 120.569 and 120.57, F.S., a member of the agency engaged in advocacy in connection with the matter under consideration is prohibited from making an ex parte communication to the presiding officer, which at the Public Service Commission is the Commission.⁸ Section 120.66(1), F.S., also provides that nothing in that subsection applies to advisory staff members who do not testify on behalf of the agency in the proceedings or to any rulemaking proceedings. Subsection (5) also reiterates or paraphrases prohibitions in ex parte communications found in Section 350.042, F.S., a statute, which as noted above, does not apply to Commission staff.

Rule 25-22.033, F.A.C., contains unnecessary and obsolete requirements and does not implement statutes for which the Commission has rulemaking authority. Additionally, it impedes Commission staff's ability to efficiently develop an understanding of issues, which is needed to facilitate processing dockets before the Commission. Thus, staff recommends that this rule be repealed.

Statement of Estimated Regulatory Costs (SERC)

Before the adoption, amendment, or repeal of any rule, an agency is encouraged to prepare a statement of estimated regulatory costs (SERC) of the proposed rule, as provided in Section 120.541, F.S. Pursuant to Section 120.54(3)(b), F.S., a SERC is required when proposed rule will have an adverse impact on small business or the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in this state within 1 year after the implementation of the rule. The repeal of Rules 25-22.002, 25-22.100 through .107, and 25-22.033, F.A.C., does not trigger the requirements for a SERC pursuant to Section 120.541, F.S., because these are internal, procedural rules that have no affect on small businesses or on regulatory costs. Staff determined that a SERC is not necessary as the rules proposed for repeal do not exceed the regulatory cost threshold of Section 120.541(1)(b), F.S. Moreover, the repeal of Rules 25-22.002, 25-22.100 through .107, and 25-22.033, F.A.C., does not require legislative ratification pursuant to Section 120.541(3), F.S. For these reasons, a SERC has not been prepared for this rulemaking.

Minor Violation Rules Certification

Pursuant to Section 120.695, F.S., the agency head must certify for each rule filed for adoption whether any part of the rule is designated as a rule the violation of which would be a minor

⁸ The Commission meets the definition of "presiding officer" under Uniform Rule 28-106.102, F.A.C.

Date: July 21, 2022

violation. Rule 25-22.002, F.A.C., Rules 25-22.100, 25-22.101, 25-22.1035, 25-22.104, 25-22.105, and 25-22.107, F.A.C., and 25-22.033, F.A.C., are currently listed as minor violation rules. Thus, staff recommends that the Commission remove the rules from the list of minor violation rules.

Conclusion

Based on the foregoing, staff recommends that the Commission should propose the repeal of Rules 25-22.002, 25-22.100 through 25-22.107, and 25-22.033, F.A.C., as set forth in Attachment A.

Issue 3: Should this docket be closed?

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

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

1 **25-25.001 Purpose.**

2 ~~The purpose of these rules is to promote efficiency, economy and the conservation of~~
3 ~~energy in the purchase of commodities for the Commission; and to provide direction of~~
4 ~~contractual services procurement policies.~~

5 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
6 *New 4-12-83, Formerly 25-25.01, Repealed_____.*

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

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25-25.002 Intent.

~~As and when it appears to be to its advantage economically and administratively, the Commission shall, as a matter of policy, make recurring purchases of those commodities designated in the several contracts executed between the State of Florida Department of Management Services and the designated contractors therein, according to the terms of the applicable contracts in effect at the time of the purchases. All other purchases shall be made in accordance with these rules unless an administrative exception to the rules has been fully justified and approved by the Agency Head, as hereinafter provided.~~

*Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—
New 4-12-83, Formerly 25-25.02, Repealed_____.*

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

1 **25-25.003 Definitions.**

2 ~~The following definitions shall apply in these rules:~~

3 ~~(1) “Commission” means the Florida Public Service Commission.~~

4 ~~(2) “Agency head,” for purposes of these rules, means the Executive Director of the~~
5 ~~Commission or the Director’s designee, who shall be authorized to approve and execute~~
6 ~~contracts for goods, equipment and services to be rendered to the Commission.~~

7 ~~(3) “A purchase” means the acquisition by contracting in any manner, whether by rent,~~
8 ~~lease, lease/purchase or installment sales contract which may provide for the payment of~~
9 ~~interest on unpaid portions of the purchase price, or outright purchase, from a source of supply~~
10 ~~for either commodities or contractual services. Within the meaning of this definition, the~~
11 ~~following are deemed not to be purchases of commodities or services:~~

12 ~~(a) Transfer, sale or exchange of personal property or services between governmental~~
13 ~~agencies including contractual services as herein defined;~~

14 ~~(b) Commodities purchased for resale except Class B printing;~~

15 ~~(c) Utilities;~~

16 ~~(d) Public communications, i.e., telephone, telegraph;~~

17 ~~(e) Legal services including attorneys, paralegals, expert witnesses, court reporters, artistic~~
18 ~~services, academic program reviews, lectures by individuals, auditing services, and~~
19 ~~research/consulting services rendered by the National Association of Regulatory Utility~~
20 ~~Commissioners;~~

21 ~~(f) Postage;~~

22 ~~(g) Transportation of persons; and~~

23 ~~(h) Employee moving expenses when arranged for according to state personnel rules and~~
24 ~~procedures prescribed by the Commission.~~

25 ~~(4) “Commodity” means any of the various supplies, materials, goods, merchandise, Class~~

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1 ~~B-printing, equipment, real property, and other personal property, purchased, leased, or~~
2 ~~otherwise contracted for by the Commission.~~

3 (5) ~~“Contractual services” means the rendering of a contractor’s time and effort without~~
4 ~~the furnishing of commodities. Any contract providing for the acquisition of both services and~~
5 ~~commodities is deemed to be a contract for the acquisition of commodities. Consultants’~~
6 ~~reports for use within state government shall not be considered a commodity.~~

7 (6) ~~“Formal invitation to bid” means a solicitation for sealed bids specifically defining the~~
8 ~~commodity or service sought, with the title, date and hour of the public bid opening~~
9 ~~designated. It shall include printed instructions prescribing all conditions for bidding and~~
10 ~~provide for a manual signature of an authorized representative and be distributed to all~~
11 ~~prospective offerors at the same time.~~

12 (7) ~~“Formal bid” means a bid submitted in response to and in accordance with a formal~~
13 ~~Invitation to Bid. It shall bear the manual signature of the vendor’s authorized representative.~~

14 (8) ~~“Formal request for proposal for contractual services” means a written request, with~~
15 ~~the manual signature of an authorized representative and with the title, date and hour of the~~
16 ~~public opening designated, for a sealed proposal for the service(s) sought. Such requests shall~~
17 ~~contain the most definitive specifications possible, including applicable laws and rules,~~
18 ~~statement of work, proposal instructions, work detail analysis and evaluation criteria.~~

19 (9) ~~“Formal proposal for contractual services” means a proposal submitted in response to~~
20 ~~and in accordance with a formal request for proposal for contractual services. It shall bear the~~
21 ~~manual signature of the offering contractor’s authorized representative.~~

22 (10) ~~“Informal bid” means either a written or oral quotation not requiring a public opening~~
23 ~~at a specific time and date. Written evidence of oral quotations shall be maintained by the~~
24 ~~Commission.~~

25 (11) ~~“Informal proposal for contractual services” means a written agreement proposed for~~
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1 ~~services, the price of which does not exceed the threshold amount provided in subsection 25-~~
2 ~~25.0061(1), F.A.C., for Category One and does not require a public opening at a specific time~~
3 ~~and date.~~

4 ~~(12) "Printing" means commercial printing services and shall include any mechanical~~
5 ~~process whereby ink is transferred to paper or other materials.~~

6 ~~(13) "Class B printing" means that portion of printing (other than Class A legislative~~
7 ~~printing) which may be circulated to and/ or used by the general public or governmental~~
8 ~~entities other than the State of Florida.~~

9 ~~(14) "Printed material" means any book, pamphlet, brochure, report, form, stationery,~~
10 ~~label, tag, card or other product of printing which is purchased by the Commission.~~

11 ~~(15) "Competitive bids" means two or more valid responses to a bid invitation.~~

12 ~~(16) "Valid response" means a responsible offer in full compliance with the bid/proposal~~
13 ~~specifications and conditions.~~

14 ~~(17) "Emergency purchase" means a purchase necessitated by a sudden unexpected turn of~~
15 ~~events (e.g., acts of God, riots, fires, floods, accidents or any circumstances or causes beyond~~
16 ~~the control of the Commission in the normal conduct of its business) where the delay incident~~
17 ~~to competitive bidding would be detrimental to the interests of the Commission or the State.~~

18 ~~(18) "Single source purchase" means the purchase of a commodity or contractual service~~
19 ~~that is available from only one source.~~

20 ~~(19) "Identical (tie) bids/proposals" means two or more bids/proposals which are equal~~
21 ~~with respect to price, quality, and service.~~

22 ~~(20) "Mutuality of management" means two or more firms that are mutually owned or~~
23 ~~managed submitting bids in response to bid invitations. Only the low bidder among such firms~~
24 ~~may be considered in determining an award.~~

25 ~~(21) "Notice of decision" means the Commission's notice to vendors or other interested~~

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1 ~~persons of its decision or intended decision concerning a bid solicitation or a contract award.~~
2 ~~Such notice shall contain the statement: "Failure to file a protest within the time prescribed in~~
3 ~~Section 120.53(5), F.S., shall constitute a waiver of proceedings under Chapter 120, F.S."~~
4 ~~Notices concerning bid/proposal solicitations shall be sent by United States mail or by hand~~
5 ~~delivery. Notices of intended contract awards, including rejection of some or all of~~
6 ~~bids/proposals received, may be given by posting the bid/proposal tabulations where the~~
7 ~~bids/proposals were opened or by certified United States mail, return receipt requested,~~
8 ~~whichever is specified in the bid solicitation or the request for proposal.~~

9 ~~(a) Issuance of a written notice of award or a purchase order shall establish a contract~~
10 ~~between the Commission and the supplier on the terms, conditions and prices specified in the~~
11 ~~Invitation to Bid and the supplier's bid response.~~

12 ~~(b) Execution of a contract representing final agreement for services shall establish a~~
13 ~~contract between the Commission and the contractor for contractual services not acquired~~
14 ~~under the provision of paragraph (a) above.~~

15 ~~(22) "Contract" means all types of bids, agreements or purchase orders, regardless of what~~
16 ~~they may be called, executed by the Commission for the procurement or disposal of~~
17 ~~commodities, services or construction.~~

18 ~~(23) "Contractual Services Administrator" means the Chief of the Bureau of Management~~
19 ~~Studies of the Division of Economic Regulation.~~

20 ~~(24) "Contract amendment" means a written modification of an existing contract, for valid~~
21 ~~consideration, mutually agreed to by all parties to the contract and signed by individuals~~
22 ~~vested with the legal authority to bind the parties they represent.~~

23 ~~(25) "Contractor" means any person or firm having a contract with the Commission or~~
24 ~~with the State of Florida Department of Management Services.~~

25 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from
existing law.

1 *New 4-12-83, Formerly 25-25.03, Amended 12-24-86, 8-15-90, Repealed* _____ ;
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1 **25-25.004 Procurement Organization.**

2 ~~As the designated Agency Head for purposes of these rules, the Executive Director has the~~
3 ~~authority to approve and execute contracts for commodities and services to be rendered to the~~
4 ~~Commission. Such authority may be delegated by the Executive Director to an appropriate~~
5 ~~staff member.~~

6 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603, 350.127(3)*
7 *FS. History—New 4-12-83, Formerly 25-25.04, Repealed_____.*

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1 **25-25.005 Delegation of Authority.**

2 ~~The Division of Administrative and Information Technology Services shall serve as the~~
3 ~~Central Procurement Officer for the Commission and is hereby delegated the following duties~~
4 ~~and powers:~~

5 ~~(1) To canvass all sources of supply and negotiate for the purchase, lease, rental, or~~
6 ~~acquisition by purchase order, contract or maintenance agreement of all commodities required~~
7 ~~by the Commission or any of its divisions or offices under competitive bidding or by~~
8 ~~contractual negotiations, in the manner hereinafter provided;~~

9 ~~(2) To plan and coordinate purchases in volume and to negotiate contracts and execute~~
10 ~~purchase orders for recurring purchases of supplies and materials required by the Commission;~~

11 ~~(3) To make purchases by adopting and using the statewide contracts in effect between the~~
12 ~~State of Florida Department of Management Services and the designated contractors therein~~
13 ~~when determined feasible by and in the best interest of the Commission;~~

14 ~~(4) To prescribe the methods of securing bids or negotiating or awarding purchase orders~~
15 ~~within the Commission's Division of Administrative and Information Technology Services,~~
16 ~~Facilities Management and Purchasing Section;~~

17 ~~(5) In the event no bids are received, to negotiate on the best terms and conditions;~~

18 ~~(6) To establish standards, formulate specifications and determine the source of supply of~~
19 ~~any commodity requisitioned by any division or office of the Commission except as otherwise~~
20 ~~provided herein, and to set the maximum fair price that shall be paid for any commodity;~~
21 ~~provided, that this may be accomplished in coordination with the State Purchasing Office of~~
22 ~~the Department of Management Services and by adoption of those standards, specifications,~~
23 ~~and sources determined by the State Purchasing Office when determined feasible by and in the~~
24 ~~best interest of the Commission;~~

25 ~~(7) To require that every division and office furnish information relative to its purchase~~

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1 ~~requirements and to prescribe methods of requisitioning commodities and services; and~~
2 ~~(8) To formulate operating procedures necessary to carry out the purpose of this section~~
3 ~~and to exercise supervision over the purchasing activity of the Division of Administrative and~~
4 ~~Information Technology Services, Facilities Management and Purchasing Section of the~~
5 ~~Commission.~~

6 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
7 *New 4-12-83, Formerly 25-25.05, Amended 12-24-86 Repealed_____.*

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1 **25-25.006 Formal Bids Required.**

2 ~~(1) No purchase of commodities or services in excess of the threshold amount provided in~~
3 ~~subsection 25-25.0061(1), F.A.C., for Category One shall be made without attempting to~~
4 ~~secure two or more formal bids unless otherwise provided for herein.~~

5 ~~(2) Nothing in these rules shall be construed as limiting the number of bids solicited, it~~
6 ~~being the intent of the Commission to secure as many competitive bids as are consistent with~~
7 ~~good purchasing practices.~~

8 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
9 *New 4-12-83, Formerly 25-25.06, Amended 12-24-86 Repealed_____.*

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1 **25-25.0061 Purchasing Threshold Amounts and Procedures for Automatic Annual**

2 **Adjustments.**

3 ~~(1) The following purchasing threshold categories are hereby established:~~

4 ~~(a) Category One: \$11,000.~~

5 ~~(b) Category Two: \$22,000.~~

6 ~~(2) The purchasing threshold amounts shall be adjusted annually concurrent with the~~

7 ~~Department of Management Services (DMS) State Purchasing Office's adjustment of its~~

8 ~~threshold amounts calculated pursuant to DMS Rule 60A-1.012, F.A.C.~~

9 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*

10 *New 12-24-86, Amended 6-19-95, Repealed_____.*

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1 **25-25.007 Legal Advertisements.**

2 ~~All purchases in excess of the threshold amount provided in subsection 25-25.0061(1),~~
3 ~~F.A.C., for Category Two shall be advertised at least once in a newspaper of general~~
4 ~~circulation and/or in the Florida Administrative Register no less than ten calendar days prior to~~
5 ~~the bid opening. Nothing in this section shall be construed as limiting the frequency, lapse~~
6 ~~time, or number of newspapers in which the advertisement may appear; provided, however,~~
7 ~~that if the Agency Head should determine that the delay incident to such advertising procedure~~
8 ~~would be detrimental to the interest of the Commission and issues a certification accordingly,~~
9 ~~the advertising may be waived.~~

10 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
11 *New 4-12-83, Formerly 25-25.07, Amended 12-24-86, Repealed_____.*

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1 **25-25.008 Contracts for Class B Printing.**

2 ~~No general contract shall be let to cover Class B printing and each job so classified shall~~
3 ~~be let separately to the lowest responsible bidder. Such contract shall apply only to the work~~
4 ~~under consideration at the time of need. Contracts for printing shall be awarded only to~~
5 ~~printing firms. No such contract shall be awarded to any broker, agent or independent~~
6 ~~contractor to provide printing manufactured by other persons or firms.~~

7 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
8 *New 4-12-83, Formerly 25-25.08, Amended 12-24-86, Repealed_____.*

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1 **25-25.009 Source Selection, Bid Openings and Contract Awards.**

2 ~~(1) Public Notice. Adequate public notice of invitations to bid shall be given sufficiently in~~
3 ~~advance of the bid openings to permit potential bidders to prepare and submit bids in a timely~~
4 ~~manner but in no event shall notice be less than 10 days. Notice shall include as a minimum~~
5 ~~the mailing or delivery of invitations to bid to two potential bidders on any bidder list, with~~
6 ~~normal practice being to allow notice to as many potential bidders as may be consistent under~~
7 ~~the circumstances with good purchasing practices. Notice may include publication in a~~
8 ~~newspaper of general circulation for a reasonable period prior to a bid opening.~~

9 ~~(2) Bid Openings. Bids shall be opened in the public place and at the time designated in~~
10 ~~the invitations to bid. The amount of each bid and the name of each bidder shall be recorded.~~
11 ~~Such record and each bid thereon shall be open to public inspection. All formal bids submitted~~
12 ~~shall prominently display on the outside of the sealed container the notation "Sealed Bid." In~~
13 ~~the event any such bid is inadvertently opened in the course of mail handling and the contents~~
14 ~~are known only to the opener, the bid shall be immediately resealed and the notation "opened~~
15 ~~by mistake, contents not revealed," shall be placed prominently on the outside of the~~
16 ~~container, in the opener's own handwriting, and be followed by the opener's signature, and~~
17 ~~such bid shall not be disqualified solely on such grounds.~~

18 ~~(3) Bid Evaluation. Bids shall be evaluated solely on requirements set forth in the~~
19 ~~Invitation to Bid, which may include criteria to determine acceptability such as inspection,~~
20 ~~testing for quality and workmanship, delivery, and suitability for a particular purpose. Those~~
21 ~~criteria that will affect the bid price and be considered in evaluation for award shall be~~
22 ~~objectively measured, such as all or none, discounts, transportation costs, and total or life~~
23 ~~cycle costs.~~

24 ~~(4) Withdrawal of Bids, Cancellation of Awards. Correction or withdrawal of bids which~~
25 ~~are clearly erroneous before or after award or cancellation of awards or contracts, based on~~
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existing law.

1 ~~such bid mistakes, may be considered if written notification of such error is received by the~~
2 ~~Division of Administrative and Information Technology Services, Facilities Management and~~
3 ~~Purchasing Section in a timely manner under the circumstances. Any alterations or corrections~~
4 ~~appearing on bids when opened must have been initialed by the vendor's representative who~~
5 ~~made the change.~~

6 ~~(5) Preference to Bidders within the State. Preference shall be given to bidders located~~
7 ~~within the State of Florida when awarding contracts, whenever commodities bid can be~~
8 ~~purchased at no greater expense than, and at a level of quality comparable to, those bid by a~~
9 ~~bidder located outside of the State of Florida.~~

10 ~~(6) Receipt of no competitive bids in the First Call for Bids on Commodities Exceeding~~
11 ~~the Threshold Amount Provided in subsection 25-25.0061(1), F.A.C., for Category One.~~
12 ~~When no competitive bids are received for the purchase of a commodity or group of~~
13 ~~commodities exceeding the Threshold Amount Provided in subsection 25-25.0061(1), F.A.C.,~~
14 ~~for Category One in the first call for bids, the Division of Administrative and Information~~
15 ~~Technology Services, Facilities Management and Purchasing Section shall review the bid and~~
16 ~~the Invitation to Bid in order to determine the reasons, if any, why no competitive bids were~~
17 ~~received. If it is determined that an emergency exists or that the items sought are available~~
18 ~~only from a single source, the Agency Head shall make a certification in writing as to the~~
19 ~~conditions and circumstances and thereby authorize the Division of Administrative and~~
20 ~~Information Technology Services, Facilities Management and Purchasing Section to proceed~~
21 ~~with the purchase. Otherwise, a second call for bids will be issued. If no competitive bids are~~
22 ~~received in a second call for bids, the Division of Administrative and Information Technology~~
23 ~~Services, Facilities Management and Purchasing Section shall review the bid and the~~
24 ~~Invitation to Bid in order to determine the reasons, if any, why no competitive bids were~~
25 ~~received and, with the authorization of the Agency Head, may proceed with the purchase or, if~~
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1 ~~the circumstances and conditions warrant, may issue another call for bids.~~

2 ~~(7) Award. The purchase order or other written notice of award shall be sent with~~
3 ~~reasonable dispatch to the lowest responsible bidder whose bid meets the requirements and~~
4 ~~criteria set forth in the Invitation to Bid. Normally, in the purchase of commodities or services,~~
5 ~~the Commission's purchase order, and where applicable, the general and special conditions~~
6 ~~contained in the invitation to bid or request for proposal and the bidder's bid response, shall~~
7 ~~constitute the complete agreement between the Commission and the vendor/supplier and the~~
8 ~~latter's agreement will not be used. Nothing herein shall preclude Commission use of a~~
9 ~~separate contract document when the Commission deems a separate contract appropriate.~~

10 ~~(8) Multi-Step Sealed Bidding. When it is determined by the Central Procurement Officer~~
11 ~~or Contractual Services Administrator to be impractical to initially prepare a purchase~~
12 ~~description to support an award based on price, an invitation for proposals may be issued~~
13 ~~requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to~~
14 ~~those bidders whose offers have been qualified under the criteria set forth in the invitation for~~
15 ~~proposals.~~

16 ~~(9) No Bid Response. In the event no bid is received in response to an Invitation to Bid,~~
17 ~~the Central Procurement Officer shall review the bidding procedure. If it is determined that the~~
18 ~~Invitation to Bid was issued reasonably and properly, the Division of Administrative and~~
19 ~~Information Technology Services, Facilities Management and Purchasing Section may~~
20 ~~proceed to purchase at the best terms and conditions available.~~

21 ~~(10) Purchases Not to be Divided. No purchase shall be divided or subdivided in order to~~
22 ~~circumvent the competitive bid requirements of these rules.~~

23 ~~(11) Conditions to be Included in Call for Bids/Proposals. All formal bid invitations and~~
24 ~~requests for proposals issued by the Commission shall include the Invitation to Bid/Bidder~~
25 ~~Acknowledgement form or the "Request for Proposal/Acknowledgement" form as prescribed~~

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1 ~~and adopted by the Commission.~~
2 ~~(12) Determination of the Best Bid. It shall be the sole responsibility of the Commission to~~
3 ~~determine the lowest responsible and responsive bidder. In any case where the Agency Head~~
4 ~~makes a determination to accept a bid other than the low bid meeting specifications, the~~
5 ~~reasons for such determination shall be fully documented.~~
6 ~~(13) Right to Reject Bids; Cancellation of Invitation to Bid; Correction of Commodity~~
7 ~~Bids. The Commission reserves the right to reject any or all bids or proposals, and to cancel~~
8 ~~any Invitation to Bid, Request for Proposal, or other solicitation and such reservation shall be~~
9 ~~indicated in all advertising and bid invitations. The reasons for rejecting bids and cancelling~~
10 ~~solicitations shall be fully documented. The Commission reserves the right to waive minor~~
11 ~~irregularities in an otherwise valid bid. A minor irregularity is defined as a variation from the~~
12 ~~bid invitation terms and conditions which does not affect the price of the bid, give the bidder~~
13 ~~an unfair advantage over other bidders, or adversely impact the interests of the Commission. A~~
14 ~~bidder may not modify its bid after opening; however, calculation or typographical errors may~~
15 ~~be corrected by the Commission.~~
16 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
17 *New 4-12-83, Formerly 25-25.09, Amended 12-24-86, 6-19-95, Repealed_____.*
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1 **25-25.010 Single Source Procurement.**

2 ~~A purchase order or contract may be awarded for commodities or services without~~
3 ~~competitive bidding when the Agency Head determines and certifies in writing that there is~~
4 ~~only one source for the commodities or services.~~

5 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
6 *New 4-12-83, Formerly 25-25.10, Repealed_____.*

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25-25.011 Emergency Procurement.

