Table of Contents
Commission Conference Agenda
September 8, 2022

Item 1

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FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 26, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Office of the General Counsel (Stiller, Harper) JSC
Division of Accounting and Finance (Higgins, Mouring, Richards) ALM
Division of Engineering (Ellis, King, Wooten) TB

RE: Docket No. 20200176-EI – Petition for a limited proceeding to approve clean energy connection program and tariff and stipulation, by Duke Energy Florida, LLC.

AGENDA: 09/08/22 – Regular Agenda – Post-Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On January 26, 2021, the Commission entered a Final Order Approving Stipulation in this Docket.[1] The Order approved Duke Energy Florida, LLC's (Duke) Clean Energy Connection (CEC) Program and associated tariffs as set forth in the stipulation. Duke's CEC Program is a voluntary community solar program that allows participating customers to pay a subscription fee in exchange for receiving bill credits related to the solar generation produced by the CEC Program solar facilities. The League of United Latin American Citizens of Florida (LULAC) timely appealed that Final Order to the Florida Supreme Court. After full briefing and oral argument, the Court remanded this proceeding to the Commission with the following guidance:

> The [final] order under review is inadequate to an extent that prevents us from deciding the central issue that we have identified. To be clear, we express no position now on the merits of LULAC's challenge. But we believe it is necessary to remand this case and afford the Commission an opportunity to enter a revised final order that adequately explains the agency's findings and reasoning. *See* § 120.68(6)(a)(1), Fla. Stat. (a reviewing court may "remand the case for further agency proceedings"). Subject to any requirements imposed by law, the form of the proceedings on remand will be up to the Commission, including the decision whether to allow the parties to present additional evidence.[2]

A copy of the Florida Supreme Court's Order is appended to this Recommendation as Attachment A.

The "central issue" raised by LULAC and for which the Court has requested additional findings and conclusions is whether the funding structure of the CEC program results in a subsidy to the participants in violation of Section 366.03, Florida Statutes (F.S.). The Court identified the following specific aspects of this issue for the Commission to address on remand:

> [1] whether the Commission accepts LULAC's characterization of the program's bill credit feature as a 'subsidy,' and if so, [2] why the Commission nonetheless considers the program to have established rates that are fair, reasonable, and not unduly preferential.

Appended to this recommendation as Attachment B is a draft Revised Final Order setting forth staff's recommended additional findings, reasoning, and conclusions regarding the CEC program, tariff, and stipulation based on the existing record. Staff recommends that all aspects of the original Final Order remain unchanged.

[1] Order No. PSC-2021-0059-S-EI, issued January 26, 2021, in Docket No. 20200176-EI, *In re: Petition for a limited proceeding to approve clean energy connection program and tariff and stipulation, by Duke Energy Florida, LLC.*
[2] *LULAC Florida Educational Fund, Inc. v. Clark, et al.,* Case No. SC21-303, slip op. at 3 (May 27, 2022) (emphasis added).

Discussion of Issues

Issue 1: Should the record be reopened?

Recommendation: No. (Stiller)

Staff Analysis: On June 8, 2022, staff conducted an informal conference with the parties to obtain input regarding remand procedures. All parties agreed that the record need not be re-opened and no further briefing was desired. Staff concurs with the parties that it is not necessary to open the record to take additional evidence or receive further written submissions from the parties. Staff recommends the existing record is sufficient for the Commission to address the matters identified by the Court.

Issue 2: Should the Commission accept LULAC's characterization of the CEC program's bill credit feature as a "subsidy," and if so, should the Commission nonetheless consider the program to have established rates that are fair, reasonable, and not unduly preferential?

Recommendation: Staff recommends that the Commission not accept LULAC's characterization of the CEC program's bill credit feature as a "subsidy." Staff further recommends that Commission find that the program has established rates that that are fair, reasonable, and not unduly preferential. (Stiller)

Staff Analysis: Staff's full analysis for Commission consideration is set forth in the attached draft Revised Final Order.

Issue 3: Should this docket be closed?

Recommendation: No. This docket should remain open pending resolution of the appeal by the Florida Supreme Court. Once the Court has disposed of the appeal, the docket should be closed administratively. (Stiller)

Staff Analysis: Staff conferred with the Clerk's Office at the Florida Supreme Court regarding this matter and was informed that the prior Final Order had not been vacated and that Supreme Court Docket Number SC21-303 remains open. Staff was informed that the Revised Final Order is to be filed with the Florida Supreme Court in Docket Number SC21-303. Accordingly, this docket should remain in litigation status pending resolution of the appeal by the Florida Supreme Court. Once the Court has disposed of the appeal, this docket should be closed administratively.