~~A purchase order or contract may be awarded for commodities or services without competitive bidding when the Agency Head determines and certifies in writing under oath, that an emergency exists which constitutes a threat to the public health, safety or welfare, or when the delay incident to competitive bidding may be detrimental to the interests of the Commission. Emergency procurement shall be accomplished with such competition as may be prudent under the circumstances.~~

*Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—
New 4-12-83, Formerly 25-25.11, Repealed_____.*

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

1 **25-25.012 Responsibility of Bidders and Offerors.**

2 ~~The failure of a bidder or offeror to supply any information required in connection with an~~
3 ~~Invitation to Bid or a Request for Proposal may be cause for a determination of “No Valid~~
4 ~~Response” and may lead to disqualification of the bid or proposal.~~

5 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
6 *New 4-12-83, Formerly 25-25.12, Repealed _____.*

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25-25.013 Multi-term Contracts.

~~A contract for commodities or services may be entered into for any period of time deemed to be in the best interest of the Commission provided the terms of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of award. Payment and performance obligation for succeeding fiscal periods shall be subject to the availability of funds and no such contract or agreement shall be entered into unless it contains the stipulation, “subject to availability of funds.” Should funds not be available in any succeeding fiscal period, such contract or agreement shall be cancelled on that ground at the beginning of such period and the contractor shall be paid only for commodities received or services used while the contract is in force.~~

*Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—
New 4-12-83, Formerly 25-25.13, Repealed_____.*

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25-25.014 Cancellation Clause.

~~Any lease contract for commodities shall include a cancellation clause of 30, 60 or 90 days, as is determined to be in the best interest of the Commission. Any contract for services shall contain a provision for unilateral cancellation by the Commission for default in accordance with subsection 25-25.023(4), F.A.C., or for refusal by the contractor to allow public access to all materials made or received by the contractor in connection with the contract, subject to the provision of Chapter 119, F.S.~~

*Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—
New 4-12-83, Formerly 25-25.14, Amended 12-24-86, Repealed_____.*

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

1 **25-25.015 Installment Sale and Purchase Contracts.**

2 ~~Installment sale and purchase contracts shall be accomplished on the form determined for~~
3 ~~the purpose by the Division of Administrative and Information Technology Services, which is~~
4 ~~hereby adopted, incorporated and published by reference for use by the Commission. The use~~
5 ~~of such contracts by the Commission shall be subject in each instance to preaudit review and~~
6 ~~prior approval by the State Comptroller.~~

7 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
8 *New 4-12-83, Formerly 25-25.15, Repealed_____.*

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25-25.016 Exemptions from Competitive Bid Requirements.

~~(1) Purchases made according to state contracts, as provided in Rule 25-25.002, F.A.C., of these rules, or from the non-profit corporation established by Part II, Chapter 946, F.S., are exempt from the competitive bid requirements of these rules.~~

~~(2) When the Central Procurement Officer finds that commodities equivalent to those offered on state contracts can be purchased at less than state contract prices, such commodities may be purchased, without advertising, through the informal bid procedure defined in subsection 25-25.003(10), F.A.C. This procedure may be used regardless of commodity pricing but all such purchases must have prior approval of the Agency Head, or his designee, and be clearly designated as exceptions to the state contracts awarded by the Department of Management Services.~~

~~(3) Purchases made from the Federal General Services Administration contracts are exempt from the competitive bid requirements of these rules.~~

*Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—
New 4-12-83, Formerly 25-25.16, Amended 12-24-86, 6-19-95, Repealed_____.*

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25-25.017 Bid Borrowing.

~~The practice of bid borrowing, or the use of another state agency's bid or proposal, is prohibited.~~

*Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—
New 4-12-83, Formerly 25-25.17, Amended 12-24-86, Repealed_____.*

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1 **25-25.018 Use of the Terms “or equivalent” and “no substitute.”**

2 ~~When an Invitation to Bid includes in the specifications an identifiable brand name or~~
3 ~~process for comparison purposes, the term “or equivalent” shall be used immediately~~
4 ~~following such identification. The term “no substitute” shall not be used for the sole purpose~~
5 ~~of limiting competition or giving preferential treatment to a particular manufacturer.~~

6 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
7 *New 4-12-83, Formerly 25-25.18, Repealed_____.*

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1 **25-25.019 Purchases Not Requiring Formal Bids.**

2 ~~Purchases that do not exceed the threshold amount provided in subsection 25-25.0061(1),~~
3 ~~F.A.C., for Category One shall be made from two or more informal bids or proposals~~
4 ~~whenever practical.~~

5 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
6 *New 4-12-83, Formerly 25-25.19, Amended 12-24-86, Repealed_____.*

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1 **25-25.020 Determinations.**

2 ~~The determinations required by these rules with regard to competitive sealed bidding,~~
3 ~~withdrawals of bids, cancellations of awards, single source procurement, emergency~~
4 ~~procurement, cancellation of Invitations to Bid or Requests for Proposals, responsibility of~~
5 ~~bidders or offerors, and any other determination made by the Commission in the course of its~~
6 ~~purchasing activity shall be final and conclusive unless found by way of an appropriate~~
7 ~~proceeding to be erroneous, arbitrary or contrary to law.~~

8 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
9 *New 4-12-83, Formerly 25-25.20, Repealed_____.*

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1 **25-25.021 Protest of Commission Decision.**

2 ~~(1) Any person adversely affected by a Commission decision or intended decision shall~~
3 ~~file a protest pursuant to Section 120.57(3), F.S.~~

4 ~~(2) The Chairman of the Commission shall designate a Commissioner on a case by case~~
5 ~~basis to resolve protests filed pursuant to Section 120.57(3), F.S.~~

6 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
7 *New 4-12-83, Formerly 25-25.21, Repealed_____.*

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1 **25-25.022 Acquisition of Printing, Duplicating and Reproduction Equipment.**

2 ~~(1) All printing, duplicating and reproduction equipment acquired by the Commission~~
3 ~~shall be the most cost competitive, effective equipment capable of meeting the Commission's~~
4 ~~needs. In making its determination of equipment to be acquired the Commission shall consider~~
5 ~~factors which include but are not limited to:~~

6 ~~(a) Actual and anticipated monthly printing, duplicating, or reproduction volumes;~~

7 ~~(b) Proximity and availability of other similar equipment; and~~

8 ~~(c) Actual and anticipated costs utilizing commercial printers compared to actual cost~~
9 ~~utilizing existing equipment together with anticipated cost of any proposed equipment.~~

10 ~~(2) All such equipment shall be used only for the efficient and economical production of~~
11 ~~printed material directly related to business of the state.~~

12 ~~(3) The Commission shall maintain cost records on all such equipment.~~

13 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
14 *New 4-12-83, Formerly 25-25.22, Repealed_____.*

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1 **25-25.023 Vendors and Suppliers.**

2 ~~(1) Vendor Files. The Commission shall maintain a file for the purpose of bid solicitations~~
3 ~~of those firms doing business with the state on a repetitive basis for the purchase of~~
4 ~~commodities or contractual services in excess of the threshold amount provided in subsection~~
5 ~~25-25.0061(1), F.A.C., for Category One per purchase. The file may consist in whole or in~~
6 ~~part of such firms that are registered with the State Purchasing Office of the Department of~~
7 ~~Management Services to do business with the State, and may be limited to such firms, in the~~
8 ~~discretion of the Commission. A vendor who is not registered to do business with the State~~
9 ~~and who desires to be included in the Commission's vendor file may file an informal~~
10 ~~application with the Division of Administrative and Information Technology Services,~~
11 ~~Facilities Management and Purchasing Section for the purpose. The application shall contain~~
12 ~~the following minimum information:~~

13 ~~(a) Complete business name and address by which bids are to be solicited;~~

14 ~~(b) Name of any mutually owned or controlled firm;~~

15 ~~(c) Type of business, such as distributor, dealer (wholesale or retail), jobber, or~~
16 ~~manufacturer;~~

17 ~~(d) Whether business is an individual, partnership, or corporation;~~

18 ~~(e) If business is a corporation, certification of compliance with Chapter 607, F.S.;~~

19 ~~(f) A description, including location, of the business facility from which commodities or~~
20 ~~services are to be supplied;~~

21 ~~(g) Experience in sales to governmental agencies;~~

22 ~~(h) Number of employees, indicating separately the number of employees in Florida;~~

23 ~~(i) Annual sales volume;~~

24 ~~(j) Current financial statement; and~~

25 ~~(k) Full description of each commodity or service offered, including results of any~~

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1 reasonably current testing of commodities by a governmental or independent testing facility.
2 ~~(2) Within 3 months of receipt of an application from a non-registered vendor applicant,~~
3 ~~the Commission will conduct an investigation and notify the applicant that it is accepted or~~
4 ~~rejected for inclusion in the vendor file. Reasons for rejection shall be clearly stated in the~~
5 ~~notice and may include, but not be limited to undesirable business practices such as non-~~
6 ~~performance and consistent failure to respond to bid invitations. The reasonably current~~
7 ~~removal of a vendor from the mailing lists of the State Purchasing Office shall be a cause for~~
8 ~~rejection. The investigation of an applicant shall not incur any expense to the Commission~~
9 ~~other than normal salaries and employee expenses for authorized full time positions. Any~~
10 ~~applicant whose application has been rejected may seek remedy as provided by Rule 25-~~
11 ~~25.021, F.A.C., of these rules for persons aggrieved by the bid solicitation and contract award~~
12 ~~process.~~

13 ~~(3) Removal from vendor files and mailing lists. The Commission may remove vendors~~
14 ~~and suppliers from its vendor files or mailing lists on reasonable grounds. Reasonable ground~~
15 ~~for such removal may include but shall not be limited to:~~

16 ~~(a) Consistent failure to respond to bid invitations (3 consecutive instances);~~
17 ~~(b) Failure to perform according to contract provisions;~~
18 ~~(c) Conviction in a court of law of any criminal offense in connection with the conduct of~~
19 ~~business;~~

20 ~~(d) Clear and convincing evidence of a violation of any federal or state anti-trust law based~~
21 ~~on the submission of bids or proposals, or the awarding of contracts; and~~

22 ~~(e) Removal from its mailing list by the State Purchasing Office. The Commission shall~~
23 ~~remove from its vendor files and mailing lists any vendor or supplier whom evidence clearly~~
24 ~~indicates has attempted to give any Commission employee a gratuity of any kind for the~~
25 ~~purpose of influencing a recommendation or decision in connection with any part of the~~

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1 Commission's purchasing activity. The Commission shall promptly notify the State
2 Purchasing Office of the removal of any person or firm from vendor files and mailing lists in
3 order that notice of such action might be disseminated to other state agencies that may be
4 affected by it.

5 (4) ~~Default. A contractor who fails to perform according to contract terms and conditions~~
6 ~~shall be notified by certified mail, return receipt requested, of the nature of the failure to~~
7 ~~perform and to correct the failure immediately. If the failure is not corrected within 10 days~~
8 ~~after receipt of the notice, a notice shall be issued by certified mail, return receipt requested,~~
9 ~~that the contractor is in default and that the Commission shall reprocure the commodities or~~
10 ~~services subject to the contract. The defaulting contractor shall reimburse the Commission for~~
11 ~~all reprocurement costs and for the monetary difference between the cost of substitute~~
12 ~~commodities or services and the contract price for such commodities or services.~~

13 ~~Reprocurement may be accomplished by attempting to contract with the second lowest bidder,~~
14 ~~then the next lowest bidder, sequentially, until a bidder willing to perform at acceptable~~
15 ~~pricing under the bid conditions is found. The Commission may elect to rebid or to purchase~~
16 ~~on the open market, as may appear to be in its best interest. Default shall be a cause for~~
17 ~~removing a contractor from the Commission's vendor files and mailing lists. All Commission~~
18 ~~default actions shall be promptly reported to the State Purchasing Office for dissemination to~~
19 ~~other state agencies. The provisions of these rules shall not limit or preclude the Commission's~~
20 ~~remedies at law in cases of default.~~

21 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
22 *New 4-12-83, Formerly 25-25.23, Amended 12-24-86, Repealed_____.*

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1 **25-25.024 Contractual Services.**

2 ~~(1) Competitive Bids on Purchases Exceeding the threshold amount provided in subsection~~
3 ~~25-25.0061(1), F.A.C., for Category One—Unless an emergency exists or a service is~~
4 ~~available only from a single source or if State or Federal law prescribes with whom the agency~~
5 ~~must contract or if the rate of payment is so established, all purchases for contractual services,~~
6 ~~or for a group of individual contractual services, in excess of the threshold amount provided in~~
7 ~~subsection 25-25.0061(1), F.A.C., for Category One shall be made by formal competitive~~
8 ~~invitation to bid to the maximum extent practicable. The invitation to bid shall include a~~
9 ~~detailed description of the services sought, the date for submittal of bids, and all contractual~~
10 ~~terms and conditions applicable for the procurement of contractual services, including the~~
11 ~~criteria which shall include, but not be limited to, price, to be used in determining~~
12 ~~acceptability of the bid. If the Commission contemplates renewal of the contract it shall be so~~
13 ~~stated in the invitation to bid. No criteria may be used in determining acceptability of the bid~~
14 ~~that was not set forth in the invitation to bid. The contract shall be awarded with reasonable~~
15 ~~promptness by written notice to the responsive and responsible or qualified bidder who bids~~
16 ~~the lowest price. This bid must be determined in writing to meet the requirements and criteria~~
17 ~~set forth in the invitation to bid.~~

18 ~~(2) Public Notice—All bid and proposal solicitations in excess of the threshold amount~~
19 ~~provided in subsection 25-25.0061(1), F.A.C., for Category Two shall be advertised at least~~
20 ~~once in the Florida Administrative Weekly and may also be noticed in newspapers of general~~
21 ~~circulation. The Commission shall give consideration to the complexity of the solicitation and~~
22 ~~give adequate notice which in no event will be less than twenty-eight (28) calendar days prior~~
23 ~~to the scheduled opening. Vendor lists of the appropriate class of vendors registered under~~
24 ~~Rule 25-25.023, F.A.C., may be solicited. These are minimum requirements and do not limit~~
25 ~~the Commission from additional notice. Public notice may be waived if the Agency Head~~

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1 ~~determines in writing that an unusual problem exists so that the delay incident to advertising~~
2 ~~would be detrimental to the interest of the Commission.~~

3 ~~(3) Request for Proposals (RFP). If the Agency Head determines that the use of~~
4 ~~competitive sealed bidding is not practicable, contractual services shall be procured by~~
5 ~~competitive sealed proposals. A request for proposals which includes a statement of the~~
6 ~~services sought and all contractual terms and conditions applicable to the procurement of~~
7 ~~contractual services, including the criteria, which shall include, but not be limited to price, to~~
8 ~~be used in determining acceptability of the proposal shall be issued. If the Commission~~
9 ~~contemplates renewal of the contract it shall be so stated in the request for proposals. To~~
10 ~~assure full understanding of and responsiveness to the solicitation requirements, discussions~~
11 ~~may be conducted with qualified offerors. Said offerors shall be accorded fair and equal~~
12 ~~treatment prior to the submittal date specified in the request for proposals with respect to any~~
13 ~~opportunity for discussion. The award shall be made to the responsive and responsible offeror~~
14 ~~whose proposal is determined in writing to be the most advantageous to the Commission,~~
15 ~~taking into consideration price and the other criteria set forth in the request for proposals. The~~
16 ~~contract file shall contain the basis on which the award is made.~~

17 ~~Request for proposals may provide for discussions to be conducted by the Commission~~
18 ~~after proposals have been opened to allow clarification, provided adequate precautions are~~
19 ~~taken to treat each offer fairly and ensure that information gleaned from competing proposals~~
20 ~~are not disclosed among the offerors.~~

21 ~~(4) Receipt and Opening of Bids and Proposals. It is the bidder's/proposer's responsibility~~
22 ~~to assure that its bid/proposal is delivered at the proper time and place of the bid opening.~~
23 ~~Bids/proposals which for any reason are not so delivered will not be considered, however,~~
24 ~~bids/proposals in the care, custody and control of the Commission at the time of the public~~
25 ~~opening will be opened and evaluated for award. Offers by telephone or telegraph are not~~

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1 ~~acceptable.~~

2 ~~Bids/proposals, upon receipt, shall be maintained unopened in a secure location until the~~
3 ~~opening time and date.~~

4 ~~Bid/proposal opening shall be public at the date, time and location specified in the~~
5 ~~solicitation. The opening shall be conducted by an employee of the Commission and~~
6 ~~witnessed by at least one other employee of the Commission.~~

7 ~~Bid/proposal tabulation sheets should be completed simultaneously with the public reading~~
8 ~~of prices received. Upon completion of the tabulation, a copy shall be made accessible for~~
9 ~~inspection by any interested party.~~

10 ~~Unless an award is to be made at the opening, all present shall be advised that the reading~~
11 ~~of prices received does not imply or constitute an award.~~

12 ~~After bids/proposals have been opened, the documents are to remain under the supervision~~
13 ~~of an employee of the Commission while being examined by any interested party.~~

14 ~~(5) Receipt of One Bid or Proposal—If only one response to an invitation to bid or request~~
15 ~~for proposals is received, the Commission shall follow the procedures of subsection 25-~~
16 ~~25.009(6), F.A.C., with the Contractual Services Administrator providing the review and~~
17 ~~determination of the reason only one bid/proposal was received for contractual services.~~

18 ~~(6) No Bid—In the event no bids or proposals are received in response to a bid solicitation~~
19 ~~or a RFP, the Commission may negotiate the best terms and conditions available.~~

20 ~~(7) Contract Terms—Following Notice of Award, a contract shall be executed between the~~
21 ~~Agency Head and the vendor prior to the rendering of the contractual services except in the~~
22 ~~case of an emergency purchase. In the event an expansion or change of work, as described in~~
23 ~~an existing contract, becomes necessary in order for the Commission to obtain the results~~
24 ~~required by it, such work shall not begin until a contract amendment has been executed~~
25 ~~between the Agency Head and the contractor. At a minimum, the contract shall include:~~

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- 1 ~~(a) Scope of Services—If necessary, to be determined as provided in Commission~~
2 ~~subsection 25-25.009(8), F.A.C.;~~
- 3 ~~(b) Description of Deliverables—A provision dividing the contract into units of~~
4 ~~deliverables, which shall include, but need not be limited to, reports, findings and drafts, that~~
5 ~~must be received and found acceptable, in writing, by the contract manager prior to payment;~~
- 6 ~~(c) Schedule of Events—A provision specifying the criteria for receipt of deliverables and~~
7 ~~the interim and/or final dates by which such criteria must be met for completion of the~~
8 ~~contract;~~
- 9 ~~(d) Funding-Out Clause—If a contract is to extend into a subsequent fiscal period, it shall~~
10 ~~contain the stipulation, “subject to availability of funds” in accordance with Commission Rule~~
11 ~~25-25.013, F.A.C.;~~
- 12 ~~(e) Travel Expense—A provision that billings for travel expenses be submitted in~~
13 ~~accordance with Section 112.061, F.S., at rates established by the Commission in accordance~~
14 ~~therewith;~~
- 15 ~~(f) Cancellation clause—A provision for unilateral cancellation of the contract by the~~
16 ~~Commission in accordance with Commission Rule 25-25.014, F.A.C.;~~
- 17 ~~(g) Billing—A provision that billing and the payment of charges be conditioned upon the~~
18 ~~satisfactory receipt of deliverables and that billing for all charges be in sufficient detail for~~
19 ~~proper auditing; and~~
- 20 ~~(h) Renewal—Where applicable, a provision that the contract may be renewed on a yearly~~
21 ~~basis, by fiscal year, as provided in the invitation to bid or request for proposal, contingent~~
22 ~~upon satisfactory performance evaluations by the Commission and subject to the availability~~
23 ~~of funds.~~
- 24 ~~(8) Contract File—The contract file shall include all pertinent information relating to the~~
25 ~~contract during the preparatory stages, including documentation supporting the decision to~~
- CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

1 ~~contract, a copy of the Invitation to Bid or request for proposals, documentation relating to the~~
2 ~~bid process, opening of bids/proposals, and evaluation and tabulation of bids, and~~
3 ~~determination and notice of award of contract.~~

4 ~~In addition, the file should include the bidders list used for the mailing of bids or~~
5 ~~proposals, addendums to the bid, the bids of all bidders, literature and price lists submitted~~
6 ~~with the bid, a copy of the legal advertisements for bids or proposals, a copy of the requisition,~~
7 ~~a copy of the purchase order or contract and evaluation work sheets. The file should be~~
8 ~~retained in accordance with the Commission's Records Retention Schedule.~~

9 ~~(9) Right of Rejection of Bids/Proposals—The Commission has the right to reject any or~~
10 ~~all bids or proposals and such reservation shall be included in all solicitations and~~
11 ~~advertisements.~~

12 ~~Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—~~
13 ~~New 4-12-83, Formerly 25-24.24, Amended 12-24-86, Repealed_____.~~

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1 **25-25.025 Minority Business Companies.**

2 ~~(1) It is the policy of the Commission to encourage participation by minority business~~
3 ~~companies as defined in Section 287.012, F.S., in Commission contracts.~~

4 ~~(2) If two identical bids/proposals to an invitation for bids or request for proposals are~~
5 ~~received and one response is from a minority owned company, the Commission shall enter~~
6 ~~into a contract with the minority owned company.~~

7 ~~(3) Except for the preferences outlined in subsections 25-25.009(5) and (2), F.A.C., of this~~
8 ~~rule, the award of identical bids/ proposals shall be determined by lot.~~

9 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
10 *New 4-12-83, Formerly 25-25.25, Repealed_____.*

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1 **25-25.030 Leases for Real Property.**
2 ~~(1) The agency head may utilize the Florida Department of Management Services’~~
3 ~~standard leasing forms and procedures developed for executive branch agencies. In the event~~
4 ~~an emergency need exists or if suitable and comparable space can be leased at an annual cost~~
5 ~~per square foot which is less than either: (a) the average annual cost per square foot of existing~~
6 ~~leases (in the same county) for all other agencies which were competitively bid pursuant to~~
7 ~~Chapter 60H 1, F.A.C., of the Department of Management Services’ rules, or (b) the current~~
8 ~~rental rate charged by the Department of Management Services for state buildings which are a~~
9 ~~part of the Florida Facilities Pool, or (c) 90% of the Department of Management Services’~~
10 ~~most recently published maximum rental rate for the zone and category of services furnished,~~
11 ~~the agency head may informally negotiate without advertising or soliciting competitive~~
12 ~~bids/proposals.~~

13 ~~(2) If the term of a negotiated lease (including options to renew), extends beyond the~~
14 ~~current terms for existing leases of other agencies which were competitively bid pursuant to~~
15 ~~Chapter 60H 1, F.A.C., of the Department of Management Services’ rules, the rental rate for~~
16 ~~subsequent years shall not increase at an annual rate which exceeds the average annual~~
17 ~~increase per square foot for the latest three year period covered by leases of other agencies in~~
18 ~~the same county which were competitively bid. All leases shall contain “right to terminate”~~
19 ~~and “subject to availability of funds” clauses. Each lease shall be approved by the agency~~
20 ~~head, and a copy shall be filed with the Department of Management Services.~~

21 *Rulemaking Authority 350.0603, 350.127(2) FS. Law Implemented 350.0603 FS. History—*
22 *New 8-15-90, Repealed_____.*

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1 **25-22.002 Agenda of Meetings.**

2 ~~A majority vote of a quorum of the Commission is required to modify the presiding~~
3 ~~officer's decision to make a specific change in the agenda.~~

4 *Rulemaking Authority 350.127(2) FS. Law Implemented 120.525 FS. History—New 12-21-*
5 *81, Formerly 25-22.02, Amended 4-18-94, 5-3-99, Repealed_____.*

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25-22.100 Authority.

~~These rules regarding the indexing, management, and availability of Commission orders are issued pursuant to Section 120.533, F.S., and Chapter 1S-6, F.A.C., and have been approved by the Department of State pursuant to Section 120.53(2)(c), F.S.~~

Rulemaking Authority 120.533 FS. Law Implemented 120.53(2)-(4) FS. History—New 9-24-92, Amended 12-27-94, Repealed_____.

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25-22.101 Purpose.

~~The purpose of this part is to provide public access to and availability of all Commission orders.~~

Rulemaking Authority 120.533 FS. Law Implemented 120.53(2)-(4) FS. History—New 9-24-92, Amended 12-27-94, Repealed.

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

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25-22.1035 Official Reporter for Final Orders.

~~The official reporter of the Florida Public Service Commission shall be its website www.floridapsc.com/ClerkOffice/Docket, effective January 1, 2010. The Florida Public Service Commission Reporter (FPSCR) published by FALR will remain the designated official reporter for final orders from January 1981 to December 31, 2009. The Florida Public Service Commission Reporter is found at some county law libraries and is available by subscription at the offices of FALR, Inc., P.O. Box 385, Gainesville, FL 32602. A copy of the Florida Public Service Commission Reporter is also available for public inspection at the Office of Commission Clerk.~~

*Rulemaking Authority 120.532, 120.533 FS. Law Implemented 120.53(2)(a), (d), (4) FS.
History—New 12-27-94, Amended 2-2-10, Repealed_____.*

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1 **25-22.104 Numbering of Orders.**

2 ~~(1) All orders shall be sequentially numbered as rendered using a two-part number~~
3 ~~separated by a dash with the first part before the dash indicating the year and the second part~~
4 ~~indicating the numerical sequence of the order issued for that year beginning with the number~~
5 ~~0001 each new calendar year. Amendatory orders will be assigned the same order number as~~
6 ~~the order being amended, with the addition of the letter “A” immediately following the order~~
7 ~~number. The assigned agency prefix which is “PSC” shall precede the two-part number.~~

8 ~~(2) The applicable order category shall be added as a suffix succeeding the agency~~
9 ~~designation prefix and the two-part number. The order categories are as follows:~~

- 10 ~~DS – Declaratory Statement~~
- 11 ~~FOI – Final Order Informal Proceedings~~
- 12 ~~FOF – Final Order Formal Proceedings~~
- 13 ~~S – Stipulation~~
- 14 ~~AS – Agreed Settlement~~
- 15 ~~CO – Consummating Order~~
- 16 ~~PAA – Proposed Agency Action Order~~
- 17 ~~TRF – Tariff Order~~
- 18 ~~SC – Show Cause Order~~
- 19 ~~PCO – Procedural Order~~
- 20 ~~PHO – Prehearing Order~~
- 21 ~~CFO – Confidentiality Order~~
- 22 ~~NOR – Notice of Rulemaking~~

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24 ~~(3) After the order category, the applicable industry designation shall be inserted. The~~
25 ~~industry designations are as follows:~~

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

- 1 ~~EI – Electric Utility—Investor Owned~~
- 2 ~~EM – Electric Utility—Municipality~~
- 3 ~~EC – Electric Utility—Rural Electric Cooperative~~
- 4 ~~EU – Electric Utility—All~~
- 5 ~~EG – Energy Conservation~~
- 6 ~~EQ – Qualifying Cogeneration Facility~~
- 7 ~~GU – Gas Industry~~
- 8 ~~GP – Gas Pipeline~~
- 9 ~~TA – Telephone Utility—Alternate Access Vendor~~
- 10 ~~TC – Telephone Utility—Coin (Pay) Telephone Company~~
- 11 ~~TI – Telephone Utility—Interexchange Company~~
- 12 ~~TL – Telephone Utility—Local Exchange Company~~
- 13 ~~TS – Telephone Utility—Shared Tenant Company~~
- 14 ~~TX – Telephone Utility—Competitive Local Exchange~~
- 15 ~~TP – Telephone (Communications) Industry Generally~~
- 16 ~~WU – Water Utility~~
- 17 ~~SU – Wastewater (Sewer) Utility~~
- 18 ~~WS – Water and Wastewater Utility~~
- 19 ~~PU – Public Utilities Generally—Applies to matters which pertain to two or more~~
- 20 ~~industries.~~
- 21 ~~OT – Other Matters—Administrative Matters not related to a particular industry.~~
- 22 *Rulemaking Authority 120.53(1) FS. Law Implemented 120.53(2)-(4) FS. History—New 9-24-*
- 23 *92, Amended 12-27-94, 12-26-01, Repealed_____.*
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CODING: Words underlined are additions; words in ~~struck through~~ type are deletions from existing law.

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25-22.105 Electronic Database of Orders and Other Records.

~~(1) The Commission’s electronic database shall be available from the Commission’s website located at www.floridapsc.com/ClerkOffice/Docket. The database shall include the ability to electronically search dockets by docket number, docket title, and document number. The ability to search by related key words (specific words, terms, and phrases) and common and colloquial words shall be available from the “advanced search” feature on the main search page of the Commission’s website at <http://www.floridapsc.com/Home/Search>. Orders within this database may be searched using logical search terms that are in common usage, that are also contained within the text of the final orders, or by descriptive information about the order that may not be specifically contained in the order. From the Category drop-down selection on the “advanced search” feature for Orders, the search may optionally be further restricted. New subject headings will be added when necessary.~~

~~(2) Information shall be added to the Commission’s website within 24 hours of the issuance of the document by the Office of Commission Clerk.~~

Rulemaking Authority 120.533(1)(f) FS. Law Implemented 120.53(2)-(4) FS. History—New 9-24-92, Amended 12-27-94, 2-2-10, Repealed_____.

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25-22.107 Plan for Making Orders Available to the Public.

~~(1) The Commission shall make orders accessible and available to the public by sequentially numbering and maintaining all orders.~~

~~(2) The Office of Commission Clerk shall assist the public in obtaining information pertaining to Commission orders and may be contacted at (850)413-6770 or at Clerk@psc.state.fl.us. Questions may also be faxed to (850)717-0114.~~

~~(3) Copies of orders shall be maintained in the Office of Commission Clerk and electronically at the Commission's website, www.floridapsc.com/ClerkOffice/Docket.~~

Rulemaking Authority 120.53(2), (8) FS. Law Implemented 120.52(2) FS. History—New 9-24-92, Amended 12-27-94, 2-2-10, Repealed_____.

1 **25-22.033 Communications Between Commission Employees and Parties.**

2 ~~The Commission recognizes that Commission employees must exchange information with~~
3 ~~parties who have an interest in Commission proceedings. However, the Commission also~~
4 ~~recognizes that all parties to adjudicatory proceedings need to be notified and given an~~
5 ~~opportunity to participate in certain communications. The intent of this rule is not to prevent~~
6 ~~or hinder in any way the exchange of information, but to provide all parties to adjudicatory~~
7 ~~proceedings notification of and the opportunity to participate in certain communications.~~

8 ~~(1) This rule shall govern communications between Commission employees and parties to~~
9 ~~docketed proceedings before the Commission. This rule shall not apply in proceedings under~~
10 ~~Sections 120.54, 120.565, 367.0814, F.S., proposed agency action proceedings before the~~
11 ~~Commission has voted to issue a proposed agency action order, non-rate case tariffs,~~
12 ~~workshops or internal affairs meetings. Also exempted are docketed and undocketed audits,~~
13 ~~telephone service evaluations, and electric and gas safety inspections. Nothing in this rule is~~
14 ~~intended to modify or supersede the procedural requirements for formal discovery under the~~
15 ~~Commission's rules and applicable provisions of the Florida Rules of Civil Procedure, or~~
16 ~~affect communications regarding discovery requests, procedure, or other matters not~~
17 ~~concerned with the merits of a case.~~

18 ~~(2) Written Communications—Notice of any written communication between Commission~~
19 ~~employees and parties shall be transmitted to all other parties at the same time as the written~~
20 ~~communication, whether by U.S. Mail or other means.~~

21 ~~(3) Scheduled Meetings and Conference Calls—All parties to the proceeding shall be~~
22 ~~given reasonable notice of the time and place of any scheduled meeting or conference call~~
23 ~~between Commission employees and parties. For purposes of this subsection, a conference~~
24 ~~call is defined as a telephone call involving three or more persons.~~

25 ~~(4) Response to Communications—Any party to a proceeding may prepare a written~~

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

1 ~~response to any communication between a Commission employee and another party. Notice of~~
2 ~~any such response shall be transmitted to all parties.~~

3 ~~(5) Prohibited Communications—No Commission employee shall directly or indirectly~~
4 ~~relay to a Commissioner any communication from a party or an interested person which would~~
5 ~~otherwise be a prohibited ex parte communication under Section 350.042, F.S. Nothing in this~~
6 ~~subsection shall preclude non-testifying advisory staff members from discussing the merits of~~
7 ~~a pending case with a Commissioner, provided the communication is not otherwise prohibited~~
8 ~~by law. However, a staff member who testifies in a case shall not discuss the merits of that~~
9 ~~case with any Commissioner during the pendency of that case.~~

10 *Rulemaking Authority 350.01(7), 350.127(2) FS. Law Implemented 120.569, 120.57,*
11 *350.042 FS. History—New 3-24-93, Repealed_____.*

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

Item 3

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850**-M-E-M-O-R-A-N-D-U-M-**

DATE: July 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Crawford) *JSC*
Office of Consumer Assistance and Outreach (Plescow) *JP*
Division of Economics (Coston) *JGH*

RE: Docket No. 20220038-EI – Complaint by Albert Arcuri against Duke Energy Florida, LLC.

AGENDA: 08/02/22 – Regular Agenda – Motion to Dismiss for Issue 1 (Oral Argument Not Requested; Participation is at the Commission’s Discretion) – Proposed Agency Action for Issue 2 (Interested Persons May Participate)

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On March 22, 2021, Mr. Albert Arcuri contacted Duke Energy Florida, LLC (Duke) requesting information for converting his existing overhead electric service to underground. Duke provided Mr. Arcuri with a cost of \$2,139.59 to complete the work, which included the trenching, installation of the cable and conduit, and removing the overhead service. After several conversations with Duke representatives addressing scheduling the undergrounding project and the breakdown of the attendant costs, Mr. Arcuri filed Informal Complaint No. 1377736E with the Commission on August 31, 2021. Duke reported that on August 30, 2021, it received a payment of \$2,139.59, and the conversion of the facilities was completed on October 14, 2021.

After requesting additional information from Duke, staff sent a letter to Mr. Arcuri on October 5, 2021, explaining how the cost to underground was calculated, and staff's opinion that the cost was reasonable and accurate, and consistent with Duke's Commission-approved tariff.

Mr. Arcuri expressed his disagreement with staff's letter, and the matter was referred to the Commission's Process Review Team (PRT) for review, in accordance with Rule 25-22.032, Florida Administrative Code (F.A.C.). By letter dated January 10, 2022, Commission staff advised Mr. Arcuri that his informal complaint had been reviewed by PRT, and it appeared that Duke had not violated any applicable statutes, rules, company tariffs, or Commission orders. Staff advised Mr. Arcuri that if he disagreed with the complaint conclusion, he could file a petition for initiation of formal proceedings for relief against Duke.

On January 17, 2021, Mr. Arcuri filed a formal complaint against Duke, stating he was overcharged for the cost of his underground conversion as opposed to the cost of a new underground installation.¹ Mr. Arcuri requested that the cost of his installation be refunded, and that funds be made available to him "to fight Duke's illegal activities and [the Commission]."

On March 17, 2022, Duke filed an Amended Motion to Dismiss (Motion) Mr. Arcuri's formal complaint.² Duke states that Mr. Arcuri's complaint fails to explain how Duke violated Rule 25-22.032, F.A.C. (regarding customer complaints), or provide any evidence that Duke violated any applicable statutes, rules, tariffs, or Commission orders. Duke contends that Mr. Arcuri has failed to state a cause of action upon which relief can be granted; therefore, his complaint should be dismissed.

This recommendation addresses whether Duke's Motion should be granted (Issue 1) and the appropriate disposition of Mr. Arcuri's formal complaint against Duke (Issue 2). The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

¹ DN 01335-2022, filed February 18, 2022.

² DN 01973-2022. The Amended Motion to Dismiss is material identical to the Motion to Dismiss Duke filed on March 14, 2022 (DN 01843-2022), but adds the pleading caption inadvertently omitted in the original filing, and properly labels the attached exhibits.

Discussion of Issues

Issue 1: Should the Commission grant Duke's Motion to Dismiss Mr. Arcuri's formal complaint?

Recommendation: No, the Commission should deny Duke's Motion. (Crawford)

Staff Analysis:

Legal Standard

To sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition fails to state a cause of action for which relief may be granted.³ The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations. A sufficiency determination is confined to the petition and documents incorporated therein and the grounds asserted in the motion to dismiss.⁴ All allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted.⁵

Duke's Motion to Dismiss

Mr. Arcuri's formal complaint states that Duke has violated Rule 25-22.032, F.A.C., which addresses the process for handling customer complaints. Duke correctly points out, however, that Mr. Arcuri fails to state how Duke is in violation of the rule. Rather, the focus of Mr. Arcuri's complaint is his dissatisfaction with the costs incurred for undergrounding his electric service. Duke states it has been explained to Mr. Arcuri that Duke's tariffed charge for replacing an existing overhead lateral with underground service is \$1,762.00. The additional \$377.59 was for Duke to perform the trenching. While Mr. Arcuri believes he shouldn't be charged more for the existing service conversion than for a new underground service, it has been explained to him that more work is involved for a conversion of existing overhead service. Duke contends that Mr. Arcuri has failed to state a cause of action upon which relief can be granted; therefore, the Commission should dismiss Mr. Arcuri's formal complaint, or in the alternative, deny Mr. Arcuri's requested relief.

Analysis and Conclusion

The Commission has previously held *pro se* litigants such as Mr. Arcuri to a relaxed pleading standard, in order to prevent delay and promote resolution of litigants' claims. Staff believes that the petition states a cause of action – a dispute with respect to Duke's rates and service – that is within the Commission's jurisdiction as provided in Section 366.04(1), F.S. As stated in Duke's

³ See *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

⁴ *Varnes* at 350.

⁵ See, e.g., *Ralph v. City of Daytona Beach*, 471 So. 2d 1173 (Fla. 4th DCA 2000); *Kest v. Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1986); *Ocala Loan Co. v. Smith*, 155 So. 2d 711, 715 (Fla. 1st DCA 1963).

Date: July 21, 2022

Motion, the substance of the formal complaint isn't about Duke's compliance with the customer complaint rule, but about Mr. Arcuri's disagreement with Duke's billing of his account for the conversion of his service from overhead to underground.

The documentation in this docket, including the informal complaint files, Mr. Arcuri's formal complaint, and Duke's Motion to Dismiss provide significant information about Mr. Arcuri's factual assertions and requested relief. Staff believes that these allegations relate to Duke's rates and service for Mr. Arcuri's electric account, and that the facts are sufficiently developed for the Commission to make a determination on the formal complaint, as recommended in Issue 2. As discussed in Issue 2, staff recommends that the Commission lacks the jurisdiction to award damages or equity relief as requested by Mr. Arcuri. While staff believes that particular relief would appropriately be subject to dismissal, Duke did not identify or discuss Mr. Arcuri's request for equity relief in its Motion. Staff therefore recommends that Duke's Motion to Dismiss should be denied in its entirety.

Issue 2: What is the appropriate disposition of Mr. Arcuri’s formal complaint?

Recommendation: Staff recommends that Mr. Arcuri’s formal complaint be denied. Mr. Arcuri’s account was properly billed in accordance with Florida statutes and rules and Duke’s tariffs. Duke did not violate any applicable statute, rule, company tariff, or order of the Commission in the processing of Mr. Arcuri’s account. Further, the Commission lacks equity jurisdiction to award Mr. Arcuri damages. (Crawford)

Staff Analysis: Pursuant to Rule 25-22.036(2), F.A.C., a complaint is appropriate when a person complains of an act or omission by a person subject to Commission jurisdiction that affects the complainant’s substantial interests and that is in violation of a statute enforced by the Commission, or of any Commission rule or order. As discussed below, Mr. Arcuri’s petition fails to show that Duke’s billing of his account for the cost of undergrounding his electric service violates a statute, rule, order, or applicable provision of Duke’s Commission-approved tariff. Further, the Commission lacks equity jurisdiction, so Mr. Arcuri’s request for damages is inappropriate. Therefore, the Commission should deny Mr. Arcuri’s petition for relief.

Formal Complaint

In his complaint, Mr. Arcuri states that Duke charged him four times the amount to convert his overhead installation to underground service, as compared to the cost for undergrounding a new installation. He states that “the only difference is they have to cut the old power line down.” Mr. Arcuri requests that the costs for his installation be readjusted and refunded. He also requests that the Commission “make funds available to fight Duke’s illegal activities and this board [the Commission] who they control.”

Analysis

Based on all the information provided, Duke’s invoice of \$2,139.59 for the cost to underground an existing residential overhead service lateral is reasonable and accurate. Duke Tariff Sheet No. 4.115, Section 11.05 establishes the expected contribution for residential customers who wish to underground an existing residential overhead service lateral as \$1,762 (excluding trenching costs). This charge is determined based on the cost to remove the existing overhead service, the average cost to install underground service, the remaining undepreciated value of the overhead facilities, and the salvage value of the overhead facilities.

Mr. Arcuri has stated his dissatisfaction that the utility is permitted to charge more for the conversion of existing overhead service than for new underground service. The charge of \$641.00 for new underground service laterals is determined by the difference between the average cost to install an overhead service lateral and the average cost to install an underground service lateral. Duke requires customers to pay the additional costs of undergrounding up front, as the remaining cost for overhead service is included in residential rates. This charge would not be appropriate in the case of an underground conversion of an existing overhead service lateral, because it does not include the cost to remove the existing overhead facilities nor the remaining undepreciated value of the overhead facilities.

Tariff Sheet No. 4.115, Section 11.05 further requires that the customer also provide, at no cost to the Company, a suitable trench and perform the backfilling. If the customer requests the Company to supply the trench or remove any additional equipment other than the service lateral, the charge to the customer for this work will be based on a specific cost estimate. The additional charge of \$377.59 for Duke to perform the trenching is reasonable and similar to other trenching charges.

Pursuant to Rule 25-6.078(3), F.A.C., each utility is required to file supporting data and analyses at least once every three years to justify the utility's differential between underground and overhead residential distribution costs. The charges listed on Duke Tariff Sheet No. 4.115 were most recently approved by Commission Order No. PSC-2020-0266-TRF-EI, issued on July 27, 2020, in Docket No. 20200110-EI, *In re: Petition for approval of revised underground residential distribution tariffs, by Duke Energy Florida, Inc.*

Based on the information provided by Mr. Arcuri and Duke, staff recommends that the invoice for \$2,139.59 was reasonable for the cost to replace an existing overhead service lateral with an underground service lateral.

Conclusion

Staff recommends that Mr. Arcuri's formal complaint should be denied. Mr. Arcuri's account was properly billed in accordance with Florida statutes and rules and Duke's tariffs. Duke did not violate any applicable statute, rule, company tariff, or order of the Commission in the processing of Mr. Arcuri's account. To the extent that Mr. Arcuri is requesting damages or similar equitable relief, the Commission has previously stated that it has no jurisdiction to make such an award; therefore, this portion of the complaint should also be denied.⁶

⁶See *Southern Bell Telephone & Telephone Co. v. Mobile America Corp.*, 291 So.2d 199 (Fla. 1974); and Order No. PSC-2020-0029-PAA-EI, issued January 17, 2020, in Docket No. 20190167-EI, *In re: Petition to compel Florida Power & Light to comply with Section 366.91, F.S. and Rule 25.6-065, F.A.C., by Floyd Gonzales and Robert Irwin.*

Issue 3: Should this docket be closed?