Filing # 150448160 E-Filed 05/27/2022 11:44:14 AM

Supreme Court of Florida

FRIDAY, MAY 27, 2022

CASE NO.: SC21-303
Lower Tribunal No(s).:
202100176-EI

LULAC FLORIDA EDUCATIONAL FUND, INC.	vs.	GARY F. CLARK, ETC., ET AL.
Appellant(s)		Appellee(s)

The League of United Latin American Citizens of Florida appeals a Public Service Commission final order (PSC-2021-0059-S-EI) that approved a settlement agreement and tariffs comprising Duke Energy Florida's Clean Energy Connection Program. The program calls for Duke to build 10 separate solar plants totaling nearly 750 MW of solar generation. Duke has allocated varying percentages of the program capacity to the company's commercial, residential, and local government groups. Subject to availability, Duke customers will be given an opportunity to enroll in the program and pay a subscription fee, which will be added to the participants' regular electricity bill. In exchange, program participants will receive bill credits tied to the solar generation produced by the program's facilities. The Commission concluded in the order under review that, "taken as a whole, the [settlement agreement] establishes rates that are fair, just, and reasonable, is supported by the record evidence, and is in the public interest."

LULAC has raised several challenges to the Commission's order, but here we will address only one. Program participants over the life of the program are expected to receive $67.6 million (present value) more in bill credits than the total amount they will pay into the program. LULAC argues that the program thus unfairly requires Duke's non-participating customers to subsidize the participating customers. According to LULAC, this violates the

statutory requirement that Duke's rates be "fair and reasonable" and that they not give "any undue or unreasonable preference or advantage" to any person. § 366.03, Fla. Stat.

Although LULAC preserved this issue by raising it at the hearing below and in a post-hearing brief, the final order approving the program does not discuss it. The "decision" section of the order includes findings that the program "provides ample system-wide benefits" and aligns with the Legislature's expressed intent to promote renewable energy. The order also mentions that "87.3% of the cumulative net present value revenue requirement benefits from the CEC program will go to the general body of ratepayers"—a group that includes participants and nonparticipants alike. But the order does not acknowledge any dispute over the program's funding structure. It does not say whether the Commission accepts LULAC's characterization of the program's bill credit feature as a "subsidy," and if so, why the Commission nonetheless considers the program to have established rates that are fair, reasonable, and not unduly preferential. Indeed, the order leaves the Court guessing as to the reasoning underlying the Commission's conclusions on this issue.

We recognize that Commission orders arrive at this Court with a presumption that they are "reasonable and just." *Sierra Club v. Brown*, 243 So. 3d 903, 907 (Fla. 2018) (citing *W. Fla. Elec. Coop. Ass'n v. Jacobs*, 887 So. 2d 1200, 1204 (Fla. 2004)). And we further acknowledge that the PSC itself reviews settlement agreements under a broad, fact-dependent "public interest" standard. *Id.* at 910-911. That standard allows the Commission to review a settlement agreement as a whole, without necessarily having to make findings on every disputed issue. *Id.* at 914. Finally, we understand that it is not this Court's job to substitute our policy views for the Commission's or to reweigh the evidence. *Id.* at 914-15 (quoting *Citizens of State v. Fla. Pub. Serv. Comm'n*, 146 So. 3d 1143, 1164 (Fla. 2014)).

Nonetheless, at least as to the major issues in dispute, Commission orders must explain the agency's findings and

conclusions enough to permit meaningful judicial review. *See id.* at 914 (affirming final PSC order that "discussed the major elements of the settlement agreement and explained why it was in the public interest."). And when an agency "fail[s] to perform its duty to explain its reasoning," it departs from the essential requirements of law. *Citizens of State v. Graham*, 213 So. 3d 703, 711-14 (Fla. 2017).

The order under review is inadequate to an extent that prevents us from deciding the central issue that we have identified. To be clear, we express no position now on the merits of LULAC's challenge. But we believe it is necessary to remand this case and afford the Commission an opportunity to enter a revised final order that adequately explains the agency's findings and reasoning. *See* § 120.68(6)(a)(1), Fla. Stat. (a reviewing court may "remand the case for further agency proceedings"). Subject to any requirements imposed by law, the form of the proceedings on remand will be up to the Commission, including the decision whether to allow the parties to present additional evidence.

It is so ordered.

POLSTON, LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.
CANADY, C.J., dissents.

A True Copy
Test:

John A. Tomasino
Clerk, Supreme Court

CASE NO.: SC21-303
Page Four

lc
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for a limited proceeding to approve clean energy connection program and tariff and stipulation, by Duke Energy Florida, LLC.	DOCKET NO. 20200176-EI ORDER NO. ISSUED:

The following Commissioners participated in the disposition of this matter:

ANDREW GILES FAY, Chairman
ART GRAHAM
GARY F. CLARK
MIKE LA ROSA
GABRIELLA PASSIDOMO

APPEARANCES:

DIANNE M. TRIPLETT, ESQUIRE, 299 First Avenue North, St. Petersburg, Florida 33701 and MATTHEW R. BERNIER, ESQUIRE, 106 E. College Avenue, Suite 800, Tallahassee, Florida 32301
On behalf of Duke Energy Florida, LLC (Duke or Company).