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

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

Item 4

State of Florida



Public Service Commission

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

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

DATE: July 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Sandy) *JSC*
Office of Consumer Assistance and Outreach (Calhoun, Plescow, Valdez De
Gonzalez) *AC*
Division of Economics (Coston) *JGH*

RE: Docket No. 20220058-EI – Complaint by Chris Rosa against Duke Energy
Florida, LLC.

AGENDA: 08/02/22 – Regular Agenda – Motion to Dismiss for Issue 1 (Oral Argument Not
Requested; Participation at the Commission’s Discretion); Proposed Agency
Action for Issue 2 (Interested Persons May Participate)

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On September 29, 2020, Ms. Chris Rosa (Ms. Rosa) filed informal complaint number 1349979E, alleging improper billing against Duke Energy Florida, LLC. (Duke) with the Commission. Ms. Rosa alleges that her account was wrongfully billed when Duke mistakenly did not remove her from the Budget Billing Program (Budget Billing) after renewable generation equipment was installed at her home.

After a thorough review, Division of Consumer Assistance and Outreach (CAO) staff closed Ms. Rosa’s informal complaint on January 19, 2022, concluding that Duke did not violate any Commission rules or its tariffs in the handling of this matter.

On March 14, 2022, Ms. Rosa filed a formal complaint against Duke, alleging the same material facts as contained in her informal complaint. Ms. Rosa's formal complaint again alleged improper billing by Duke, specifically that Ms. Rosa does not owe Duke "past due" charges.

On March 25, 2022, Duke filed a Motion to Dismiss (Motion) Ms. Rosa's formal complaint. Duke states that Ms. Rosa's complaint fails to cite any statute, rule, or order which Duke allegedly violated and should, therefore, be dismissed for failing to meet the pleading requirements of Rule 25-22.036, Florida Administrative Code (F.A.C.). Duke further contends that the complaint, even when read in the light most favorable to Ms. Rosa, fails to specify a cause of action or the relief being sought and should, therefore, be dismissed.

This recommendation addresses whether Duke's Motion should be granted (Issue 1) and the appropriate disposition of Ms. Rosa's formal complaint against Duke (Issue 2). The Commission has jurisdiction over this matter pursuant to Section 366.04, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission grant Duke's Motion to Dismiss Ms. Rosa's formal complaint?

Recommendation: No, the Commission should deny Duke's Motion. (Sandy)

Staff Analysis:

Legal Standard

To sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition fails to state a cause of action for which relief may be granted.¹ The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations. A sufficiency determination is confined to the petition and documents incorporated therein and the grounds asserted in the motion to dismiss.² All allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted.³

Duke's Motion to Dismiss

Ms. Rosa alleges that her account was wrongfully billed when Duke did not remove her account from Budget Billing status after renewable generation equipment was installed at her home on June 17, 2019.

Duke alleges that Ms. Rosa's complaint fails to meet the pleading requirements for a formal complaint because it does not "identify the rule, order, or statute that Duke allegedly violated, nor does she describe any actions taken on behalf of Duke that constitute a violation of any rules, statutes, company tariff, or Commission Orders." As such, Duke contends that it cannot "adequately research, prepare and formulate a defense." For formal administrative proceedings authorized by Chapter 120, F.S., the Uniform Rules of Procedure contained in Chapter 28-106, F.A.C., apply. In addition to the Uniform Rules which govern all administrative proceedings, the Commission has adopted specific procedural rules to govern proceedings before it, which are contained in Chapter 25-22, F.A.C. As cited by Duke, Rule 25-22.036, F.A.C., requires that a formal complaint must contain:

1. The rule, order, or statute that has been violated;
 2. The actions that constitute the violation;
 3. The name and address of the person against whom the complaint is lodged;
- and

¹ See *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

² *Varnes* at 350.

³ See, e.g., *Ralph v. City of Daytona Beach*, 471 So. 2d 1173 (Fla. 4th DCA 2000); *Kest v. Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1986); *Ocala Loan Co. v. Smith*, 155 So. 2d 711, 715 (Fla. 1st DCA 1963).

4. The specific relief requested, including any penalty sought.

Duke's Motion alleges that between June 2019 and March 2021, Ms. Rosa and Duke were in regular communication regarding a number of billing charges, billing statements reflecting those charges, and outstanding balances that had allegedly gone unpaid, i.e., an unpaid balance of \$370.04 as of April 2021. Ms. Rosa appeared to believe that her account would be automatically removed from Budget Billing after her net metering started in June 2019. When Ms. Rosa contacted Duke regarding the bills still showing her Budget Billing status, she alleges that a Duke representative advised her not to remove the account from Budget Billing because she would eventually have a credit deferred balance. Duke has no record of this conversation. Duke's records show Ms. Rosa made a request to remove her account from Budget Billing on December 31, 2019. The account was removed from Budget Billing that same day and the deferred credit balance was applied to the account balance.

Duke's Motion further alleges that the CAO staff has reviewed the substance of Ms. Rosa's complaint during an informal complaint process and concluded that Duke did not violate any Commission rules or its tariffs in the handling of this matter. However, Duke's Motion acknowledges Ms. Rosa's disagreement with how Duke characterizes the material facts that are the basis of Ms. Rosa's formal complaint. Further, it appears as if Ms. Rosa also disagrees with CAO staff's characterization of the material facts that are the basis of her complaint in this matter.

Analysis and Conclusion

The Commission has previously held pro se litigants such as Ms. Rosa to a relaxed pleading standard, in order to prevent delay and promote resolution of litigants' claims.⁴ Staff believes that the petition states a cause of action – a dispute with respect to Duke's billing – that is within the Commission's jurisdiction as provided in Section 366.04(1), F.S.

Staff believes the facts and law in this docket are sufficiently developed and a complaint in strict compliance with the rule is not necessary in order for the Commission to make a decision at this time. The extensive documentation in this docket, including the informal complaint files, Ms. Rosa's formal complaint, Duke's Motion to Dismiss, and the documented correspondence between staff and Ms. Rosa provides significant information about Ms. Rosa's factual assertions and requested relief. Staff believes this information is sufficient to allow the Commission to make a decision on the substance of Ms. Rosa's complaint, and does not believe it would be an efficient use of the parties' resources to require Ms. Rosa to amend her complaint merely to comply with the technical pleading rules. Therefore, staff recommends that the Commission deny Duke's Motion to Dismiss. Instead, staff recommends that the Commission proceed to make a decision on the substance of Ms. Rosa's complaint, as discussed in Issue 2.

⁴See PSC-2020-0469-FOF-EI, issued November 23, 2020, in Docket Nos. 20200030-EI, *In re: Complaint by Juana L. Del Rosario against Florida Power & Light Company regarding backbilling for alleged meter tampering.*

Issue 2: What is the appropriate disposition of Ms. Rosa's complaint?

Recommendation: Ms. Rosa's formal complaint should be denied and she should pay any outstanding account balance. It appears that Ms. Rosa's account was properly billed in accordance with Duke's tariffs along with Commission rules and statutes. Furthermore, it does not appear that Duke has violated any jurisdictionally applicable provision of the Florida Statutes, the Florida Administrative Code, or its tariff in the handling of Ms. Rosa's account. (Sandy)

Staff Analysis:

Formal Complaint

In her formal complaint, Ms. Rosa asserts that she "does not owe any 'past due' amounts. Every single month Duke has been paid for the actual kwh and taxes used by the undersigned."

Analysis

The following list is a summary of all of the investigative activity that has been performed on behalf of Ms. Rosa in an effort to address the substance of her complaint.

1. On or about September 29, 2020, Ms. Rosa filed a complaint with the Commission, stating her account had been removed from the Budget Billing Program ("Budget Billing"), and Duke continued to bill her account for past-due amounts. Ms. Rosa believed the unpaid balance is a result of Duke keeping her account in Budget Billing after her renewable generation equipment was installed. Ms. Rosa further claimed Duke provided incorrect information while her account was on Budget Billing and requested a bill clarification. Ms. Rosa disputed the bill dated September 25, 2020 for the amount of \$507.01 and sought a credit adjustment for that amount. Ms. Rosa's complaint was assigned No. 1349979E.
2. On June 17, 2019, Duke installed a bi-directional meter at Ms. Rosa's address. At the time, Ms. Rosa was participating in Budget Billing. The billing statements from June 2019 – December 2019 were estimated due to a locked gate but were updated once actual readings were received. During this time period, Duke only received three (3) payments to Ms. Rosa's account, and her account had not had a zero balance since August 7, 2019. Ms. Rosa remained on Budget Billing until December 31, 2019, when she contacted Duke regarding the estimated bills and requested to be removed from Budget Billing.
3. On January 9, 2020, Duke issued a re-billed final Budget Billing/net metering statement, which included \$61.71 in current charges, \$8.36 in late fees, \$701.29 past due balance, and a Budget Billing deferred credit balance of \$212.59. The Budget Billing credit balance was applied to Ms. Rosa's account and resulted in a new account balance of \$558.77. Duke received payments from Ms. Rosa during the first six (6) months of 2020; however, those payments only included the current charges on the account which resulted in a balance forward on each statement. An additional four (4) late fees in the amount \$28.03 were waived.

Date: July 21, 2022

4. On June 18, 2020, Duke and Ms. Rosa entered into an agreement for the \$365.04 balance due that allowed Ms. Rosa to pay 12 monthly installments of \$30.42. No payment for the monthly installment was received for July and August 2020, so the agreement was canceled and the entire past due balance of \$365.04 was charged back to Ms. Rosa's account along with an unpaid balance of \$12.53 for a total balance of \$377.57.
5. On December 28, 2020, three (3) more late fees were waived, and on April 7, 2021 Duke waived two (2) additional late fees incurred for February and March 2021. Duke advised the Commission it was willing to create an agreement for payment of the remaining unpaid balance, which at the time was \$370.04.
6. On April 8, 2021, CAO staff mailed a letter to Ms. Rosa that included five (5) tables with data reflected on the billing statements from January 2019 through March 2021 to clarify the information regarding the unpaid balance of \$370.04. Ms. Rosa responded to CAO staff's letter and indicated she never asked for nor agreed to an installment plan and she was never advised to request Duke to terminate Budget Billing after the bi-directional meter was installed. Additionally, Ms. Rosa claimed she was advised by Duke to stay on Budget Billing because she would eventually receive a credit because her consumption was lower due to net metering. Ms. Rosa claims on December 31, 2019, a Duke representative suggested she be removed from Budget Billing, and another representative told her to only pay current charges on her account.
7. CAO staff reviewed the 23 months from June 2019 (when net metering billing commenced), to April 2021, and found Ms. Rosa's account had been billed for the difference between energy used and energy received. Ms. Rosa made 16 payments, and Duke waived 11 late fees for a total of \$69.73. Duke has no record of advising Ms. Rosa to remain on Budget Billing. Based on the information available for review, CAO staff determined that Duke did not violate any Commission rules or its tariff in the handling of Ms. Rosa's issue.

Although Ms. Rosa's formal complaint was filed after CAO staff closed Complaint No. 1349979E, she provided no new evidence for the Commission's consideration in this matter. Therefore, the only evidence currently available to support Ms. Rosa's complaint has already been reviewed by CAO staff who determined that Duke did not violate any Commission rules or its tariff in the handling of Ms. Rosa's issue.

Conclusion

Staff believes it conducted a thorough and complete investigation of this matter and that Duke has complied with its tariff and all applicable statutes and Commission rules. Based on the information obtained by staff, it appears that Ms. Rosa was properly billed in accordance with Duke's tariffs along with Commission rules and statutes. Ms. Rosa has presented no documentation or evidence that supports her contention that she was improperly billed by Duke. Furthermore, it does not appear that Duke has violated any jurisdictionally applicable provision of the Florida Statutes, the Florida Administrative Code, or its tariff in the handling of Ms. Rosa's account. Therefore, staff recommends that the Commission deny Ms. Rosa's formal

complaint, and find that she should pay any outstanding account balances currently owed to Duke.

Issue 3: Should this docket be closed?

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

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

Item 5

State of Florida



Public Service Commission

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

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

DATE: July 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Maloy, Ramos) *TB*
Division of Accounting and Finance (Thurmond, Sowards) *ALM*
Division of Economics (Bruce, Hudson) *JGH*
Office of the General Counsel (J. Crawford) *JSC*

RE: Docket No. 20220019-WU – Application for transfer of water facilities of Neighborhood Utilities, Inc. and water Certificate No. 430-W to CSWR-Florida Utility Operating Company, LLC, in Duval County.

AGENDA: 08/02/22 – Regular Agenda – Proposed Agency Action for Issues 2, 3, and 4 - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Neighborhood Utilities, Inc. (Neighborhood, Utility, or Seller) is a Class C water utility providing service to approximately 439 residential and 4 general service customers in Duval County. The Utility 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 2021 Annual Report, the Utility reported operating revenues of \$183,323 and a net operating loss of \$18,732.

The Florida Public Service Commission (Commission) granted an original water certificate to Neighborhood in 1984.¹ The Commission approved an amendment in 2011.² The rates for the Utility were last set by the Commission in 2016.³

On January 14, 2022, CSWR-Florida Utility Operating Company, LLC (CSWR-Neighborhood or Buyer) filed an application with the Commission for the transfer of Certificate No. 430-W from Neighborhood to CSWR-Neighborhood in Duval 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 March 3, 2022. OPC and staff have issued a number of discovery and data requests to CSWR-Neighborhood in this docket.

This recommendation addresses the transfer of the water system and Certificate No. 430-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.).

¹Order No. 13723, issued September 28, 1984, in Docket No. 19840063-WU, *In re: Application of Neighborhood Utilities, Inc., for a certificate to operate a water utility in Duval County.*

²Order No. PSC-11-0135-FOF-WU, issued February 28, 2011, in Docket No. 20090441-WU, *In re: Application for amendment of Certificate No. 430-W to add territory in Duval County by Neighborhood Utilities, Inc.*

³Order No. PSC-16-0537-PAA-WU, issued November 23, 2016, in Docket No. 20150181-WU, *In re: Application for staff-assisted rate case in Duval County by Neighborhood Utilities, Inc.*

Discussion of Issues

Issue 1: Should the transfer of Certificate No. 430-W in Duval County from Neighborhood Utilities, Inc. to CSWR-Florida Utility Operating Company, LLC be approved?

Recommendation: Yes. The transfer of the water system and Certificate No. 430-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 90 days of the Order approving the transfer, which is final agency action. If the sale is not finalized within 90 days of the resultant Order, the Buyer should file a status update in the docket file. The Utility's existing rates, late payment charge, service availability charges, non-sufficient funds charges, and initial customer deposits as shown on Schedule No. 2, should remain in effect, until a change is authorized by this Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), Florida Administrative Code, (F.A.C.). The Seller is current with respect to annual reports and regulatory assessment fees (RAFs) through December 31, 2021, and the Buyer should be responsible for filing annual reports and paying RAfs for all future years. (Maloy, Thurmond, Bruce)

Staff Analysis: On January 14, 2022, CSWR-Neighborhood filed an application for the transfer of Certificate No. 430-W from Neighborhood to CSWR-Neighborhood in Duval County. The application complies with Section 367.071, F.S., and Commission rules concerning applications for transfer of certificates. The sale to CSWR-Neighborhood will become final after Commission approval of the transfer, pursuant to Section 367.071(1), F.S.

Noticing, Territory, and Land Ownership

CSWR-Neighborhood 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-Neighborhood 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-Neighborhood should submit the executed and recorded deed to the Commission within 90 days of the Order approving the transfer.

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 agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. There are no guaranteed revenue contracts, or customer advances of Neighborhood that must be disposed of with regard to the transfer. CSWR-Neighborhood 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 \$460,000. 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's water treatment plant is rated at 360,000 gallons per day (gpd). Raw water is drawn from a single well, with an emergency water source of JEA Major Grid at a capacity of 360,000 gpd. The raw water is treated by hypochlorination. The water is stored in a 2,000 gallon hydropneumatic tank and two ground tanks, with a capacity of 15,000 gallons and 25,000 gallons, before distribution.

Staff reviewed the Utility's most recent Florida Department of Environmental Protection (DEP) inspection reports. In 2019, the Utility was issued a warning letter for its on-site generator not functioning, which failed in 2017 during a power outage from Hurricane Irma. The DEP conducted an inspection of the water treatment facility on July 1, 2020, and it was found to be in violation of the DEP's rules and regulations. The July 1, 2020 Sanitary Survey addressed a leaking service pump and well pump, bio growth in the casing of the well pump, as well as the non-functional on-site generator. Thereafter, the DEP issued a Consent Order on April 1, 2022. The Consent Order addressed the same violations as the Utility's most recent sanitary survey. The Utility addressed the violations set forth in the Consent Order and the actions required by the DEP have been completed. Furthermore, the Utility is currently passing all DEP secondary water standards.⁴

CSWR-Neighborhood 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 90 days of the Order approving the transfer. In the Buyer's application, CSWR-Neighborhood provided its assessment of Neighborhood's water system, and lists several improvements and repairs it recommends be made to the system. 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-Neighborhood's application states that it owns and operates more than 257 water/wastewater systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, Mississippi, North Carolina, Arizona, and Tennessee that service approximately 70,000 water and 110,000 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-Neighborhood 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.

⁴Document No. 01594-2022.

Rates, Charges, and Initial Customer Deposits

The Utility's rates, charges, and initial customer deposits were last approved in a 2016 staff-assisted rate case.⁵ Since the Utility's last rate case, the rates were decreased to remove an expired rate case expense amortization.⁶ 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 this Commission. In addition, the Utility has miscellaneous service charges. The late payment charge of \$4.30 is appropriate. However, the remaining miscellaneous service charges do not conform to Rule 25-30.460, F.A.C., and are discussed in Issue 4. Therefore, staff recommends that the Utility's existing rates, late payment charge, service availability charges, non-sufficient funds charges, and initial customer deposits as shown on Schedule No. 2, should remain in effect, until a change is authorized by this Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), F.A.C.

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, 2021. The Buyer should be responsible for filing the Utility's annual reports and paying RAFs for all future years.

Conclusion

Based on the foregoing, staff recommends the transfer of the water system and Certificate No. 430-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 90 days of the Order approving the transfer, which is final agency action. If the sale is not finalized within 90 days of the transfer Order, the Buyer should file a status update in the docket file. The Utility's existing rates, late payment charge, service availability charges, non-sufficient funds charges, and initial customer deposits as shown on Schedule No. 2, should remain in effect, until a change is authorized by this Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), F.A.C. The Seller is current with respect to annual reports and RAFs through December 31, 2021, and the Buyer should be responsible for filing annual reports and paying RAFs for all future years.

⁵Order No. PSC-16-0537-PAA-WU, issued November 23, 2016, in Docket No. 20150181-WU, *In re: Application for staff assisted rate case by Neighborhood Utilities, Inc.*

⁶*Id.*

Issue 2: What is the appropriate net book value for CSWR-Florida Utility Operating Company, LLC's water system for transfer purposes?

Recommendation: For transfer purposes, the net book value (NBV) of the water system is \$60,063 as of January 31, 2022. Within 90 days of the date of the consummating order, CSWR-Neighborhood 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 the Utility's 2022 Annual Report when filed. (Thurmond)

Staff Analysis: Rate base was last established on November 23, 2016, by Order No. PSC-2016-0537-PAA-WU.⁷ The purpose of establishing NBV for transfers is to determine whether an acquisition adjustment should be approved. CSWR-Neighborhood'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 January 31, 2022.⁸ Staff's recommended NBV, as described below, is shown on Schedule No. 1.

Utility Plant in Service (UPIS)

According to the Utility's general ledger, the total UPIS balance was \$672,155 as of December 31, 2021. Staff auditors compiled the plant additions and retirements to UPIS from June 30, 2015, to January 31, 2022, and traced supporting documentation. As a result, staff recommends an increase to UPIS of \$1,299 as of January 31, 2022. Accordingly, staff recommends a total UPIS balance of \$673,454 as of January 31, 2022.

Land

The Utility's general ledger reflected a land balance of \$1,000 as of June 30, 2015. There have been no additions to land since June 30, 2015. Therefore, staff recommends no adjustments to its land balance.

Accumulated Depreciation

According to the Utility's general ledger, the total accumulated depreciation balance was \$540,622 as of December 31, 2021. Staff auditors recalculated depreciation accruals for all water accounts since the last rate case through January 31, 2022, using audited UPIS balances and the depreciation rates established by Rule 25-30.140, F.A.C. As a result, staff recommends that the accumulated depreciation balance be increased by \$21,745 as of January 31, 2022. Accordingly, staff recommends a total accumulated depreciation balance of \$562,367 as of January 31, 2022.

⁷Order No. PSC-16-0537-PAA-WU, issued November 23, 2016, in Docket No. 20150181-WU, *In re: Application for staff-assisted rate case in Duval County by Neighborhood Utilities, Inc.*

⁸Net 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.

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

According to the Utility's general ledger, the CIAC balance and accumulated amortization of CIAC were \$76,431 and \$0, respectively, as of December 31, 2021. Staff auditors traced CIAC and accumulated amortization of CIAC balances from June 30, 2015, to January 31, 2022, using supporting documentation. As a result, staff recommends that the CIAC balance be increased by \$193,145 as of January 31, 2022. Staff also recommends that the accumulated amortization of CIAC balance be increased by \$217,552 as of January 31, 2022. Accordingly, staff recommends total CIAC and Accumulated Amortization of CIAC balances of \$269,576 and \$217,552, respectively, as of January 31, 2022.

Net Book Value

The Utility's general ledger reflected a NBV of \$56,102 as of December 31, 2021. Based on the adjustments described above, staff recommends a NBV of \$60,063 as of January 31, 2022. 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. 1 as of January 31, 2022. As addressed in Issue 3, a positive acquisition adjustment should not be recognized for ratemaking purposes.

Conclusion

Based on the above, staff recommends a NBV of \$60,063 as of January 31, 2022, 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 the Utility's 2022 Annual Report when filed.

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. (Thurmond, Maloy)

Staff Analysis: In its filing, the applicant requested a positive acquisition adjustment be included in the calculation of the Utility'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 \$460,000. As discussed in Issue 2, staff is recommending a NBV of \$60,063. This would result in a positive acquisition adjustment of \$399,937.

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.

If a purchase price above depreciated original cost is used to determine rate base, without the requirement for extraordinary circumstances, it could encourage utilities to "swap assets" and inappropriately increase costs to customers.

Deferral

In discovery, CSWR-Neighborhood stated that it intends to ask for deferral of a decision regarding the requested acquisition adjustment. In its application, the Buyer laid out factors such as improvements to quality of service, cost efficiencies, and rate stability. These are discussed below and staff recommends that these factors do not constitute extraordinary circumstances. In response to discovery, the Buyer agreed that after rate base is set, if a company provides support in a separate and subsequent case that there are utility assets that were not previously recorded, then the company can prospectively recover the unrecorded amount of that investment. Therefore, if the Buyer finds assets were incorrectly recorded on the Seller's balance sheet, the Buyer can support those costs and recover them in a future rate case which is Commission practice and not considered extraordinary circumstances.

In the past, the Commission has approved positive acquisition adjustments for three separate natural gas utilities: the acquisition of Florida City Gas by AGL Resources, Inc., the acquisition of Florida Public Utilities Company (FPUC) by the Florida Division of Chesapeake Utilities

Corporation, and the acquisition of Indiantown Gas Company by FPUC.⁹ In all three cases, the buyers provided detailed information estimating net savings to customers that could be achieved should the transfer and acquisition adjustment be approved. In addition, all three utilities acknowledged that if the estimated cost savings did not materialize or were less than represented, that some or all of the granted positive acquisition adjustments could be removed prospectively. In contrast, CSWR-Neighborhood stated that such estimates cannot be given at this time and thus requested the decision regarding the acquisition adjustment be deferred until it has the information to estimate net cost savings to customers. Staff believes the cases noted above demonstrate that a buyer that has undertaken the appropriate level of due diligence has the ability and responsibility to provide estimated net cost savings to customers at the time of transfer.

Pursuant to Commission practice, the buyer has the burden to prove extraordinary circumstances at the time of transfer. Staff believes in the instant case the Buyer has failed to provide proof of extraordinary circumstances. Further, the Buyer had multiple opportunities to provide pertinent information needed to determine if a positive acquisition adjustment is appropriate. As such, staff recommends the Commission deny the request to defer a decision on the positive acquisition adjustment.

Finally, it is long-standing Commission practice to address the disposition of any positive or negative acquisition adjustment at the time of transfer. Pursuant to Section 120.68(7)(e)3., F.S., when agencies change their established policies, practices and procedures, they must give an explanation for the deviation. Staff does not believe the facts in this case warrant such a deviation. As such, staff believes the deferral of a positive acquisition adjustment decision in this docket would result in an unnecessary deviation from Commission practice.

Improvements in Quality of Service and Compliance with Regulatory Mandates

In its application, CSWR-Neighborhood 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, January 2017 to March 2022. For the five-year period, the Commission recorded a total of two customer complaints pertaining to billing. Additionally, in its application, CSWR-Neighborhood indicated that the Utility has not received any customer complaints pertaining to

⁹Order No. PSC-07-0913-PAA-GU, issued November 13, 2007, in Docket No. 20060657-GU, *In re: Petition for approval or acquisition adjustment and recognition of regulatory asset to reflect purchase of Florida City Gas by AGL Resources, Inc.*; Order No. PSC-12-0010-PAA-GU, issued January 3, 2012, in Docket No. 20110133-GU, *In re: Petition for approval of acquisition adjustment and recovery of regulatory assets, and request for the consolidation of regulatory filings and records of Florida Public Utilities Company and Florida Divisions of Chesapeake Utilities Corporation*; Order No. PSC-14-0015-PAA-GU, issued January 6, 2014, in Docket No. 20120311-GU, *In re: Petition for approval of positive acquisition adjustment to reflect the acquisition of Indiantown Gas Company by Florida Public Utilities Company*.

secondary water standards during the past five years. As discussed in Issue 1, staff also reviewed the Utility's most recent DEP inspection reports. While the Utility was issued a Consent Order on April 1, 2022, the Utility has addressed the violations and completed DEP's requirements set forth in the Consent Order.

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-Neighborhood 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-Neighborhood'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

In its application, the Buyer stated that based on its size, the 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 Neighborhood's systems to ensure compliance with all health and environmental requirements and ensure service to customers remains safe and reliable

In response to discovery, the Buyer provided an estimated annual reduction of operation and maintenance (O&M) expense of approximately \$20,000. However, with a requested acquisition adjustment of \$399,937, the requested amount is approximately six and one-half times greater than the system's current NBV of \$60,063. Even if the Buyer was able to achieve these savings in O&M expense, the inclusion of the requested acquisition adjustment in rate base and the inclusion of the annual amortization expense in the net operating income calculation, would result in an increased revenue requirement. By operation of math, the overall impact would be a net increase to customer rates.

The Buyer also stated that CSWR-Neighborhood 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-Neighborhood, 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 of demonstrating extraordinary circumstances. Moreover, Neighborhood has exhibited rate stability. The Utility has had only two staff-assisted rate cases, seven price indices, and one pass-through increase since it was granted its water certificate in 1984.

Staff's recommendation is consistent with the Commission's decision in Order No. PSC-2020-0458-PAA-WS.¹⁰ In that docket, the buyer 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, the buyer cited 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 the buyer accomplished cost savings, it did not believe the actions performed demonstrated extraordinary circumstances that would justify approval of a positive acquisition adjustment.

Staff's recommendation is also consistent with the Commission's decisions for CSWR-Florida Utility Operating Company, LLC's request for a positive acquisition adjustment in Order Nos. PSC-2022-0116-PAA-SU, PSC-2022-0120-PAA-WU, and PSC-2022-0115-PAA-WS.¹¹ In those cases, it was determined that CSWR-Florida Utility Operating Company, LLC failed to provide sufficient evidence of extraordinary circumstances and was denied a positive acquisition adjustment in all three cases. In those cases, CSWR-Florida Utility Operating Company, LLC also requested a deferral of the decision regarding the positive acquisition adjustments which was denied by the Commission. Staff finds the facts of this case similar to the three cases discussed above.

Conclusion

Pursuant to Rule 25-30.0371, F.A.C., staff recommends a positive acquisition adjustment 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 do not illustrate extraordinary circumstances and instead demonstrates CSWR-Neighborhood's intentions to responsibly provide utility service.

¹⁰Order 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.*

¹¹Order No. PSC-2022-0116-PAA-SU, issued March 17, 2022, in Docket No. 20210133-SU, *In re: Application for transfer of facilities of North Peninsula Utilities Corporation and wastewater Certificate No. 249-S to CSWR-Florida Utility Operating Company, LLC, in Volusia County.* ; Order No. PSC-2022-0120-PAA-WU, issued March 18, 2022, in Docket No. 20220095-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*; Order No. PSC-2022-0115-PAA-WS, issued March 15, 2022, in 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.*

Issue 4: Should CSWR-Florida Utility Operating Company, LLC’s miscellaneous service charges be revised to conform to amended Rule 25-30.460, F.A.C.?

Recommendation: Yes. The miscellaneous service charges should be revised to conform to the recent amendment to Rule 25-30.460, F.A.C. The tariff should be revised to reflect the removal of initial connection and normal reconnection charges. CSWR-Neighborhood should be required to file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. CSWR-Neighborhood should provide proof of the date notice was given within 10 days of the date of the notice. CSWR-Neighborhood should be required to charge the approved miscellaneous service charges until authorized to change them by the Commission in a subsequent proceeding. (Bruce)

Staff Analysis: Effective June 24, 2021, Rule 25-30.460, F.A.C., was amended to remove initial connection and normal reconnection charges.¹² The definitions for initial connection charges and normal reconnection charges were subsumed in the definition of the premises visit charge. The Utility’s miscellaneous service charges consist of initial connection and normal reconnection charges. The normal reconnection charge is more than the premises visit charge. Since the premises visit entails a broader range of tasks, staff believes the premises visit charge should reflect the amount of the normal reconnection charge of \$34 for normal hours and \$38 for after hours. Therefore, staff recommends that the initial connection and normal reconnection charges be removed, the premises visit charge should be revised to \$34 for normal hours and \$38 for after hours, and the definition for the premises visit charge be updated to comply with amended Rule 25-30.460, F.A.C. The Utility’s existing and staff’s recommended miscellaneous service charges are shown below in Tables 4-1 and 4-2.

**Table 4-1
 Utility Existing Miscellaneous Service Charges**

| | Normal Hours | After Hours |
|---|--------------|-------------|
| Initial Connection Charge | \$19.00 | \$21.00 |
| Normal Reconnection Charge | \$34.00 | \$38.00 |
| Violation Reconnection Charge | \$30.00 | \$32.00 |
| Premises Visit Charge (in lieu of disconnection) | \$19.00 | \$21.00 |

**Table 4-2
 Staff Recommended Miscellaneous Service Charges**

| | Normal Hours | After Hours |
|-------------------------------|--------------|-------------|
| Violation Reconnection Charge | \$30.00 | \$32.00 |
| Premises Visit Charge | \$34.00 | \$38.00 |

¹²Order No. PSC-2021-0201-FOF-WS, 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.*

Conclusion

Based on the above, staff recommends the miscellaneous service charges be revised to conform to the recent amendment to Rule 25-30.460, F.A.C. The tariff should be revised to reflect the removal of initial connection and normal reconnection charges. CSWR-Neighborhood should be required to file a proposed customer notice to reflect the Commission-approved charges. The approved charges should be effective on or after the stamped approval date on the tariff sheet pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved charges should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. CSWR-Neighborhood should provide proof of the date notice was given within 10 days of the date of the notice. CSWR-Neighborhood should be required to charge the approved miscellaneous service charges until authorized to change them by the Commission in a subsequent proceeding.

Issue 5: 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, proof that appropriate noticing has been done pursuant to Rule 25-30.4345, F.A.C., and the Buyer has submitted the executed and recorded warranty deed and that the Buyer has submitted a copy of its application for permit transfer to the DEP within 90 days of the Commission's Order approving the transfer. (J. 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, proof that appropriate noticing has been done pursuant to Rule 25-30.4345, F.A.C., and the Buyer has submitted the executed and recorded warranty deed and that the Buyer has submitted a copy of its application for permit transfer to the DEP within 90 days of the Commission's Order approving the transfer.

DESCRIPTION OF TERRITORY SERVED

Please refer to description of territory served as filed in Docket Number 840063-WU. Order Number 13723, Issued 9/28/84, Certificate Number 430-W.

In Township 2 South, Range 25 East:

Section 31

The South ½ of said Section 31
LESS

the West 660 feet of said Section 31, and the Southeast 1/4 of the Southwest 1/4 of said Section 31, and the South 165 feet of the Southeast 1/4 of the Southeast 1/4 of said Section 31, and the North 300 feet of the South 756 feet of the East 437 feet of the Southeast 1/4 of the Southeast 1/4 of said Section 31, and the East 40 feet of the South 1/2 of said Section 31.

Docket No. 090441-WU; Order No. PSC-11-0135-FOF-WU, Issued 2/28/11:

NEIGHBORHOOD UTILITIES, INC.
DESCRIPTION OF WATER TERRITORY TO BE ADDED
DUVAL COUNTY

In Township 2 South, Range 25 East:

Section 31

Area name: NU-1. A portion of Tracts 13 and 14, Block 3, in Section 31 as shown on the plat of Jacksonville Heights, as recorded in Plat Book 5, Page 93 of the current public records of Duval County, Florida, more particularly described as follows:

Commence at the Southwest corner of said Section 31; thence N 89° 42' 31" E along the south line of said Section 31, a distance of 1,224.03 feet to the Southwest corner of Tract 13, Block 3, Jacksonville Heights to the Point of Beginning; thence continue along said south line of Section 31, N 89° 42' 30" E a distance of 663.36 feet; thence N 00° 50' 36" E a distance of 664.62 feet; thence S 89° 46' 36" W a distance of 664.95 feet; thence S 00° 47' 27" W a distance of 665.40 feet to the Point of Beginning. Containing 10.14 acres.

In Township 2 South, Range 25 East and in Township 3 South, Range 25 East:

Area name: NU-2. A portion of Tracts 1 through 6, inclusive, Tracts 10 through 14, Block 3, and Tracts 5 through 8, inclusive Tracts 9, 11, and 12, Block 4, in Section 31, Township 2 South, Range 25 East, together with a portion of Tracts 6 and 7, Block 2, in Section 6, Township 3 South, Range 25 East as shown on the plat of Jacksonville Heights, as recorded in Plat Book 5, Page 93 of the current public records of Duval County, Florida, more particularly described as follows:

(Continued on Sheet No. 3.2)

(Continued from Sheet No. 3.1)

Commence at the Southwest corner of said Section 31; thence N 89° 42' 31" E along the south line of said Section 31, a distance of 664.35 feet to the Southwest corner of Tract 11, Block 3, Jacksonville Heights, to the Point of Beginning; thence N 00° 44' 25" E a distance of 166.54 feet; thence S 89° 43' 33" W a distance of 614.49 feet; thence S 00° 39' 57" W a distance of 327.10 feet; thence N 89° 42' 31" E a distance of 248.32 feet; thence S 00° 38' 40" W a distance of 173.91 feet; thence N 89° 17' 13" E a distance of 364.98 feet; thence S 00° 39' 10" W a distance of 516.95 feet; thence N 84° 58' 30" E a distance of 172.65 feet; thence N 00° 40' 10" E a distance of 222.00 feet; thence N 84° 58' 30" E a distance of 160.00 feet; thence N 00° 41' 18" E a distance of 599.10 feet; thence S 89° 42' 31" W a distance of 330.34 feet to the Point of Beginning. Containing 11.61 acres.

NEIGHBORHOOD UTILITIES, INC.
DESCRIPTION OF WATER TERRITORY TO BE DELETED
DUVAL COUNTY

In Township 2 South, Range 25 East:

Section 31

Area name: JEA-1. A portion of Tracts 11 and 12, Block 3, in Section 31, as shown on the plat of Jacksonville Heights, as recorded in Plat Book 5, Page 93 of the current public records of Duval County, Florida, more particularly described as follows:

Commence at the Southwest corner of said Section 31; thence N 89° 42' 31" E along the south line of said Section 31, a distance of 1,224.03 feet to the Southwest corner of Tract 13, Block 3, Jacksonville Heights, thence N 00° 47' 27" E along the west line of said Tract 13 a distance of 861.76 feet to the Point of Beginning; thence N 55° 09' 07" W a distance of 66.88 feet; thence N 89° 18' 56" W a distance of 219.61 feet; thence N 00° 46' 00" E a distance of 65.71 feet; thence N 89° 15' 41" W a distance of 110.00 feet; thence N 00° 43' 08" E a distance of 275.01 feet; thence N 89° 50' 42" E a distance of 155.39 feet; thence N 00° 01' 10" E a distance of 135.00 feet; thence N 89° 50' 42" E a distance of 230.97 feet; thence S 00° 47' 27" W a distance of 519.05 feet to the Point of Beginning. Containing 3.61 acres.

Area name: JEA-2. A portion of Tracts 9, 11, and 12, plus all of Tract 10, Block 4, in Section 31, as shown on the plat of Jacksonville Heights, as recorded in Plat Book 5, Page 93 of the current public records of Duval County, Florida, more particularly described as follows:

Commence at the Southwest corner of said Section 31; thence N 89° 42' 31" E along the south line of said Section 31, a distance of 2,657.56 feet to the Southwest corner of Tract 11, Block 4, Jacksonville Heights, to the Point of Beginning; thence N 00° 53' 47" E a distance of 1327.69 feet; thence S 44° 38' 49" E a distance of 1,856.48 feet; thence S 89° 42' 31" W a distance of 1,325.40 feet to the Point of Beginning. Containing 20.19 acres.

**FLORIDA PUBLIC SERVICE COMMISSION
authorizes
Neighborhood Utilities, Inc.
pursuant to
Certificate Number 430-W**

to provide water service in Duval 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, canceled or revoked by Order of this Commission.

| <u>Order Number</u> | <u>Date Issued</u> | <u>Docket Number</u> | <u>Filing Type</u> |
|---------------------|--------------------|----------------------|----------------------|
| 13723 | 09/28/84 | 840063-WU | Original Certificate |
| PSC-11-0135-FOF-WU | 02/28/11 | 090441-WU | Amendment |
| * | | 20220019-WU | Transfer |

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

**CSWR-Florida Utility Operating Company, LLC
 Neighborhood Utilities, Inc.**

Schedule of Net Book Value as of January 31, 2022

| <u>Description</u> | <u>Balance Per Utility 12/31/21</u> | <u>Adjustments</u> | | <u>Staff 1/31/22</u> |
|--------------------------|---|--------------------|---|--------------------------|
| Utility Plant in Service | \$672,155 | \$1,299 | A | \$673,454 |
| Land & Land Rights | 1,000 | - | | 1,000 |
| Accumulated Depreciation | (540,622) | (21,745) | B | (562,367) |
| CIAC | (76,431) | (193,145) | C | (269,576) |
| Amortization of CIAC | <u>0</u> | <u>217,552</u> | D | <u>217,552</u> |
| Total | <u>\$56,102</u> | <u>\$3,961</u> | | <u>\$60,063</u> |

**CSWR-Florida Utility Operating Company, LLC
Neighborhood Utilities, Inc.**

Explanation of Adjustments to Net Book Value as of January 31, 2022

| Explanation | Amount |
|--|------------------|
| A. UPIS To reflect the appropriate balance. | \$1,299 |
| B. Accumulated Depreciation To reflect the appropriate balance. | (21,745) |
| C. CIAC To reflect the appropriate balance. | (193,145) |
| D. Accumulated Amortization of CIAC To reflect the appropriate balance. | <u>217,552</u> |
| Total Adjustments to Net Book Value as of January 31, 2022 | <u>(\$3,961)</u> |

**CSWR-Florida Utility Operating Company, LLC
Neighborhood Utilities, Inc.**

Schedule of Staff's Recommended Account Balances as of January 31, 2022

| Account No. | Description | UPIS | Accumulated Depreciation |
|------------------------|--------------------------------------|------------------|-------------------------------------|
| 304 | Structures & Improvements | \$14,967 | (\$13,179) |
| 305 | Collecting & Impounding Reservoirs | 90,940 | (81,390) |
| 307 | Wells and Springs | 45,388 | (45,388) |
| 309 | Supply Mains | 2,708 | (557) |
| 311 | Pumping Equipment | 58,328 | (57,907) |
| 320 | Water Treatment Equipment | 33,508 | (31,588) |
| 330 | Distribution Reservoirs & Standpipes | 30,830 | (13,655) |
| 331 | Transmission and Distribution Mains | 248,307 | (202,216) |
| 333 | Services | 64,444 | (40,761) |
| 334 | Meters and Meter Installations | 32,587 | (32,587) |
| 335 | Hydrants | 35,812 | (34,961) |
| 339 | Other Plant Misc. Equipment | 13,921 | (7,018) |
| 340 | Office Furniture and Equipment | <u>1,714</u> | <u>(1,158)</u> |
| | Total | <u>\$673,454</u> | <u>\$562,367</u> |

**CSWR-Florida Utility Operating Company, LLC
 Neighborhood Utilities, Inc.
 Monthly Water Rates**

Residential and General Service

Base Facility Charge by Meter Size

| | |
|-------------|----------|
| 5/8" x 3/4" | \$8.44 |
| 3/4" | \$12.66 |
| 1" | \$21.09 |
| 1 1/2" | \$42.19 |
| 2" | \$67.50 |
| 3" | \$134.99 |
| 4" | \$210.93 |
| 6" | \$421.86 |

Charge per 1,000 gallons - Residential

| | |
|------------------------|--------|
| 0 – 5,000 gallons | \$4.34 |
| 5,001 – 10,000 gallons | \$5.34 |
| Over 10,000 gallons | \$8.00 |

Charge per 1,000 gallons – General Service \$4.81

Initial Customer Deposits

Meter Size

Residential

General Service

| | | |
|----------------------|---------------------------------------|---------------------------------------|
| 5/8" x 3/4" | \$58.00 | 2x the average estimated monthly bill |
| All over 5/8" x 3/4" | 2x the average estimated monthly bill | 2x the average estimated monthly bill |

Miscellaneous Service Charges

| | |
|---------------------|----------------------------------|
| Late Payment Charge | \$4.30 |
| NSF Charges | Pursuant to Section 68.065, F.S. |

Service Availability Charges

Meter Installation Charge

| | |
|-----------------------|-------------|
| 5/8" x 3/4" | \$206.00 |
| All other meter sizes | Actual Cost |

Plant Capacity Charge

| | |
|-------------------------------|----------|
| Residential-per ERC (350 GPD) | \$420.00 |
| All others per gallon | \$1.20 |

Item 6

State of Florida



Public Service Commission

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

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

DATE: July 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Forrest) *JGH*
Office of the General Counsel (Brownless) *JSC*

RE: Docket No. 20220106-EI – Petition for approval of new my energy bill+ program with income qualified component, by Duke Energy Florida, LLC.

AGENDA: 08/02/22 – Regular Agenda – Tariff Suspension – Participation is at the discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 08/02/22 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

On June 3, 2022, Duke Energy Florida (Duke or utility) filed a petition requesting approval of a new fixed (or flat) bill program called My Energy Bill+. This proposal is similar in structure to Duke's current Your Fixed Bill tariff. A flat bill tariff allows participating customers to receive a fixed monthly bill for 12 months, which is calculated using the prior 12-months average usage plus an additional risk and usage adder. Customers who voluntarily enroll in a fixed bill program need to enter into a Service Agreement with the utility for a term of 12 months. The Service Agreement will automatically renew for an additional 12 months, unless the customer notifies the utility prior to the renewal date. On the enrollment anniversary, the utility will issue a new monthly flat bill amount for the upcoming year based upon updated usage and risk parameters.

Under the proposed tariff, Duke would offer qualifying residential customers a monthly flat bill rate that includes a reduced risk premium compared to the risk premium in its current Your Fixed

Bill program. The current Your Fixed Bill program has a risk adder of 6 percent, while the new My Energy Bill+ program limits the risk adder to 4 percent. In exchange for the reduced risk premium, the proposed My Energy Bill+ program would require customers to grant Duke access to control their thermostats during periods of peak usage. In addition, Duke would offer 1,000 free smart thermostats to income-qualified customers. This program was originally conceptualized in a Memorandum of Understanding between Duke, Vote Solar, the CLEO Institute and the Southern Alliance for Clean Energy, which was filed in Docket No. 20210016-EI.¹

This recommendation is to suspend the proposed tariffs. The Commission has jurisdiction over this matter pursuant to Section 366.06, Florida Statutes (F.S.).