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On behalf of Office of Public Counsel (OPC).

BRADLEY MARSHALL AND JORDAN LUEBKEMANN, ESQUIRES, 111 S. Martin Luther King Jr. Blvd., Tallahassee, Florida 32301 and DOMINIQUE BURKHARDT, ESQUIRE, 4500 Biscayne Blvd., Ste. 201, Miami, Florida 33137
On behalf of League of United Latin American Citizens of Florida, a/k/a LULAC Florida Educational Fund, Inc. (LULAC).

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On behalf of Walmart Inc. (Walmart).

GEORGE CAVROS, ESQUIRE, 120 E. Oakland Park Blvd., Suite 105, Oakland Park, Florida 33334
On behalf of Southern Alliance for Clean Energy (SACE).

KATIE CHILES OTTENWELLER, 838 Barton Woods Road NE, Atlanta, Georgia 30307
On behalf of Vote Solar (Vote Solar).

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On behalf of the Florida Public Service Commission (Staff).

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Advisor to the Florida Public Service Commission.

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Florida Public Service Commission General Counsel

REVISED FINAL ORDER

BY THE COMMISSION:

Background

On January 26, 2021, we entered a Final Order Approving Stipulation in this docket.[3] The Order approved Duke Energy Florida, LLC's (Duke) Clean Energy Connection (CEC) Program and associated tariffs as set forth in the stipulation. Duke's CEC Program is a voluntary community solar program that allows participating customers to pay a subscription fee in exchange for receiving bill credits related to the solar generation produced by the CEC Program solar facilities. The League of United Latin American Citizens of Florida (LULAC) timely appealed that Final Order to the Florida Supreme Court. After full briefing and oral argument, the Court remanded this proceeding to us with the following guidance:

> The [final] order under review is inadequate to an extent that prevents us from deciding the central issue that we have identified. To be clear, we express no position now on the merits of LULAC's challenge. But we believe it is necessary

[3] Order No. PSC-2021-0059-S-EI, issued January 26, 2021, in Docket No. 20200176-EI, *In re: Petition for a limited proceeding to approve clean energy connection program and tariff and stipulation, by Duke Energy Florida, LLC.*

> to remand this case and afford the Commission an opportunity to enter a revised final order that adequately explains the agency's findings and reasoning. *See* § 120.68(6)(a)(1), Fla. Stat. (a reviewing court may "remand the case for further agency proceedings"). Subject to any requirements imposed by law, the form of the proceedings on remand will be up to the Commission, including the decision whether to allow the parties to present additional evidence.[4]

On June 8, 2022, Commission staff conducted an informal conference with the parties to obtain input regarding remand procedures. Staff has represented to us that the parties agreed that the record need not be re-opened and no further briefing was desired. After reviewing the existing record in light of the Court's direction on remand, we agree and conclude that it is not necessary to open the record to take additional evidence or receive further written submissions from the parties. The existing record is sufficient for us to address the matters identified by the Court.

This Order contains additional findings, reasoning, and conclusions regarding the CEC program, tariff, and stipulation based on the existing record. All aspects of the original Final Order remain unchanged.

Supplemental Findings and Conclusions

The "central issue" raised by LULAC and for which the Court has requested additional findings and conclusions is whether the funding structure results in a subsidy to the participants in violation of Section 366.03, Florida Statutes (F.S.). The Court identified the following specific aspects of this issue for us to address on remand:

> [1] whether the Commission accepts LULAC's characterization of the program's bill credit feature as a 'subsidy,' and if so, [2] why the Commission nonetheless considers the program to have established rates that are fair, reasonable, and not unduly preferential.

After a brief discussion of the facets of the CEC program most relevant to this Revised Order, we will specifically address and answer these questions.

The Subscription Fee and Bill Credits

As characterized by LULAC, the "subsidy" at issue on remand is the positive difference between the subscription fees paid by participants and the bill credits they are projected to receive over the life of the program, which amounts to $67.6 million in present value. In other words, it is the bill credits of $67.6 million received by subscription fee paying participants, and paid by the general body of ratepayers, which LULAC characterizes as a subsidy.

The total amount to be paid by program participants in subscription fees was calculated as 104.9% of the fixed revenue requirement associated with constructing and operating the

[4] *LULAC Florida Educational Fund, Inc. v. Clark, et al.,* Case No. SC21-303, slip op. at 3 (May 27, 2022) (emphasis added).

program's solar power plants, net of avoided generation and transmission capital, fixed costs, and gas reservation charges. This total paid by participants over the life of the program is projected to be $833.4 million, which exceeds the fixed revenue requirement by $39.2 million. This excess inures to the benefit of the general body of ratepayers, as the electricity generated by the program's solar power plants will be used to provide service to all customers.