¹ Document No. 03685-2021 in Docket No. 20210016-EI, *In re: Duke Energy Florida, LLC's Petition for Limited Proceeding to Approve 2021 Settlement Agreement, Including General Base Rate Increases.*

Discussion of Issues

Issue 1: Should the Commission suspend Duke's proposed My Energy Bill+ program tariffs?

Recommendation: Yes. The proposed My Energy Bill+ program tariffs should be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the proposed new program and associated tariffs. (Forrest)

Staff Analysis: Staff recommends that the proposed tariffs be suspended to allow staff the necessary time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the proposed tariffs.

Pursuant to Section 366.06(3), F.S., the Commission may withhold consent to the operation of all or any portion of the new rate schedules delivering to the utility requesting such a change a reason or written statement of good cause for doing so within 60 days. Staff believes that the reason stated above is good cause consistent with the requirements of Section 366.06(3), F.S.

Issue 2: Should this docket be closed?

Recommendation: No, this docket should remain open pending the Commission decision on the proposed tariff changes. (Brownless)

Staff Analysis: This docket should remain open pending the Commission decision on the proposed tariff changes.

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: July 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Hudson) *JGH*
Office of the General Counsel (Crawford) *JSC*

RE: Docket No. 20220119-WU – Request for approval for new class of service by Lake Talquin Waterworks.

AGENDA: 08/02/22 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 08/08/22 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

Lake Talquin Waterworks (Lake Talquin or utility) is a class C utility providing water service to approximately 237 residential customers, in single family and mobile homes, located next to Lake Talquin in southwest Leon County. Wastewater service is provided by septic tank. The Utility’s service area is located in the Northwest Florida Water Management District. According to Lake Talquin’s 2021 Annual Report, total gross water revenue was \$136,342 and total water operating expense was \$107,669. Lake Talquin was granted its grandfather water certificate in 2021 and the Commission at the time approved the utility’s existing rates and charges.¹

On June 9, 2022, Lake Talquin filed a request to add additional base facility charges (BFC) to its tariff for larger meter sizes for the residential and general service classes. Currently, the utility only has Commission-approved residential and general service BFCs for the 5/8” x 3/4” meter

¹ Order No. PSC-2021-0113-PAA-WU, issued March 22, 2021, *In re: Application of Lake Talquin Waterworks, Inc. for grandfather water certificate in Leon County and pass through of regulatory assessment fees.*

Docket No. 20220119-WU

Date: July 21, 2022

size. This recommendation addresses the utility's request to add the additional BFCs for larger meter sizes to its tariff. The Commission has jurisdiction pursuant to Section 367.091(4), Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the utility’s proposed tariffs containing the BFCs for additional meter sizes for the residential and general service classes be approved?

Recommendation: Yes, the utility’s proposed tariffs containing the BFCs for additional meter sizes for the residential and general service classes should be approved. The utility should file a proposed customer notice to reflect the Commission-approved rates. Lake Talquin’s Second Revised Sheet No. 12.0 and Second Revised Sheet No. 13.0 should be approved as filed. The approved rates should be effective for service rendered on or after the stamped approval date of the tariffs pursuant to Rule 25-30.475(1), Florida Administrative Code (F.A.C.), provided that the notice of the tariff has been received by the two general service customers impacted. The utility should provide proof of the date notice was given within 10 days of the date of the notice. (Hudson)

Staff Analysis: The utility explained that it has two general service customers with larger meter sizes of 1-inch and 1-1/2 inch. Currently, Lake Talquin’s tariff only has a BFC for a 5/8 inch x 3/4 inch meter size. The utility’s proposed BFCs for the additional meter sizes are calculated by using the utility’s existing BFC of \$36.60 for the 5/8 inch x 3/4 inch size meter as a foundation, and then applying the American Water Works Association’s (AWWA’s) meter equivalent factor. The AWWA meter equivalent factors are contained in Rule 25-30.055, F.A.C. Lake Talquin’s existing BFC for the 5/8 inch x 3/4 inch meter size and the BFCs for the proposed additional meters based on the AWWA meter equivalents are shown in Table 1-1.

Table 1-1
Utility’s Existing and Proposed BFC Charges

| Meter Size | AWWA Meter Factor | BFC |
|-------------|-------------------|----------|
| 5/8" X 3/4" | 1 | \$36.60 |
| 3/4" | 1.5 | \$54.90 |
| 1" | 2.5 | \$91.50 |
| 1-1/2" | 5 | \$183.00 |
| 2" | 8 | \$292.80 |
| 3" | 16 | \$585.60 |
| 4" | 25 | \$915.00 |

Source: Utility’s filing.

The utility has been charging the general service customers the only BFC it currently has in place. The gallonage charge is \$3.23 per 1,000 gallons for all meter sizes. The utility will charge the two general service customers the appropriate BFC based on the customers’ meter size once authorized by the Commission.

Conclusion

The utility’s proposed tariffs containing the BFCs for additional meter sizes for the residential and general service classes should be approved. The utility should file a proposed customer

Date: July 21, 2022

notice to reflect the Commission-approved rates. Lake Talquin's Second Revised Sheet No. 12.0 and Second Revised Sheet No. 13.0 should be approved as filed. The approved rates should be effective for service rendered on or after the stamped approval date of the tariffs pursuant to Rule 25-30.475(1), F.A.C., provided that the notice of the tariff has been received by the two general service customers impacted. The utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 2: Should this docket be closed?

Recommendation: Yes. If Issue 1 is approved, the tariff sheets should become effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. If a protest is filed within 21 days of the issuance of the Order, the tariff should remain in effect with the revenues held subject to refund pending resolution of the protest, and the docket should remain open. If no timely protest is filed, the docket should be closed upon the issuance of a Consummating Order. (Crawford)

Staff Analysis: If Issue 1 is approved, the tariff sheets should become effective on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475, F.A.C. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with revenues subject to refund pending resolution of the protest, and the docket should remain open. If no timely protest is filed, the docket should be closed upon the issuance of a Consummating Order.

Item 8

State of Florida



Public Service Commission

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

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

DATE: July 21, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Hampson, Coston, Draper, Guffey)
Division of Accounting and Finance (Norris, Andrews, D. Buys, Osorio)
Office of the General Counsel (Sandy, Crawford)

RE: Docket No. 20220067-GU – Petition for rate increase by Florida Public Utilities Company, Florida Division of Chesapeake Utilities Corporation, Florida Public Utilities Company - Fort Meade, and Florida Public Utilities Company - Indiantown Division.

AGENDA: 08/02/22 – Regular Agenda – Decision on Interim Rates – Participation is at the Discretion of the Commission

COMMISSIONERS ASSIGNED: ~~All Commissioners~~ Clark, Fay, Passidomo ^{AT 7/21/22}

PREHEARING OFFICER: Passidomo

CRITICAL DATES: 08/02/22 (60-day provision of Section 366.071(2), F.S., waived by Company until 08/02/22)

SPECIAL INSTRUCTIONS: None

Case Background

On May 24, 2022, Florida Public Utilities Company (FPUC), Florida Division of Chesapeake Utilities Corporation (Chesapeake), Florida Public Utilities Company-Fort Meade (Ft. Meade), and Florida Public Utilities Company-Indiantown Division (Indiantown) (collectively the Company) filed a petition seeking Commission approval to increase rates and charges and to consolidate the four natural gas utilities into one utility operating under the name Florida Public Utilities Company. The four natural gas utilities provide sales and transportation of natural gas and are public utilities subject to the Commission's regulatory jurisdiction under Chapter 366, Florida Statutes (F.S.).

In 2009, Chesapeake Utilities Corporation (CUC), a Delaware corporation, which owned and operated the Florida Division of Chesapeake Utilities Corporation, acquired Florida Public Utilities Company's electric and gas divisions. In 2010, Florida Public Utilities Company acquired Indiantown Gas Company and in 2013 the natural gas assets of Fort Meade, a municipal utility. Since the acquisitions, Indiantown Gas Company operates as Florida Public Utilities Company-Indiantown Division and Fort Meade as Florida Public Utilities Company-Fort Meade.

The Company currently serves approximately 92,000 residential, commercial, and industrial customers in 26 counties throughout the state of Florida. In its petition, the Company requested an increase of \$43.8 million in additional annual revenues. Of that amount, \$19.8 million is associated with moving the Company's current investment in the Commission-approved Gas Reliability Infrastructure Program (GRIP), which is being recovered through a separate surcharge on customers' bills, into base rates. The remaining \$24 million, according to FPUC, is necessary for the Company to earn a fair return on its investment and a requested return on equity of 11.25 percent. The Company based its request on a 13-month average rate base of \$454.9 million for the projected test year January through December 2023. The requested overall rate of return is 6.43 percent.

FPUC's last approved rate case was in 2008,¹ Chesapeake's last rate case was in 2009,² and Indiantown's last rate case was in 2003, prior to its acquisition in 2013.³ Ft. Meade was a municipal utility prior to its acquisition in 2013 and has not had a rate case prior to this pending docket. More recently, in Commission Order No. PSC-2021-0148-TRF-GU,⁴ the four individual utilities' tariffs were consolidated without modifications to customer rates. Prior to the consolidation of the tariffs, the utilities provided natural gas service under four separate Commission-approved tariffs.

The Company stated that the key drivers for the proposed rate increase are: capital investments to expand service, technology and safety investments, increased insurance premiums, and an increase in cost of materials and labor as a result of high inflation. As part of the petition, the Company filed a new 2023 depreciation study, a cost recovery environmental surcharge, revisions to its Area Expansion Program (AEP), and consolidated rate structures.

Pursuant to Sections 366.06(2) and (4), F.S., FPUC requested that this rate case be processed using the Commission's hearing process. Accordingly, an administrative hearing has been scheduled for this matter from October 25 through 28, 2022. At the July 7, 2022 Agenda Conference, the Commission suspended the proposed permanent increase in rates and charges.

¹Order Nos. PSC-2009-0375-PAA-GU, issued May 27, 2009, and PSC-2009-0848-S-GU, issued December 28, 2009, in Docket No. 20080366-GU, *In re: Petition for rate increase by Florida Public Utilities Company*.

²Order No. PSC-2010-0029-PAA-GU, issued January 14, 2010, in Docket No. 20090125-GU, *In re: Petition for increase in rates by Florida Division of Chesapeake Utilities Corporation*.

³Order No. PSC-2004-0565-PAA-GU, issued June 2, 2004, in Docket No. 20030954-GU, *In re: Petition for rate increase by Indiantown Gas Company*.

⁴Order No. PSC-2021-0148-TRF-GU, issued April 22, 2021, in Docket No. 20200214-GU, *In re: Joint petition of Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade, and the Florida Division of Chesapeake Utilities Corporation for approval of consolidation of tariffs, for modifications to retail choice transportation service programs, and to change the MACC for Florida Public Utilities Company*.

In its petition, the Company requested an interim rate increase of \$7.13 million. Section 366.071, F.S., addresses interim rates and procedures and requires the Commission to authorize within 60 days of a filing for an interim rate increase the collection of interim rates. On June 7, 2022, the Company waived the 60-day provision of Section 366.071(2), F.S., and agreed to defer implementation of the proposed interim rates until the issue is addressed at the scheduled August 2, 2022 Agenda Conference.⁵

This recommendation addresses the requested interim revenue increase and rates. The interim revenue increases are calculated separately for each of the four utilities and are addressed in Issues 1 through 7. As discussed in Issue 5, staff recommends approval of Indiantown and Ft. Meade's requested interim revenue increase. However, staff recommends adjustments to the interim revenue requests for FPUC and Chesapeake. The Commission has jurisdiction over this request under Sections 366.06 and 366.071, F.S.

⁵Document No. 03478-2022, filed June 7, 2022.

Discussion of Issues

Issue 1: Are FPUC's, Chesapeake's, Indiantown's, and Ft. Meade's proposed interim rate bases appropriate?

Recommendation: Yes. The appropriate interim rate base for FPUC, Chesapeake, Indiantown, and Ft. Meade should be \$319,224,069, \$111,929,536, \$1,998,095, and \$1,294,682, respectively. (Andrews)

Staff Analysis: In its filing, the Company proposed interim year-end rate bases of \$319,224,069, \$111,929,536, \$1,998,095, and \$1,294,682 for FPUC, Chesapeake, Indiantown, and Ft. Meade, respectively, for the period ended December 31, 2021. Pursuant to Section 366.071(5)(a), F.S., the Company is permitted to elect either an average or year-end rate base to calculate its interim revenue request. Staff reviewed the rate base adjustments made in the current interim filing for consistency with the Commission-approved adjustments in each utility's last rate case proceeding, where appropriate, as well as other applicable dockets.⁶ Based on staff's review, it appears that the Company made applicable and appropriate adjustments that are consistent with the prior Commission Orders. Staff's recommendation of whether FPUC is entitled to the proposed interim increase is discussed in Issue 5. If it is determined that interim relief should be granted to the Company in this case, staff agrees that \$319,224,069, \$111,929,536, \$1,998,095, and \$1,294,682 for FPUC, Chesapeake, Indiantown, and Ft. Meade, respectively, are the appropriate amounts of rate base for each utility for the historical interim test year ended December 31, 2021. The calculations are shown on Attachment A.

⁶Order Nos. PSC-2009-0375-PAA-GU, issued May 27, 2009, in Docket No. 20080366-GU, *In re: Petition for rate increase by Florida Public Utilities Company*; PSC-2010-0029-PAA-GU, issued January 14, 2010, in Docket No. 20090125-GU, *In re: Petition for increase in rates by Florida Division of Chesapeake Utilities Corporation*; and PSC-2004-0565-PAA-GU, issued June 2, 2004, in Docket No. 20030954-GU, *In re: Petition for rate increase by Indiantown Gas Company*.

Issue 2: Are FPUC's, Chesapeake's, Indiantown's, and Ft. Meade's proposed interim returns on equity and overall rates of return appropriate?

Recommendation: Yes, in part, and no, in part. The appropriate return on equity for FPUC, Chesapeake, Indiantown, and Ft. Meade should be 9.85 percent, 9.80 percent, 10.50 percent, and 9.85 percent, respectively, and the overall cost of capital should be 5.50 percent, 5.33 percent, 6.86 percent, and 4.28 percent, respectively, for purposes of determining interim rates. (Andrews)

Staff Analysis: For purposes of its interim rate request, FPUC, Chesapeake, Indiantown, and Ft. Meade used an overall cost of capital of 5.41 percent, 5.30 percent, 5.35 percent, and 4.73 percent, respectively, based on a return on equity (ROE) of 9.85 percent, 9.80 percent, 10.50 percent, and 10.00 percent, respectively. Each utility reflected a capital structure for the 13-month average historical interim test year ended December 31, 2021. Staff believes several adjustments are necessary.

Pursuant to Section 366.071(2)(a), F.S., the appropriate ROE for purposes of determining an interim rate increase is the minimum of the Company's currently authorized ROE range. Staff believes that the ROE is consistent with each utility's last rate case proceeding as well as other applicable dockets for FPUC, Chesapeake, and Indiantown. However, the minimum of Ft. Meade's authorized ROE range is 9.85 percent. Ft. Meade was acquired by FPUC in 2013 and has not had a rate case before the Commission to determine ROE.⁷ Therefore, Ft. Meade's authorized ROE range is set equal to FPUC's until another determination can be made. Therefore, staff recommends an ROE of 9.85 percent for the purpose of determining interim rates for Ft. Meade.

MFR Schedule F-8 for Indiantown and Ft. Meade reflected negative per book balances for long-term debt, short-term debt, and common equity. However, there is no such thing as negative long-term debt or negative short-term debt. Consequently, the Company used the ratio of the parent company capital structure components to make pro rata adjustments in order to reconcile the capital structure to rate base. In order to be consistent, staff made an adjustment to use the ratio of the parent company capital structure components to make pro rata adjustments for all four systems.

Staff also recommends that the capital structure for each utility be reconciled to the year-end rate bases, as each utility's requested revenue increase is calculated based on year-end rate base. Pursuant to Section 366.071(5)(a), F.S., the Company is permitted to elect either average or year-end rate base to calculate its interim revenue request. The Company's election to use year-end rate base should be applied consistently. However, the MFR Schedule F-8 for each individual utility reflected a capital structure reconciled to average rate base. Staff made an adjustment to reconcile each utility's capital structure to year-end rate base and made an additional correction

⁷Order No. PSC-2013-0676-TRF-GU, issued December 20, 2013, in Docket No. 20130258-GU, *In re: Petition for approval of tariff sheets reflecting gas service to customers in the City of Ft. Meade, by Florida Public Utilities Company.*

to the pro rata adjustment of Indiantown. Staff made Indiantown's pro rata adjustment across all sources of capital to stay consistent with its last rate case.⁸

Staff recommends that the capital structure of FPUC, Chesapeake, Indiantown, and Ft. Meade for the historical interim test year ended December 31, 2021, reflect an ROE of 9.85 percent, 9.80 percent, 10.50 percent, and 9.85 percent, respectively, resulting in an overall cost of capital of 5.50 percent, 5.33 percent, 6.86 percent, and 4.28 percent, respectively, based on staff's recommended adjustments. Attachment B details the calculations of the each utility's overall cost of capital for each utility.

⁸Order No. PSC-2004-0565-PAA-GU, issued June 2, 2004, in Docket No. 20030954-GU, *In re: Petition for rate increase by Indiantown Gas Company*.

Issue 3: Are FPUC's, Chesapeake's, Indiantown's, and Ft. Meade's proposed interim test year net operating incomes appropriate?

Recommendation: No. The appropriate historical base year ended December 31, 2021 net operating income for FPUC, Chesapeake, Indiantown, and Ft. Meade should be \$17,555,780, \$5,961,365, \$137,069, and \$55,412, respectively. (Andrews)

Staff Analysis: The proposed historical interim test year net operating income for FPUC, Chesapeake, Indiantown, and Ft. Meade of \$17,267,622, \$5,927,716, \$106,898, \$61,238 are the twelve-month amounts for the historical interim test year ended December 31, 2021. Staff reviewed the net operating income adjustments made in the current interim filing for consistency with the Commission-approved adjustments in the last rate case proceeding for each individual utility, as well as other applicable dockets.⁹ Based on staff's review, it appears that each utility made the applicable and appropriate adjustments that are consistent with the prior Commission Orders. However, staff is recommending adjustments to each system's cost of capital in Issue 2 and bad debt expense rate in Issue 4. These adjustments have fallout effects which have altered the proposed net operating income for FPUC, Chesapeake, Indiantown, and Ft. Meade.

Staff's recommendation of whether the Company is entitled to the proposed interim increases is discussed in Issue 5. If it is determined that interim relief should be granted to FPUC, Chesapeake, Indiantown, and Ft. Meade in this case, staff recommends that \$17,555,780, \$5,961,365, \$137,069, and \$55,412, respectively, are the appropriate amounts of net operating income for the historical interim test year ended December 31, 2021. The calculations are shown on Attachment A.

⁹Order Nos. PSC-2009-0375-PAA-GU, issued May 27, 2009, in Docket No. 20080366-GU, *In re: Petition for rate increase by Florida Public Utilities Company*; PSC-2010-0029-PAA-GU, issued January 14, 2010, in Docket No. 20090125-GU, *In re: Petition for increase in rates by Florida Division of Chesapeake Utilities Corporation*; and PSC-2004-0565-PAA-GU, issued June 2, 2004, in Docket No. 20030954-GU, *In re: Petition for rate increase by Indiantown Gas Company*.

Issue 4: Are FPUC’s, Chesapeake’s, Indiantown’s, and Ft. Meade's proposed interim net operating income multipliers appropriate?

Recommendation: No. FPUC, Chesapeake, Indiantown, and Ft. Meade should be granted interim net operating income (NOI) multipliers of 1.3599, 1.3506, 1.3652, and 1.3807, respectively. (Andrews)

Staff Analysis: On MFR Schedule F-6, FPUC, Chesapeake, Indiantown, and Ft. Meade calculated an interim revenue expansion factor of 74.1443 using a 21 percent federal income tax rate, a 5.5 percent state income tax rate, and a 0.5030 percent factor for regulatory assessment fees. Additionally, the Company reflected the same factor of 0.1811 percent for bad debt expense in each utility’s calculation. Upon review, staff determined that the bad debt expense rate was a consolidated calculation reflecting all of the utilities. Staff recommends that the appropriate bad debt expense rate for each utility’s interim revenue expansion factor be calculated on a stand-alone basis, as the Commission has not yet approved the request to consolidate rate structure for the four utilities. Therefore, staff recommends that FPUC, Chesapeake, Indiantown, and Ft. Meade use a bad debt expense factor of 0.9977 percent, 0.3199 percent, 1.3779 percent, and 2.4786 percent, respectively. Therefore, staff recommends that 1.3599, 1.3506, 1.3652, and 1.3807 are the appropriate interim NOI multipliers for FPUC, Chesapeake, Indiantown, and Ft. Meade, respectively. The calculations are shown below.

**Table 4-1
 FPUC – Interim NOI Multiplier**

| <u>Description</u> | |
|------------------------------|------------------|
| Revenue Requirement | 100.0000% |
| Regulatory Assessment Fee | -0.5030% |
| Bad Debt Rate | <u>-0.9977%</u> |
| Net Before Income Tax | 98.4993% |
| State Income Tax @ 5.5% | -5.4175% |
| Federal Income Tax @ 21% | <u>-19.5472%</u> |
| Revenue Expansion Factor | <u>73.5347%</u> |
| NOI Multiplier (100/73.5347) | <u>1.3599</u> |

Table 4-2
Chesapeake – Interim NOI Multiplier

| <u>Description</u> | |
|------------------------------|------------------|
| Revenue Requirement | 100.0000% |
| Regulatory Assessment Fee | -0.5030% |
| Bad Debt Rate | <u>-0.3199%</u> |
| Net Before Income Tax | 99.1771% |
| State Income Tax @ 5.5% | -5.4547% |
| Federal Income Tax @ 21% | <u>-19.6817%</u> |
| Revenue Expansion Factor | <u>74.0407%</u> |
| NOI Multiplier (100/74.0407) | <u>1.3506</u> |

Table 4-3
Indiantown – Interim NOI Multiplier

| <u>Description</u> | |
|------------------------------|------------------|
| Revenue Requirement | 100.0000% |
| Regulatory Assessment Fee | -0.5030% |
| Bad Debt Rate | <u>-1.3779%</u> |
| Net Before Income Tax | 98.1191% |
| State Income Tax @ 5.5% | -5.3966% |
| Federal Income Tax @ 21% | <u>-19.4717%</u> |
| Revenue Expansion Factor | <u>73.2509%</u> |
| NOI Multiplier (100/73.2509) | <u>1.3652</u> |

Table 4-4
Ft. Meade – Interim NOI Multiplier

| <u>Description</u> | |
|------------------------------|------------------|
| Revenue Requirement | 100.0000% |
| Regulatory Assessment Fee | -0.5030% |
| Bad Debt Rate | <u>-2.4786%</u> |
| Net Before Income Tax | 97.0184% |
| State Income Tax @ 5.5% | -5.3360% |
| Federal Income Tax @ 21% | <u>-19.2533%</u> |
| Revenue Expansion Factor | <u>72.4291%</u> |
| NOI Multiplier (100/72.4291) | <u>1.3807</u> |

Issue 5: Should FPUC, Chesapeake, Indiantown, and Ft. Meade's requested interim revenue increases be granted?

Recommendation: Yes, in part, and no, in part. Indiantown and Ft. Meade's requested interim revenue increases of \$31,095 and \$35,138, respectively, should be granted. However, the appropriate interim revenue increase for FPUC and Chesapeake should be \$5,284,334 and \$2,329,697, respectively. (Andrews)

Staff Analysis: FPUC, Chesapeake, Indiantown, and Ft. Meade requested interim rate relief of \$4,852,243, \$2,281,056, \$31,095, and \$35,138, respectively, for the historical interim test year ended December 31, 2021. As discussed in Issues 2 and 4, staff is recommending adjustments to each system's cost of capital and bad debt expense rate. These adjustments result in fallout adjustments to the total interim revenue increase for FPUC, Chesapeake, Indiantown, and Ft. Meade. However, in the petition, the Companies applied a downward adjustment to the interim rate relief for Indiantown and Ft. Meade in an effort to mitigate the upward rate pressure customers would experience if they were charged the full rate increase necessary to meet their required rates of return.¹⁰ Staff believes these adjustments are reasonable.

Staff's fallout adjustments discussed above result in interim rate relief that is higher than the adjusted amount requested by the Companies for Indiantown and Ft. Meade. Thus, staff recommends Indiantown's and Ft. Meade's requested interim revenue increases of \$31,095 and \$35,138, respectively, be granted. The fallout adjustments discussed above result in increases to the interim revenue increase for FPUC and Chesapeake of \$432,091 and \$48,641, respectively. Therefore, staff recommends that the appropriate revenue increases for FPUC, Chesapeake, Indiantown, and Ft. Meade are \$5,284,334, \$2,329,697, \$31,095, and \$35,138, respectively, for the historical interim test year ended December 31, 2021. A summary of the rate increases for all four utilities is shown in Table 5-1.

Table 5-1
Interim Revenue Increases

| | Requested Increase | Staff Adjustment | Staff Recom. Increase |
|------------|---------------------------|-------------------------|------------------------------|
| FPUC | \$4,852,243 | \$432,091 | \$5,284,334 |
| Chesapeake | \$2,281,056 | \$48,641 | \$2,329,697 |
| Indiantown | \$31,095 | \$0 | \$31,095 |
| Ft. Meade | \$35,138 | \$0 | \$35,138 |

The interim revenue increases would allow FPUC and Chesapeake an opportunity to earn an overall rate of return of 5.50 percent and 5.33 percent, respectively, and the minimum of the range of return on equity of 9.85 percent and 9.80 percent, respectively. As a result of the

¹⁰The Companies stated that the calculated interim rate increases for Indiantown and Ft. Meade would be 257.58 percent and 41.23 percent, respectively. For interim purposes, the Companies limited the interim rate increase request for Indiantown and Ft. Meade to the proposed total final rate increases of 24.1 percent and 18.5 percent.

Company’s election to cap the level of rate increases for Indiantown and Ft. Meade, the interim rate increases requested will provide these systems an opportunity to earn returns below the minimum of their respective range of return on equity.

After a determination of the permanent rate increase has been made, the interim rate increases will be reviewed to determine if any portion should be refunded to customers. The calculations of interim rate relief are shown in Tables 5-2 through 5-5.

**Table 5-2
 FPUC – Interim Revenue Increase**

| <u>Description</u> | |
|--|--------------------|
| Jurisdictional Adjusted Rate Base | \$319,224,069 |
| Overall Rate of Return | <u>5.50%</u> |
| Jurisdictional Net Operating Income | \$17,555,780 |
| Jurisdictional Adjusted Net Operating Income | \$13,669,962 |
| Revenue Deficiency | \$3,885,818 |
| Net Operating Income Multiplier | <u>1.3599</u> |
| Interim Revenue Increase | <u>\$5,284,334</u> |
| Base Rate Revenues | \$42,307,452 |
| Recommended Percentage Increase Factor | <u>12.49%</u> |

**Table 5-3
 Chesapeake – Interim Revenue Increase**

| <u>Description</u> | |
|--|--------------------|
| Jurisdictional Adjusted Rate Base | \$111,929,536 |
| Overall Rate of Return | <u>5.33%</u> |
| Jurisdictional Net Operating Income | \$5,961,365 |
| Jurisdictional Adjusted Net Operating Income | \$4,236,442 |
| Revenue Deficiency | \$1,724,923 |
| Net Operating Income Multiplier | <u>1.3506</u> |
| Interim Revenue Increase | <u>\$2,329,697</u> |
| Base Rate Revenues | \$14,548,672 |
| Recommended Percentage Increase Factor | <u>16.01%</u> |

**Table 5-4
 Indiantown – Interim Revenue Increase**

| Description | |
|--|--------------------|
| Jurisdictional Adjusted Rate Base | \$1,998,095 |
| Overall Rate of Return | <u>6.86%</u> |
| Jurisdictional Net Operating Income | \$137,069 |
| Jurisdictional Adjusted Net Operating Income | (\$138,334) |
| Revenue Deficiency | \$275,403 |
| Net Operating Income Multiplier | <u>1.3652</u> |
| Interim Revenue Increase | <u>\$375,973</u> |
| Less: Adjustment for Decrease in Indiantown | <u>(\$344,878)</u> |
| Adjusted Interim Revenue Requested | <u>\$31,095</u> |
| Base Rate Revenues | \$129,024 |
| Recommended Percentage Increase Factor | <u>24.10%</u> |

**Table 5-5
 Ft. Meade – Interim Revenue Increase**

| Description | |
|--|-------------------|
| Jurisdictional Adjusted Rate Base | \$1,294,682 |
| Overall Rate of Return | <u>4.28%</u> |
| Jurisdictional Net Operating Income | \$55,412 |
| Jurisdictional Adjusted Net Operating Income | \$3,172 |
| Revenue Deficiency | \$52,240 |
| Net Operating Income Multiplier | <u>1.3807</u> |
| Interim Revenue Increase | <u>\$72,126</u> |
| Less: Adjustment for Decrease in Indiantown | <u>(\$36,988)</u> |
| Adjusted Interim Revenue Requested | <u>\$35,138</u> |
| Base Rate Revenues | \$189,935 |
| Recommended Percentage Increase Factor | <u>18.50%</u> |

Date: July 21, 2022

Issue 6: Should FPUC, Chesapeake, Indiantown, and Ft. Meade's proposed interim rates and associated tariffs be approved?

Recommendation: Yes, in part, and no, in part. Indiantown and Ft. Meade's proposed interim rates and associated tariffs should be approved. However, the interim rates for FPUC and Chesapeake should be adjusted to recover the staff-recommended interim revenue increase, as discussed in Issue 5. If the staff-recommended adjustments are approved by the Commission, the Company should file revised interim tariffs for FPUC and Chesapeake for administrative approval by staff. The interim rates should be made effective for all meter readings occurring on or after thirty days from the date of the Commission vote. In addition, pursuant to Rule 25-22.0406(8), F.A.C., the Company should provide notice to customers of the revised rates with the first bill containing the new rates. (Hampson)

Staff Analysis: As discussed in Issue 5, staff recommends approval of Indiantown and Ft. Meade's requested interim revenue increase. However, staff recommends adjustments to the interim revenue requests for FPUC and Chesapeake.

Attachment C to the recommendation shows, for each respective utility, the allocation of the interim increase and the resulting cents-per-therm increases to be applied to the rate classes. Pages 1 – 3 of Attachment C show the allocation of the increase for FPUC and Chesapeake, as adjusted by staff, to recover the staff-recommended interim revenue increase. Pages 4 and 5 of Attachment C show the allocation of the increase for Indiantown and Ft. Meade, as proposed by the Company. These increases were calculated using the methodology contained in Rule 25-7.040, F.A.C., which requires that any increase be applied evenly across the board to all rate classes based on their base rate revenues. Attachment D shows the resulting interim per-therm distribution charges for all rate classes of each utility.

The interim rates should be made effective for all meter readings occurring on or after thirty days from the date of the Commission vote and decision herein. The Company included proposed interim tariffs in its petition. If the staff-recommended adjustments are approved by the Commission, the Company should file revised interim tariffs for FPUC and Chesapeake for administrative approval by staff. Pursuant to Rule 25-22.0406(8), F.A.C., the Company should provide notice to customers of the revised rates with the first bill containing the new rates and a copy of the customer notice should be submitted to Commission staff for approval prior to its use.

Issue 7: What is the appropriate security to guarantee the amount subject to refund?

Recommendation: The appropriate security to guarantee the funds collected subject to refund is a corporate undertaking. (Andrews, D. Buys, Osorio)

Staff Analysis: The Company has requested a corporate undertaking in the amount of \$5,136,247. The criteria for a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. Staff reviewed the financial statements of the parent company, Chesapeake Utilities Corporation (CUC), to determine if it can support a corporate undertaking for the requested amount. CUC's 2021, 2020 and 2019 financial statements were used to determine the condition of CUC. CUC has experienced an increase in liquidity over the three-year review period. CUC's average equity ratio over the three-year period has been stable at 47.7 percent which is sufficient in this instance based on CUC's overall financial condition. In addition, CUC has experienced a strong and improving interest coverage ratio. Finally, net income has been on average fourteen times greater than the requested corporate undertaking amount. CUC's financial performance has demonstrated adequate levels of profitability, interest coverage, and equity capitalization.

Staff believes CUC has adequate resources to support a corporate undertaking for the Company in the amount requested. Also, CUC has provided a written guarantee in the amount of its requested interim increase, which supports the corporate undertaking. Therefore, staff recommends that a corporate undertaking of \$5,136,247 is acceptable.

This brief financial analysis is only appropriate for deciding if the Company, through its parent company, can support a corporate undertaking in the amount proposed and should not be considered a finding regarding staff's position on other issues in this proceeding.

Issue 8: Should this docket be closed?

Recommendation: No. This docket should remain open to process the revenue increase request of the Company. (Sandy)

Staff Analysis: This docket should remain open pending the Commission's final resolution of the Company's requested rate increase.

**Florida Public Utilities Company
 FPUC
 Docket No. 20220067-GU
 Interim Base Year
 December 31, 2021**

| | Adjusted Base Year Per Company | Adjustments | Adjusted Base Year Per Staff |
|---------------------------------|-----------------------------------|-------------|---------------------------------|
| <u>Rate Base</u> | | | |
| Plant in Service | \$366,153,578 | - | \$366,153,578 |
| Common Plant Allowed | 7,900,957 | - | 7,900,957 |
| Customer Advances | (695,131) | - | (695,131) |
| Acquisition Adjustment | 35,456,269 | - | 35,456,269 |
| Accumulated Depreciation | (101,243,731) | - | (101,243,731) |
| Net Plant in Service | \$307,571,942 | - | \$307,571,942 |
| Construction Work In Progress | 4,690,537 | - | 4,690,537 |
| Net Utility Plant | \$312,262,479 | - | \$312,262,479 |
| Working Capital Allowance | 6,961,590 | - | 6,961,590 |
| Total Rate Base | \$319,224,069 | - | \$319,224,069 |
| <u>Income Statement</u> | | | |
| Operating Revenues | \$57,836,957 | \$5,284,334 | \$63,121,291 |
| Operating Expenses: | | | |
| Operation & Maintenance | \$24,620,563 | \$52,720 | \$24,673,283 |
| Depreciation | 8,837,925 | - | 8,837,925 |
| Amortizations | 2,548,711 | - | 2,548,711 |
| Taxes Other Than Income | 5,134,340 | 26,580 | 5,160,920 |
| Income Taxes - Federal | 1,188,290 | 1,032,939 | 2,221,229 |
| Income Taxes - State | (153,377) | 286,277 | 132,900 |
| Deferred Income Taxes - Federal | 1,100,758 | - | 1,100,758 |
| Deferred Income Taxes - State | 889,785 | - | 889,785 |
| Total Operating Expenses | \$44,166,995 | \$1,398,516 | \$45,565,511 |
| Net Operating Income | \$13,669,962 | \$3,885,818 | \$17,555,780 |
| Overall Rate of Return | 4.28% | | 5.50% |

**Florida Public Utilities Company
Chesapeake
Docket No. 20220067-GU
Interim Base Year
December 31, 2021**

| | Adjusted Base Year Per Company | Adjustments | Adjusted Base Year Per Staff |
|---------------------------------|-----------------------------------|-------------|---------------------------------|
| <u>Rate Base</u> | | | |
| Plant in Service | \$140,726,977 | - | \$140,726,977 |
| Common Plant Allowed | 3,401,222 | - | 3,401,222 |
| Customer Advances | | - | 0 |
| Acquisition Adjustment | | - | 0 |
| Accumulated Depreciation | (34,295,795) | - | (34,295,795) |
| Net Plant in Service | \$109,832,404 | - | \$109,832,404 |
| Construction Work In Progress | 1,259,290 | - | 1,259,290 |
| Net Utility Plant | \$111,091,694 | - | \$111,091,694 |
| Working Capital Allowance | 837,842 | - | 837,842 |
| Total Rate Base | \$111,929,536 | - | \$111,929,536 |
| <u>Income Statement</u> | | | |
| Operating Revenues | \$20,530,527 | \$2,329,697 | \$22,860,224 |
| Operating Expenses: | | | |
| Operation & Maintenance | \$10,242,786 | \$7,452 | \$10,250,238 |
| Depreciation | 3,770,056 | - | 3,770,056 |
| Amortizations | (124,248) | - | (124,248) |
| Taxes Other Than Income | 1,525,492 | 11,718 | 1,537,210 |
| Income Taxes - Federal | 275,981 | 458,524 | 734,505 |
| Income Taxes - State | (66,463) | 127,079 | 60,616 |
| Deferred Income Taxes - Federal | 427,271 | - | 427,271 |
| Deferred Income Taxes - State | 243,210 | - | 243,210 |
| Total Operating Expenses | \$16,294,085 | \$604,773 | \$16,898,858 |
| Net Operating Income | \$4,236,442 | \$1,724,923 | \$5,961,365 |
| Overall Rate of Return | 3.78% | | 5.33% |

**Florida Public Utilities Company
 Indiantown
 Docket No. 20220067-GU
 Interim Base Year
 December 31, 2021**

| | Adjusted Base Year Per Company | Adjustments | Adjusted Base Year Per Staff |
|---------------------------------|-----------------------------------|-------------|---------------------------------|
| <u>Rate Base</u> | | | |
| Plant in Service | \$2,807,409 | - | \$2,807,409 |
| Common Plant Allowed | (16,983) | - | (16,983) |
| Customer Advances | 0 | - | 0 |
| Acquisition Adjustment | 745,800 | - | 745,800 |
| Accumulated Depreciation | (1,795,804) | - | (1,795,804) |
| Net Plant in Service | \$1,740,422 | - | \$1,740,422 |
| Construction Work In Progress | 9,540 | - | 9,540 |
| Net Utility Plant | \$1,749,962 | - | \$1,749,962 |
| Working Capital Allowance | 248,133 | - | 248,133 |
| Total Rate Base | \$1,998,095 | - | \$1,998,095 |
| <u>Income Statement</u> | | | |
| Operating Revenues | \$140,075 | \$ | \$516,048 |
| Operating Expenses: | | | |
| Operation & Maintenance | \$168,302 | \$5,180 | \$173,482 |
| Depreciation | 79,674 | - | 79,674 |
| Amortizations | 44,904 | - | 44,904 |
| Taxes Other Than Income | 35,943 | 1,891 | 37,834 |
| Income Taxes - Federal | (40,911) | 73,208 | 32,297 |
| Income Taxes - State | (6,049) | 20,290 | 14,241 |
| Deferred Income Taxes - Federal | (4,073) | - | (4,073) |
| Deferred Income Taxes - State | 619 | - | 619 |
| Total Operating Expenses | \$278,409 | \$100,570 | \$378,979 |
| Net Operating Income | (\$138,334) | \$275,403 | \$137,069 |
| Overall Rate of Return | -6.92% | | 6.86% |

**Florida Public Utilities Company
 Ft. Meade
 Docket No. 20220067-GU
 Interim Base Year
 December 31, 2021**

| | Adjusted Base Year Per Company | Adjustments | Adjusted Base Year Per Staff |
|---------------------------------|-----------------------------------|-------------|---------------------------------|
| <u>Rate Base</u> | | | |
| Plant in Service | \$1,329,032 | - | \$1,329,032 |
| Common Plant Allowed | 33,091 | - | 33,091 |
| Customer Advances | - | - | - |
| Acquisition Adjustment | - | - | - |
| Accumulated Depreciation | (240,611) | - | (240,611) |
| Net Plant in Service | \$1,121,512 | - | \$1,121,512 |
| Construction Work In Progress | 12,857 | - | 12,857 |
| Net Utility Plant | \$1,134,369 | - | \$1,134,369 |
| Working Capital Allowance | 160,313 | - | 160,313 |
| Total Rate Base | \$1,294,682 | - | \$1,294,682 |
| <u>Income Statement</u> | | | |
| Operating Revenues | \$229,197 | \$72,126 | \$301,323 |
| Operating Expenses: | | | |
| Operation & Maintenance | \$174,325 | \$1,788 | \$176,113 |
| Depreciation | 37,292 | - | 37,292 |
| Amortizations | (6,432) | - | (6,432) |
| Taxes Other Than Income | 23,954 | 363 | 24,317 |
| Income Taxes - Federal | (16,673) | 13,887 | (2,786) |
| Income Taxes - State | (2,556) | 3,849 | 1,293 |
| Deferred Income Taxes - Federal | 10,348 | - | 10,348 |
| Deferred Income Taxes - State | 5,767 | - | 5,767 |
| Total Operating Expenses | \$226,025 | \$19,886 | \$245,911 |
| Net Operating Income | \$3,172 | \$52,240 | \$55,412 |
| Overall Rate of Return | 0.25% | | 4.28% |

**Florida Public Utilities Company
FPUC
Docket No. 20220067-GU
Interim Base Year
December 31, 2021**

| Capital Component | Jurisdictional Capital Structure | Ratio | Cost Rate | Weighted Cost Rate |
|--------------------------|---|----------------|----------------------|-------------------------------|
| Long-Term Debt | \$95,615,922 | 29.95% | 3.60% | 1.08% |
| Short-Term Debt | 33,865,614 | 10.61% | 1.42% | 0.15% |
| Customer Deposits | 8,766,028 | 2.75% | 2.41% | 0.07% |
| Common Equity | 136,231,707 | 42.68% | 9.85% | 4.20% |
| Deferred Income Taxes | 44,744,797 | 14.02% | 0.00% | 0.00% |
| Investment Tax Credits | - | 0.00% | 0.00% | 0.00% |
| Total | \$319,224,069 | 100.00% | | 5.50% |

**Florida Public Utilities Company
 Chesapeake
 Docket No. 20220067-GU
 Interim Base Year
 December 31, 2021**

| Capital Component | Jurisdictional | | Cost Rate | Weighted Cost Rate |
|--------------------------|--------------------------|----------------|------------------|---------------------------|
| | Capital Structure | Ratio | | |
| Long-Term Debt | \$32,810,549 | 29.31% | 3.60% | 1.06% |
| Short-Term Debt | 11,620,966 | 10.38% | 1.42% | 0.15% |
| Customer Deposits | 1,510,544 | 1.35% | 2.19% | 0.03% |
| Common Equity | 46,747,833 | 41.77% | 9.80% | 4.09% |
| Deferred Income Taxes | 19,239,644 | 17.19% | 0.00% | 0.00% |
| Investment Tax Credits | - | 0.00% | 0.00% | 0.00% |
| Total | \$111,929,536 | 100.00% | | 5.33% |

**Florida Public Utilities Company
Indiantown
Docket No. 20220067-GU
Interim Base Year
December 31, 2021**

| Capital Component | Jurisdictional | | Cost Rate | Weighted Cost Rate |
|--------------------------|--------------------------|----------------|------------------|---------------------------|
| | Capital Structure | Ratio | | |
| Long-Term Debt | \$718,783 | 35.97% | 3.60% | 1.30% |
| Short-Term Debt | 254,581 | 12.74% | 1.42% | 0.18% |
| Customer Deposits | 10 | 0.00% | 2.19% | 0.00% |
| Common Equity | 1,024,108 | 51.25% | 10.50% | 5.38% |
| Deferred Income Taxes | 612 | 0.03% | 0.00% | 0.00% |
| Investment Tax Credits | - | 0.00% | 0.00% | 0.00% |
| Total | \$1,998,095 | 100.00% | | 6.86% |

**Florida Public Utilities Company
 Ft. Meade
 Docket No. 20220067-GU
 Interim Base Year
 December 31, 2021**

| Capital Component | Jurisdictional Capital | | Cost Rate | Weighted Cost Rate |
|--------------------------|-----------------------------------|----------------|----------------------|-------------------------------|
| | Structure | Ratio | | |
| Long-Term Debt | \$304,237 | 23.50% | 3.60% | 0.85% |
| Short-Term Debt | 107,756 | 8.32% | 1.42% | 0.12% |
| Customer Deposits | 7,344 | 0.57% | 2.19% | 0.01% |
| Common Equity | 433,472 | 33.48% | 9.85% | 3.30% |
| Deferred Income Taxes | 441,873 | 34.13% | 0.00% | 0.00% |
| Investment Tax Credits | - | 0.00% | 0.00% | 0.00% |
| Total | <u>\$1,294,682</u> | <u>100.00%</u> | | <u>4.28%</u> |