The bill credit was calculated to ensure payback to each participant of the subscription fee at year seven. This timeframe is consistent with SolarTogether, an existing Florida Power & Light Company solar program we approved several years ago.[5] Applying general principles from SolarTogether and other community solar programs, Duke then calculated a flat amount per kWh to be allocated as a bill credit, with that amount increasing 1.5% annually beginning in year four (first year of full production from all ten solar plants), such that participants hit a break-even point of fees and credits at year five and achieve full payback at year seven.

Importantly, a non-low-income participant will receive bill credits that exceed the subscription fee only after five years of continuous enrollment, and will realize full payback only after seven years of continuous enrollment. A customer who exits the program would start again at the year one credit level if they chose to rejoin.

The estimated net benefit value of the program's solar power plants to Duke's system is substantial. This value consists of avoided or deferred capacity, and reduced fuel consumption,[6] purchased power, variable operating and maintenance, and conventional pollutant and carbon emission costs. Duke calculated the total net benefit value of the CEC program as $532.7 million cumulative present value revenue requirement (CPVRR).

The net amount of bill credits over subscription fees represents 12.7% of this economic value. The remainder of the total economic value (87.3%) will inure to the benefit of the general body of ratepayers. All of the electricity from the ten solar plants will be on the grid that serves the general body of ratepayers. The CEC program will result in the construction of 749 megawatts (MW) of clean energy that is expected to serve all of Duke's customers for at least thirty years. We previously found and here affirm that this program is in the public interest.

The CEC program bill credits are not properly characterized as a "subsidy"

The term "subsidy" is not defined in Chapter 366, F.S., or its implementing rules. LULAC did not argue in this proceeding that we apply a specific definition of that term, and referred to the bill credits interchangeably in written submissions as a "subsidy" and a "cross-subsidy." Those terms are labels affixed by LULAC as part of its argument that the CEC program's funding structure violates Section 366.03, F.S. As set forth below, use of the terms "subsidy" or "cross-subsidy" or characterizing bill credits as such are not dispositive of whether the rates are lawful.

[5] Order PSC-2020-0084-S-EI, issued March 20, 2020, in Docket No. 20190061-EI, *In re: Petition by Florida Power & Light Company for Approval of FPL SolarTogether Program and Tariff.*

[6] As Duke Witness Borsch noted in his rebuttal testimony, as fuel (natural gas and coal) prices rise, solar power provides increased savings.

Turning to LULAC's specific allegations on this record and this Court's first question, we do not accept LULAC's characterization of the program's bill credit feature as a "subsidy" because the bill credits do not neatly fit the mold of "subsidy."[7] The recipients of the bill credits are not receiving a credit to construct solar facilities, which is the goal of the CEC program. In fact, the very purpose of the program is to provide a participation opportunity for those who desire to support solar energy development but do not have the capability, physical space, or desire to construct on-site solar. Additionally, those who choose to participate are not the sole users or beneficiaries of the electricity the solar plants will generate. Importantly, for the first five years of their subscription, most participants will pay more cumulatively in subscription fees than they receive in return, which is the antithesis of a subsidy.

However, as we note below, these utility-scale solar plants would not be constructed on the proposed timeline were it not for the CEC program, and the customers would not be incentivized economically to participate in the program but for the bill credits. Over the life of the program, participants who remain continuously subscribed for more than five years will receive a greater benefit as compared to non-participants, and thus the bill credits do result in some degree of different treatment of participants and non-participants by Duke, no matter the label assigned. However, the mere existence of disparate treatment of participants and nonparticipants (whether or not labeled or characterized as a subsidy) is not itself dispositive of the lawfulness of the program. As previously noted, Chapter 366, Florida Statutes, does not mention, define, or even prohibit a "subsidy."[8] What Section 366.03, F.S. expressly prohibits is "undue preference or advantage." Thus, whether or not we accept LULAC's characterization of the bill credit as a subsidy, the only question we ultimately must answer is the second question the Court remanded: Do the bill credits result in rates that are just, reasonable, fair, and not unduly preferential?

The bill credits do not create an undue preference and the resulting rates are fair, reasonable, and just

Section 366.03, F.S., provides, in pertinent part: "No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect."[9] The CEC program, with the bill credit feature, does not create an undue preference or rates that are unfair, unreasonable, or unjust.

We first note that the CEC program does not provide an undue preference to any existing class of customers. The program is required to have diverse participants across numerous customer classes, including commercial and industrial (65%), and residential, small business, and local government (35%). These groups have differing service, load, and cost characteristics.

[7] Miriam-Webster defines subsidy as "a grant by a government to a private person or company to assist an enterprise deemed advantageous to the public." https://www.merriam-webster.com/dictionary/subsidy.

[8] "Subsidies, and, therefore, rate discrimination, are inherent in any rate design." Order No. PSC-04-0417-PAA-EI, issued April 22, 2004, in Docket No. 031135-EI, *In re: Petition for approval to implement consolidated fuel adjustment surcharge by Florida Public Utilities Company.*

[9] We may approve the stipulation in this docket under the public interest test only if it is consistent with this governing statute. *See Sierra Club v. Brown*, 243 So. 3d 903, 909 (Fla. 2018).

Accordingly, any feature of the program (such as bill credits) that impacts participants differently than non-participants impacts a diverse group of ratepayers, not one class.[10] The existence of one current[11] customer – whether Walmart or some other entity – with a substantially larger allocation than the other commercial customers does not dilute this class diversity. Notably, twenty-two of the thirty customers who are currently signed on as participants are local governments, healthcare organizations, and schools.

There is a rational basis to treat participants differently. Early subscribers to the program who have steady, relatively high electricity use are referred to by Duke as "anchor customers." Due to these initial participants and their substantial subscription fees, a large amount of solar not previously contemplated is not only being constructed, but is on an accelerated schedule. The entire 749 MW – 10 solar plants sized at 74.9 MW each – is projected to be in service by the end of 2024. In the 2024/2025 timeframe when all ten are projected to be operational, the CEC solar plants should produce approximately 4% of Duke's net energy for load.

Of significant importance in our analysis of the CEC program is that the benefits that are created by the 749 MW of new generation are realized by the entire body of ratepayers. By virtue of Duke constructing 749 MW of solar instead of relying on traditional fossil fuel generation to meet future energy needs, all customers will experience savings from avoided or deferred generation, reduced fuel costs, lower operating and maintenance costs, and projected emissions cost savings from reductions in carbon dioxide. Over the life of the program, operation of the 10 solar facilities is projected to displace more than 51 MWh of fossil fired generation, decreasing annual average use of natural gas by 11 billion cubic feet and coal consumption by 7,000 tons.

The displaced generation is due, in part, to the deferral of several combustion turbines for multiple years over the thirty year planning period and the reduction in the total number of new turbines by one (for years 2026-2034). Duke is also committing to evaluate no later than in its 2023 Ten Year Site Plan the potential to defer or replace an additional planned combustion turbine unit with solar plus storage facilities. In addition to the direct benefits of reduced investment in fossil fired generation, the deferral of additional traditional generation provides necessary space for new and evolving technologies.

There is no record evidence that Duke had existing plans to add 749 MW of solar power before being approached by customers and subsequently proposing the CEC program. There is record evidence that Duke had existing solar at that time, is capable of developing more, and had plans for only limited expansion. The reasonable inference from these facts is that the CEC program accelerated the timing and amount of solar in Duke's energy portfolio, and thereby brought expanded benefits to the general body of ratepayers on an expedited schedule.

Duke did not simply grant some benefit to the specific commercial customers who approached the utility. Duke broadened program participation by creating separate participant allocations for local governments and low-income residential customers. Duke further included provisions to ensure low-income participants would never pay more in a subscription fee than

[10] Under Section 366.03, Florida Statutes, we are to examine rates "for any possible discrimination or preference between the different classes of service." *Re Tampa Elec. Co.*, 26 P.U.R.3d 158 (Oct. 22, 1958) (emphasis added).
[11] Participants may exit the CEC program at any time.

they would receive in bill credits, thereby allowing persons who may not otherwise have the financial ability to participate in solar energy the opportunity to do so.

In sum, while we must generally ensure that one customer is not charged a greater or lesser amount than another customer with like services under the same or similar circumstances, we may allow different treatment among otherwise like customers if there is a reasonable basis to differentiate established in the record.[12] Based on the facts summarized above, we find that affording a modest preference to the various participants is appropriate and not undue.

There is no statutory or rule formula to determine whether a particular rate structure is unduly preferential.[13] The final determination of undue preference is a factual determination vested to the discretion of this Commission to make based on the record and the circumstances in any specific docket.[14] "This Court has consistently recognized the broad legislative grant of authority which [chapter 366] confer[s] and the considerable license the Commission enjoys as a result of this delegation." *Citizens of State v. Pub. Serv. Comm'n*, , 425 So. 2d 534, 540 (Fla. 1982). Our broad discretion in this docket is also being exercised in the context of a stipulation, to which the public interest test applies. Thus, we must ultimately examine the stipulation as a whole and weigh all of its various components – not solely the bill credit – to make that public interest determination.

The total amount of bill credits afforded the participants is a relatively small percentage of the total net benefits flowing from the CEC program.[15] This total is divided among a diverse group of participants. A portion of the bill credit is dedicated to ensuring that low-income residential customers never pay more in subscription fees than they receive in bill credits. Another portion of the total bill credit amount is distributed to participating local governments, healthcare organizations, and schools. The remaining bill credits are distributed to the various commercial customers. All of the remaining benefits flowing from the solar generation are realized by the entire body of ratepayers. Given this structure that allocates the overwhelming majority of benefits to the general body of ratepayers and divides the remainder among a range of participants, the bill credits do not create an undue preference, and the resulting rates are fair, just, and reasonable.[16]

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[12] *See Fla. Power Corp. v. Mayo*, 203 So. 2d 614, 615 (Fla. 1967) (utility must "sufficiently identif[y] and distinguish[] a class of consumers to preclude an effective attack based on discrimination or arbitrary preference").