**Florida Public Utilities Company
 FPUC
 Docket No. 20220067-GU
 Allocation of Interim Rate Increase**

Year Ended 12/31/2021 Based on Increase Using Year-End Rate Base

| (1) Rate Schedule | (2) Bills | (3) Therm Sales | (4) Customer Charge | (5) Energy Charge | (6) TOTAL (4+5) | (7) Dollar Increase | (8) Percent Increase Requested | (9) Increase Requested (Cents per Therm) |
|----------------------|----------------|-----------------------|---------------------------|-------------------------|-----------------------|---------------------------|---|---|
| RS | 732,742 | 16,009,999 | \$ 8,060,162 | \$ 7,977,462 | \$ 16,037,624 | \$2,003,150 | 12.49% | \$0.1251 |
| RS-GS | 8,628 | 76,940 | 183,345 | \$ 38,338 | 221,683 | \$27,689 | 12.49% | 0.3599 |
| GS-1 | 10,542 | 984,167 | 210,840 | 385,164 | 596,004 | \$74,443 | 12.49% | 0.0756 |
| GSTS-1 | 2,460 | 705,334 | 49,200 | 276,040 | 325,240 | \$40,623 | 12.49% | 0.0576 |
| GS-2 | 26,215 | 6,615,292 | 865,095 | 2,588,961 | 3,454,056 | \$431,422 | 12.49% | 0.0652 |
| GSTS-2 | 10,084 | 5,703,961 | 332,772 | 2,232,302 | 2,565,074 | \$320,386 | 12.49% | 0.0562 |
| CS-GS | 3,236 | 50,076 | 115,881 | 19,598 | 135,479 | \$16,922 | 12.49% | 0.3379 |
| LVS | 7,901 | 8,202,818 | 711,090 | 2,901,009 | 3,612,099 | \$451,162 | 12.49% | 0.0550 |
| LVTS | 15,269 | 32,542,765 | 1,374,210 | 11,509,074 | 12,883,284 | \$1,609,163 | 12.49% | 0.0494 |
| ITS | 216 | 9,545,720 | 60,480 | 2,203,152 | 2,263,632 | \$282,735 | 12.49% | 0.0296 |
| GLS | 346 | 99,723 | - | 24,143 | 24,143 | \$3,016 | 12.49% | 0.0302 |
| NVGTS | 24 | 1,091,314 | 2,400 | 186,735 | 189,135 | \$23,624 | 12.49% | 0.0216 |
| TOTAL | 817,663 | 81,628,109 | 11,965,475 | 30,341,976 | 42,307,452 | \$5,284,334 | 12.49% | \$0.0647 |

Florida Public Utilities Company
 Chesapeake
 Docket No. 20220067-GU
 Allocation of Interim Rate Increase

Page 1 of 2

Year Ended 12/31/2021 Based on Increase Using Year-End Rate Base

| (1) Rate Schedule | (2) Bills | (3) Therm Sales | (4) Customer Charge | (5) Energy Charge | (6) TOTAL (4+5) | (7) Dollar Increase | (8) Percent Increase Requested | (9) Increase Requested (Cents per Therm) | (10) Fixed Billing Classes (Customer Charge Increase) |
|----------------------|--------------|-----------------------|---------------------------|-------------------------|-----------------------|---------------------------|---|---|--|
| FTS-A | 13,565 | 91,828 | \$ 176,345 | \$ 42,570 | \$ 218,915 | \$35,055 | 16.01% | \$0.3817 | |
| FTS-B | 26,909 | 288,020 | 417,090 | 141,954 | 559,043 | \$89,520 | 16.01% | 0.3108 | |
| FTS-1 | 167,826 | 2,622,779 | 3,188,694 | 1,214,609 | 4,403,303 | \$705,106 | 16.01% | 0.2688 | |
| FTS-2 | 9,977 | 520,828 | 339,218 | 166,457 | 505,675 | \$80,974 | 16.01% | 0.1555 | |
| FTS-2.1 | 8,404 | 875,477 | 336,160 | 269,883 | 606,043 | \$97,046 | 16.01% | 0.1108 | |
| FTS-3 | 3,658 | 1,131,232 | 395,064 | 272,650 | 667,714 | \$106,922 | 16.01% | 0.0945 | |
| FTS-3.1 | 4,000 | 2,376,849 | 536,000 | 484,473 | 1,020,473 | \$163,410 | 16.01% | 0.0688 | |
| FTS-A Fixed | 366 | 2,608 | 6,222 | | 6,222 | \$996 | 16.01% | 0.3820 | \$2.72 |
| FTS-B Fixed | 752 | 8,154 | 17,296 | | 17,296 | \$2,770 | 16.01% | 0.3397 | \$3.68 |
| FTS-1 Fixed | 2,499 | 40,994 | 72,471 | | 72,471 | \$11,605 | 16.01% | 0.2831 | \$4.64 |
| FTS-2 Fixed | 303 | 14,297 | 14,544 | | 14,544 | \$2,329 | 16.01% | 0.1629 | \$7.69 |
| FTS-2.1 Fixed | 207 | 27,458 | 18,009 | | 18,009 | \$2,884 | 16.01% | 0.1050 | \$13.93 |
| FTS-3 Fixed | 203 | 59,513 | 32,886 | | 32,886 | \$5,266 | 16.01% | 0.0885 | \$25.94 |
| FTS-3.1 Fixed | 81 | 47,543 | 21,303 | | 21,303 | \$3,411 | 16.01% | 0.0718 | \$42.11 |
| FTS-4 | 2,556 | 3,034,326 | 536,760 | 573,488 | 1,110,248 | \$177,785 | 16.01% | 0.0586 | |
| FTS-5 | 432 | 1,046,614 | 164,160 | 173,529 | 337,689 | \$54,074 | 16.01% | 0.0517 | |
| FTS-6 | 360 | 2,481,663 | 216,000 | 375,649 | 591,649 | \$94,742 | 16.01% | 0.0382 | |

Florida Public Utilities Company
 Chesapeake
 Docket No. 20220067-GU
 Allocation of Interim Rate Increase

Page 2 of 2

Year Ended 12/31/2021 Based on Increase Using Year-End Rate Base

| (1) Rate Schedule | (2) Bills | (3) Therm Sales | (4) Customer Charge | (5) Energy Charge | (6) TOTAL (4+5) | (7) Dollar Increase | (8) Percent Increase Requested | (9) Increase Requested (Cents per Therm) | (10) Fixed Billing Classes (Customer Charge Increase) |
|----------------------|----------------|-----------------------|---------------------------|-------------------------|-----------------------|---------------------------|---|---|--|
| FTS-7 | 312 | 4,294,439 | 218,400 | 528,216 | 746,616 | \$119,557 | 16.01% | 0.0278 | |
| FTS-8 | 204 | 4,981,990 | 244,800 | 549,215 | 794,015 | \$127,147 | 16.01% | 0.0255 | |
| FTS-9 | 85 | 3,703,323 | 170,000 | 338,224 | 508,224 | \$81,383 | 16.01% | 0.0220 | |
| FTS-10 | 36 | 3,630,889 | 108,000 | 302,017 | 410,017 | \$65,657 | 16.01% | 0.0181 | |
| FTS-11 | 12 | 1,227,249 | 66,000 | 85,625 | 151,625 | \$24,280 | 16.01% | 0.0198 | |
| FTS-12 | 60 | 17,027,034 | 540,000 | 1,042,565 | 1,582,565 | \$253,418 | 16.01% | 0.0149 | |
| NGV | 12 | 887,807 | 1,200 | 150,927 | 152,127 | \$24,360 | 16.01% | 0.0274 | |
| TOTAL | 242,819 | 50,422,914 | 7,836,622 | 6,712,050 | 14,548,672 | \$2,329,697 | 16.01% | \$0.0462 | |

**Florida Public Utilities Company
 Indiantown
 Docket No. 20220067-GU
 Allocation of Interim Rate Increase**

Year Ended 12/31/2021 Based on Increase Using Year-End Rate Base

| (1) Rate Schedule | (2) Bills | (3) Therm Sales | (4) Customer Charge | (5) Energy Charge | (6) TOTAL (4+5) | (7) Dollar Increase | (8) Percent Increase Requested | (9) Increase Requested (Cents per Therm) |
|----------------------|--------------|-----------------------|---------------------------|-------------------------|-----------------------|---------------------------|---|---|
| TS-1 | 8,098 | 115,897 | \$ 72,882 | \$ 43,850 | \$ 116,732 | \$28,132 | 24.10% | \$0.2427 |
| TS-2 | 261 | 80,957 | 6,525 | 4,665 | 11,190 | \$2,697 | 24.10% | 0.0333 |
| TS-3 | 12 | 7,986 | 720 | 382 | 1,102 | \$266 | 24.10% | 0.0333 |
| TS-4 | | - | - | - | - | \$0 | 24.10% | 0.0000 |
| TOTAL | 8,371 | 204,840 | 80,127 | 48,897 | 129,024 | \$31,095 | 24.10% | \$0.1518 |

**Florida Public Utilities Company
 Ft. Meade
 Docket No. 20220067-GU
 Allocation of Interim Rate Increase**

Year Ended 12/31/2021 Based on Increase Using Year-End Rate Base

| (1) Rate Schedule | (2) Bills | (3) Therm Sales | (4) Customer Charge | (5) Energy Charge | (6) TOTAL (4+5) | (7) Dollar Increase | (8) Percent Increase Requested | (9) Increase Requested (Cents per Therm) |
|----------------------|--------------|-----------------------|---------------------------|-------------------------|-----------------------|---------------------------|---|---|
| RS | 6,631 | 67,422 | \$ 56,364 | \$ 37,554 | \$ 93,918 | \$17,375 | 18.50% | \$0.2577 |
| GS-1 | 276 | 44,446 | 4,830 | 24,757 | 29,587 | \$5,474 | 18.50% | 0.1231 |
| GSTS-1 | 108 | 34,584 | 1,890 | 19,263 | 21,153 | \$3,913 | 18.50% | 0.1132 |
| LVS | 24 | 27,325 | 4,200 | 5,957 | 10,157 | \$1,879 | 18.50% | 0.0688 |
| LVTS | 24 | 141,839 | 4,200 | 30,921 | 35,121 | \$6,497 | 18.50% | 0.0458 |
| TOTAL | 7,063 | 315,616 | 71,484 | 118,452 | 189,935 | \$35,138 | 18.50% | \$0.1113 |

**Florida Public Utilities Company
FPUC
Docket No. 20220067-GU
Present and Interim Rates**

| Rate Code | Rate Schedule | Present Rate | Interim Increase | Interim Rate |
|-----------------|---|--------------|------------------|--------------|
| RS | <u>Residential Service</u> | | | |
| | Customer Charge | \$11.00 | N/A | \$11.00 |
| | Energy Charge (cents/therm) | 49.828 | 12.51 | 62.340 |
| RSGS | <u>Residential Standby Generator Service</u> | | | |
| | Customer Charge | \$21.25 | N/A | \$21.25 |
| | Energy Charge (cents/therm) | 49.828 | 35.99 | 85.816 |
| GS-1 | <u>General Service - 1</u> | | | |
| | Customer Charge | \$20.00 | N/A | \$20.00 |
| | Energy Charge (cents/therm) | 39.136 | 7.56 | 46.700 |
| GTS-1 | <u>General Transportation Service - 1</u> | | | |
| | Customer Charge | \$20.00 | N/A | \$20.00 |
| | Transportation Charge (cents/therm) | 39.136 | 5.76 | 44.895 |
| GS-2 | <u>General Service - 2</u> | | | |
| | Customer Charge | \$33.00 | N/A | \$33.00 |
| | Energy Charge (cents/therm) | 39.136 | 6.52 | 45.658 |
| GTS-2 | <u>General Transportation Service - 2</u> | | | |
| | Customer Charge | \$33.00 | N/A | \$33.00 |
| | Transportation Charge (cents/therm) | 39.136 | 5.62 | 44.753 |
| CSGS | <u>Commercial Standby Generator Service</u> | | | |
| | Customer Charge | \$35.81 | N/A | \$35.81 |
| | Transportation Charge (cents/therm) | 39.136 | 33.79 | 72.928 |
| LVS | <u>Large Volume Service</u> | | | |
| | Customer Charge | \$90.00 | N/A | \$90.00 |
| | Energy Charge (cents/therm) | 35.366 | 5.50 | 40.866 |
| LVTS | <u>Large Volume Transportation Service</u> | | | |
| | Customer Charge | \$90.00 | N/A | \$90.00 |
| | Transportation Charge (cents/therm) | 35.366 | 4.94 | 40.311 |
| IS/ITS (Closed) | <u>Interruptible (Transportation) Service</u> | | | |
| | Customer Charge | \$280.00 | N/A | \$280.00 |
| | Transportation Charge (cents/therm) | 23.08 | 2.96 | 26.042 |
| NGVS/NGVTS | <u>Natural Gas Vehicle (Transportation) Service</u> | | | |
| | Customer Charge | \$100.00 | N/A | \$100.00 |
| | Transportation Charge (cents/therm) | 17.111 | 2.16 | 19.276 |
| GLS/GLTS | <u>Gas Lighting (Transportation) Service</u> | | | |
| | Customer Charge | \$0.00 | N/A | \$0.00 |
| | Transportation Charge (cents/therm) | 24.21 | 3.02 | 27.234 |

**Florida Public Utilities Company
 Chesapeake
 Docket No. 20220067-GU
 Present and Interim Rates**

Page 1 of 2

| Rate Code | Rate Schedule | Present Rate | Interim Increase | Interim Rate |
|------------------------|--|--------------|------------------|--------------|
| FTS-A (Closed) | <u>Firm Transportation Service - A</u> | | | |
| | Customer Charge | \$13.00 | N/A | \$13.00 |
| | Transportation Charge (cents/therm) | 46.358 | 38.17 | 84.53 |
| FTS-A (Fixed) (Closed) | <u>Firm Transportation Service - A (Fixed)</u> | | | |
| | Customer Charge | \$17.00 | \$2.72 | 19.72 |
| | Transportation Charge (cents/therm) | 0 | N/A | 0 |
| FTS-B (Closed) | <u>Firm Transportation Service - B</u> | | | |
| | Customer Charge | \$15.50 | N/A | \$15.50 |
| | Transportation Charge (cents/therm) | 49.286 | 31.08 | 80.37 |
| FTS-B (Fixed) (Closed) | <u>Firm Transportation Service - B (Fixed)</u> | | | |
| | Customer Charge | \$23.00 | \$3.68 | \$26.68 |
| | Transportation Charge (cents/therm) | 0 | N/A | 0 |
| FTS-1 | <u>Firm Transportation Service - 1</u> | | | |
| | Customer Charge | \$19.00 | N/A | \$19.00 |
| | Transportation Charge (cents/therm) | 46.31 | 26.88 | 73.19 |
| FTS-1 (Fixed) | <u>Firm Transportation Service - 1 (Fixed)</u> | | | |
| | Customer Charge | \$29.00 | \$4.64 | \$33.64 |
| | Transportation Charge (cents/therm) | 0 | N/A | 0 |
| FTS-2 | <u>Firm Transportation Service - 2</u> | | | |
| | Customer Charge | \$34.00 | N/A | \$34.00 |
| | Transportation Charge (cents/therm) | 31.960 | 15.55 | 47.51 |
| FTS-2 (Fixed) | <u>Firm Transportation Service - 2 (Fixed)</u> | | | |
| | Customer Charge | \$48.00 | \$7.69 | \$55.69 |
| | Transportation Charge (cents/therm) | 0 | N/A | 0 |
| FTS-2.1 | <u>Firm Transportation Service - 2.1</u> | | | |
| | Customer Charge | \$40.00 | N/A | \$40.00 |
| | Transportation Charge (cents/therm) | 30.827 | 11.08 | 41.91 |
| FTS-2.1 (Fixed) | <u>Firm Transportation Service - 2.1 (Fixed)</u> | | | |
| | Customer Charge | \$87.00 | \$13.93 | \$100.93 |
| | Transportation Charge (cents/therm) | 0 | N/A | 0 |
| FTS-3 | <u>Firm Transportation Service - 3</u> | | | |
| | Customer Charge | \$108.00 | N/A | \$108.00 |
| | Transportation Charge (cents/therm) | 24.102 | 9.45 | 33.55 |
| FTS-3 (Fixed) | <u>Firm Transportation Service - 3 (Fixed)</u> | | | |
| | Customer Charge | \$162.00 | \$25.94 | \$187.94 |
| | Transportation Charge (cents/therm) | 0 | N/A | 0 |

**Florida Public Utilities Company
 Chesapeake
 Docket No. 20220067-GU
 Present and Interim Rates**

Page 2 of 2

| Rate Code | Rate Schedule | Present Rate | Interim Increase | Interim Rate |
|-----------------|--|--------------|------------------|--------------|
| FTS-3.1 | <u>Firm Transportation Service - 3.1</u> | | | |
| | Customer Charge | \$134.00 | N/A | \$134.00 |
| | Transportation Charge (cents/therm) | 20.383 | 6.88 | 27.26 |
| FTS-3.1 (Fixed) | <u>Firm Transportation Service - 3.1 (Fixed)</u> | | | |
| | Customer Charge | \$263.00 | \$42.11 | \$305.11 |
| | Transportation Charge (cents/therm) | 0 | N/A | 0 |
| FTS-4 | <u>Firm Transportation Service - 4</u> | | | |
| | Customer Charge | \$210.00 | N/A | \$210.00 |
| | Transportation Charge (cents/therm) | 18.900 | 5.86 | 24.76 |
| FTS-5 | <u>Firm Transportation Service - 5</u> | | | |
| | Customer Charge | \$380.00 | N/A | \$380.00 |
| | Transportation Charge (cents/therm) | 16.580 | 5.17 | 21.75 |
| FTS-6 | <u>Firm Transportation Service - 6</u> | | | |
| | Customer Charge | \$600.00 | N/A | \$600.00 |
| | Transportation Charge (cents/therm) | 15.137 | 3.82 | 18.95 |
| FTS-7 | <u>Firm Transportation Service - 7</u> | | | |
| | Customer Charge | \$700.00 | N/A | \$700.00 |
| | Transportation Charge (cents/therm) | 12.300 | 2.78 | 15.08 |
| FTS-8 | <u>Firm Transportation Service - 8</u> | | | |
| | Customer Charge | \$1,200.00 | N/A | \$1,200.00 |
| | Transportation Charge (cents/therm) | 11.024 | 2.55 | 13.58 |
| FTS-9 | <u>Firm Transportation Service - 9</u> | | | |
| | Customer Charge | \$2,000.00 | N/A | \$2,000.00 |
| | Transportation Charge (cents/therm) | 9.133 | 2.20 | 11.33 |
| FTS-10 | <u>Firm Transportation Service - 10</u> | | | |
| | Customer Charge | \$3,000.00 | N/A | \$3,000.00 |
| | Transportation Charge (cents/therm) | 8.318 | 1.81 | 10.13 |
| FTS-11 | <u>Firm Transportation Service - 11</u> | | | |
| | Customer Charge | \$5,500.00 | N/A | \$5,500.00 |
| | Transportation Charge (cents/therm) | 6.977 | 1.98 | 8.96 |
| FTS-12 | <u>Firm Transportation Service - 12</u> | | | |
| | Customer Charge | \$9,000.00 | N/A | \$9,000.00 |
| | Transportation Charge (cents/therm) | 6.124 | 1.49 | 7.61 |
| FTS-NGV | <u>Firm Transportation Service - Natural Gas Vehicle</u> | | | |
| | Customer Charge | \$100.00 | N/A | \$100.00 |
| | Transportation Charge (cents/therm) | 17.111 | 2.74 | 19.85 |

**Florida Public Utilities Company
 Indiantown
 Docket No. 20220067-GU
 Present and Interim Rates**

| Rate Code | Rate Schedule | Present Rate | Interim Increase | Interim Rate |
|-----------|---|--------------|------------------|--------------|
| TS-1 | <u>Transportation Service - 1</u> | | | |
| | Customer Charge | \$9.00 | N/A | \$9.00 |
| | Transportation Charge (cents/therm) | 37.835 | 24.27 | 62.109 |
| TS-2 | <u>Transportation Service - 2</u> | | | |
| | Customer Charge | \$25.00 | N/A | \$25.00 |
| | Transportation Charge (cents/therm) | 5.762 | 3.33 | 9.093 |
| TS-3 | <u>Transportation Service - 3</u> | | | |
| | Customer Charge | \$60.00 | N/A | \$60.00 |
| | Transportation Charge (cents/therm) | 4.785 | 3.33 | 8.111 |
| TS-4 | <u>Transportation Service - 4</u> | | | |
| | Customer Charge | \$2,000.00 | N/A | \$2,000.00 |
| | Transportation Charge (cents/therm) | 3.910 | N/A | 3.910 |
| | Demand Charge (cents/Dekatherm) | 53.000 | N/A | 53.000 |
| TS-NGV | <u>Transportation Service - Natural Gas Vehicle</u> | | | |
| | Customer Charge | \$100.00 | N/A | \$100.00 |
| | Transportation Charge (cents/therm) | 17.111 | N/A | 17.111 |

**Florida Public Utilities Company
 Ft. Meade
 Docket No. 20220067-GU
 Present and Interim Rates**

| Rate | Rate Schedule | Present Rate | Interim Increase | Interim Rate |
|-------|---|--------------|------------------|--------------|
| RS-1 | <u>Residential Service</u> | | | |
| | Customer Charge | \$8.50 | N/A | \$8.50 |
| | Energy Charge (cents/therm) | 55.7 | 25.77 | 81.47 |
| GS-1 | <u>General Service - 1</u> | | | |
| | Customer Charge | \$17.50 | N/A | \$17.50 |
| | Energy Charge (cents/therm) | 55.7 | 12.31 | 68.01 |
| GTS-1 | <u>General Transportation Service - 1</u> | | | |
| | Customer Charge | \$17.50 | N/A | \$17.50 |
| | Transportation Charge (cents/therm) | 55.7 | 11.32 | 67.02 |
| LVS | <u>Large Volume Service</u> | | | |
| | Customer Charge | \$175.00 | N/A | \$175.00 |
| | Energy Charge (cents/therm) | 21.8 | 6.88 | 28.677 |
| LVTS | <u>Large Volume Transportation Service</u> | | | |
| | Customer Charge | \$175.00 | N/A | \$175.00 |
| | Transportation Charge (cents/therm) | 21.8 | 4.58 | 26.381 |
| NGVS | <u>Natural Gas Vehicle Service</u> | | | |
| | Customer Charge | \$100.00 | N/A | \$100.00 |
| | Energy Charge (cents/therm) | 17.111 | N/A | 17.111 |
| NGVTS | <u>Natural Gas Vehicle Transportation Service</u> | | | |
| | Customer Charge | \$100.00 | N/A | \$100.00 |
| | Transportation Charge (cents/therm) | 17.111 | N/A | 17.111 |