[13] *See* Order No. PSC-15-0496-FOF-EI, issued October 23, 2015, in Docket No. 15085-EI, *In re: Complaint by Erika Alvarez, Jerry Buechler, & Richard C. Silvestri Against Fla. Power & Light Co.* ("No statute, Commission rule or Commission Order prescribes a particular format or manner in which FPL, or any other utility, is required to administer its solar rebate reservations. Moreover, our practice has been not to micromanage the business decisions of regulated companies, but to instead focus on the end-product goal.").

[14] *See Pennsylvania Co v. United States*, 236 U.S. 351, 361, 35 S. Ct. 370, 373 (1915) ("what is such undue or unreasonable preference or advantage is a question not of law, but of fact").

[15] *Cf. Sierra Club v. Brown,* 243 So. 3d 903, 918 (Fla. 2018) (public interest demonstration in rate case could be defeated by one investment only if it "was so large in comparison to the other, uncontested costs for which FPL sought recovery that the reasonableness of the agreed rate increase could not be determined without a prudence finding on [that] . . . issue") (Lawson, J., concurring).

[16] As a general comparison, the percentage of program benefits afforded the general body of ratepayers by Duke in the CEC program greatly exceeds the benefits Florida Power & Light Company assigned to its customers in SolarTogether (87.3% vs. 45%).

Decision

Duke did not plan to construct 749 MW of new solar generation before being approached by existing customers about a new solar program. Using that request as a catalyst, Duke engaged in further outreach and ultimately created a program for diverse participation in utility-scale solar for the benefit of all customers. These overall benefits include fuel diversification and substantial new renewable energy, both of which further the stated intent of the Legislature.[17] When placed in this appropriate context, the benefit afforded the participants by one feature of Duke's CEC program does not create an undue preference.

Having again carefully reviewed the entire record, we find that, taken as a whole, the Stipulation establishes rates that are fair, just, and reasonable, is supported by the record evidence, and is in the public interest, and we hereby approve it.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-2021-0059-S-EI, issued January 26, 2021, in Docket No. 20200176-EI, *In re: Petition for a limited proceeding to approve clean energy connection program and tariff and stipulation, by Duke Energy Florida, LLC*, is affirmed in its entirety, and revised to the extent set forth above. It is further

ORDERED that the Clerk shall file a true and correct copy of this Revised Final Order with the Florida Supreme Court in Case No. SC21-303. It is further

ORDERED that this docket shall remain open pending resolution of the appeal by the Florida Supreme Court. Once the Court has disposed of the appeal, the docket shall be closed administratively.

[17] Section 366.92(1), F.S.

By ORDER of the Florida Public Service Commission this _____ day of _____, _____.

ADAM J. TEITZMAN
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

SPS

Item 2

FILED 8/26/2022
DOCUMENT NO. 05672-2022
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 26, 2022

TO: Office of Commission Clerk (Teitzman)

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

RE: Docket No. 20220074-TP – 2023 State certification under 47 C.F.R. §54.313 and §54.314, annual reporting requirements for high-cost recipients and certification of support for eligible telecommunications carriers.

AGENDA: 09/08/22 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Graham

CRITICAL DATES: 10/01/22 (Filing deadline with the Federal Communications Commission and the Universal Service Administrative Company)

SPECIAL INSTRUCTIONS: None

Case Background

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

[1] 47 U.S.C. §254(b)(3) (2022)
[2] FCC, "Universal Service for High Cost Areas - Connect America Fund," updated August 16, 2022, https://www.fcc.gov/general/universal-service-high-cost-areas-connect-america-fund, accessed August 17, 2022.

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

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

Certification will be filed online with USAC through USAC's online portal. Immediately following online certification, the USAC website will automatically generate a letter that may be submitted electronically to the FCC to satisfy the submission requirements of 47 C.F.R. §54.314(c). In order for a carrier to be eligible for high-cost universal service support for all of calendar year 2023, certification must be submitted by the Commission by October 1, 2022.[4]

[3] 47 C.F.R §54.314(a) (2022)
[4] 47 C.F.R §54.314(d) (2022)

Discussion of Issues

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

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

Staff Analysis: All Florida ETCs that are seeking high-cost support have filed affidavits with the Commission attesting that the high-cost funds received for the preceding calendar year were used, and funds for the upcoming calendar year will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Additionally, each company has filed FCC Form 481 with USAC. Form 481 includes information such as emergency operation capability, FCC pricing standards comparability for voice and broadband service, holding company and affiliate brand details, and tribal lands service and outreach. Price cap carriers certify in Form 481 that high-cost support received was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor. Rate-of-return carriers certify in Form 481 that reasonable steps are being made to achieve FCC broadband upload and download standards and, if privately held, submit documents detailing the company's financial condition. Based on previous years' data and projected changes in support, staff estimates that the amount of 2023 high-cost support that these carriers may receive in Florida will be approximately $15 million.[5]

Staff reviewed the affidavits and submissions made by each carrier to the Commission and to USAC. Each of the Florida ETCs receiving high-cost support has attested that all federal high-cost support provided to them within Florida was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

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

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

Issue 2: Should this docket be closed?

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

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

Item 3

FILED 8/26/2022
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FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 26, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Richards) *ALM*
Division of Economics (Bethea, Hudson) *JGH*
Division of Engineering (Ellis, Phillips) *TB*
Office of the General Counsel (J. Crawford, Rubottom) *JSC*

RE: Docket No. 20220066-WS – Application for increase in water rates in Washington County, by Sunny Hills Utility Company.

AGENDA: 09/08/22 – Regular Agenda – Proposed Agency Action, Except for Issues 18, 19 and 20 – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: 10/6/22 (5-Month Effective Date (PAA Rate Case))

SPECIAL INSTRUCTIONS: None

Table of Contents

Case Background

Sunny Hills Utility Company (Utility or Sunny Hills) is a Class B water and wastewater utility serving approximately 559 residential customers and 18 general service customers in Washington County. The Utility has not had its rates established since its transfer from Aqua Utilities Florida, Inc.[1] The Utility's last rate case was in 2012.[2] According to the Utility's 2021 Annual Report, Sunny Hills recorded net operating revenues of $342,786 and net operating expenses of $369,129.

On April 7, 2022, Sunny Hills filed its application for the rate increase at issue in the instant docket.[3] In its application, the Utility is seeking a rate increase for the water system only.

On May 3, 2022, staff sent the Utility a letter indicating certain deficiencies with its minimum filing requirements (MFRs).[4] All deficiencies were subsequently satisfied, and an official filing date of May 6, 2022, was established.[5]

The Utility requested that the application be processed as a Proposed Agency Action (PAA) and requested interim rate relief. The test year established for interim and final rates is the period ended December 31, 2021. Sunny Hills requested an interim revenue increase of $52,872 (16.08 percent), and a final revenue increase of $90,740 (25.79 percent).

By Order No. PSC-2022-0227-PCO-WS, the Commission suspended final rates proposed by the Utility and approved interim rates to allow staff sufficient time to process this case.[6] Staff conducted a virtual customer meeting on July 19, 2022. Two customers spoke at the meeting. One of the customers that spoke during the virtual customer meeting raised questions concerning the impact of potential future growth in Sunny Hills' service territory. In response to a data request, the Utility indicated that it has met with the County and a developer in the area several times, but that no definitive plans have been provided regarding future growth in their service territory.[7]

The Commission has jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes (F.S.).

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[1]Order No. PSC-2014-0315-PAA-WS, issued June 13, 2014, in Docket No. 20130172-WS, *In re: Application for approval of transfer of certain water and wastewater facilities and Certificate Nos. 501-W and 435-S of Aqua Utilities Florida, Inc. to Sunny Hills Utility Company in Washington County.*
[2]Order No. PSC-2012-0102-FOF-WS, issued March 5, 2012, in Docket No. 20100330-WS, *In re: Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.*
[3]Document No. 02296-2022, filed on April 7, 2022.
[4]Document No. 02778-2022, filed on May 3, 2022.
[5]Document No. 03123-2022, filed on May 24, 2022.
[6]Order No. PSC-2022-0227-PCO-WS, issued June 27, 2022, in Docket No. 20220066-WS, *In re: Application for increase in water rates in Washington County, by Sunny Hills Utility Company.*
[7] Document No. 04904-2022, filed on July 22, 2022.

Discussion of Issues

Issue 1: Is the quality of service provided by Sunny Hills satisfactory?

Recommendation: Yes. Sunny Hills is meeting all Department of Environmental Protection (DEP) primary and secondary standards with the exception of the secondary standard for iron at a backup well, Well No. 1. The Utility is taking measures to address the iron levels at Well No. 1 and has been responsive to customer complaints. Therefore, the quality of service provided by Sunny Hills should be considered satisfactory. (Phillips)

Staff Analysis: Pursuant to Section 367.081(2)(a)1, F.S., and Rule 25-30.433(1), Florida Administrative Code (F.A.C.), the Commission, in every rate case, shall make a determination of the quality of service provided by the utility by evaluating the quality of the utility's product (water) and the utility's attempt to address customer satisfaction. The Rule requires that the most recent chemical analyses, outstanding citations, violations, and consent orders on file with the DEP and the county health department, along with any DEP and county health department officials' testimony concerning quality of service shall be considered. In addition, any customer testimony, comments, or complaints shall also be considered. The operating condition of the water system is addressed in Issue 2.

Quality of Utility's Product

In evaluation of Sunny Hill's product, staff reviewed the Utility's compliance with the DEP primary and secondary drinking water standards. Primary standards protect public health while secondary standards regulate contaminates that may impact the taste, odor, and color of drinking water. The most recent comprehensive chemical analyses were performed on November 22, 2021 and all results were found to be in compliance with DEP regulations, except for the secondary standard for iron at Well No. 1, one of two backup wells. A review of the DEP records did not show any consent orders against the Utility.

The Utility's Attempt to Address Customer Satisfaction

Staff reviewed the complaints filed in the Commission's Consumer Activity Tracking System (CATS), complaints filed with the DEP, and complaints received by the Utility from January 1, 2017 through December 31, 2021. The Commission also received written customer correspondence in this docket from six customers. A customer meeting was held on Tuesday July 19, 2022, where two customers provided comments, one of whom had already provided written comments. Staff also performed a supplemental review of the complaints filed in CATS and with DEP following the July 19, 2022 customer meeting. Table 1-1 shows the number of complaints categorized by complaint type and source. The majority of the complaints filed were filed with the Utility and were related to low water pressure, discolored water, and leaks.

Table 1-1
Number of Complaints by Type and Source

Subject	CATS	Correspondence / Customer Meeting	DEP	Utility	Total
Water Pressure	1			119	120
Discolored Water	1	4	14	68	87
Damaged Meter				12	12
Billing	6				6
Leaks		1		56	57
Rate Increase		5			5
Total*	8	10	14	255	287

*A single customer complaint may be counted multiple times if it fits into multiple categories, was reported to multiple agencies, or was reported multiple times.

Starting the week of July 22, 2022, the DEP noted an increase of complaints associated with discolored water. While the operator reported that system pressure and chlorination were adequate, the DEP conducted a site visit to investigate the complaints and noted that backup Well No. 1 had elevated iron levels and had been operating due to a valve repair on the primary well. The DEP's field inspection observed the distribution system produce tinted water that cleared after flushing and recommended repairing the primary well and reducing iron content by means of a sequestering agent or filtration, with a notation that the Utility had already submitted plans for an iron filtration system to be installed.

Low pressure, discolored water, and leaks are all related to the Utility's distribution system. Sunny Hills has a large distribution system that is over forty years old and was installed before the current owners purchased the system. In addition to the size and age of the system, the surrounding soil is mostly sand and likely to shift. This can result in distribution lines breaking and leaking. When a line breaks the pressure is reduced throughout the distribution system. When the pressure drops the Utility uses a backup well to help maintain pressure; however, as noted above the raw water supply located at Well No. 1 has high levels of natural iron that leads to discolored water when this well is utilized. As discussed further in Issue 4, Sunny Hills is adding an iron filtration system at Well No. 1. In addition, line breaks may allow for sediment to enter the distribution system, and repairing the break will cause sediment to become dislodged resulting in discolored water. Due to the size of the distribution system it is difficult for the Utility's workers to locate breaks when they occur; however, the Utility has capped and removed from service several unused water lines that were believed to contribute to leaks. After repairs are made, and in response to customer complaints, the operator will flush the lines to remove sediment. Sunny Hills stated that most customer complaints are resolved by flushing.

Conclusion

Sunny Hills is meeting all DEP primary and secondary standards with the exception of the secondary standard for iron at a backup well, Well No. 1. The Utility is taking measures to address the iron levels at Well No. 1 and has been responsive to customer complaints. Therefore, the quality of service provided by Sunny Hills should be considered satisfactory.

Issue 2: Are the infrastructure and operating conditions of Sunny Hills' water system in compliance with DEP regulations?

Recommendation: Yes. The Utility's water system is currently in compliance with DEP regulations. (Phillips)

Staff Analysis: Rule 25-30.225(2), F.A.C., requires each water and wastewater utility to maintain and operate its plant and facilities by employing qualified operators in accordance with the rules of the DEP. Rule 25-30.433(2), F.A.C., requires consideration of whether the infrastructure and operating conditions of the plant and facilities are in compliance with Rule 25-30.225, F.A.C. In making this determination, the Commission must consider testimony of the DEP and county health department officials, sanitary surveys for water systems and compliance evaluation inspections for wastewater systems, citations, violations, and consent orders issued to the utility, customer testimony, comments, and complaints, and utility testimony and responses to the aforementioned items.

Water System Operating Condition

Sunny Hill's water system consists of three wells: the main well with a capacity of 504,000 gallons per day (gpd), and two backup wells with capacities of 432,000 and 288,000 gpd for a total permitted design capacity of 1,224,000 gpd. The Utility also has three storage units: a main water storage tank with a capacity of 150,000 gallons, and two 10,000 gallon hydropneumatic tanks, for a total capacity of 170,000 gallons. Sunny Hills uses two chlorine treatment plants to treat the raw water. Staff reviewed Sunny Hills' sanitary surveys conducted by the DEP to determine the Utility's overall water facility compliance. A review of the sanitary survey conducted on December 3, 2021, and the DEP site inspection on July 29, 2022, indicated that Sunny Hills' water treatment facility is in compliance with the DEP's rules and regulations.

Conclusion

Based on the above, Sunny Hills' water system is currently in compliance with DEP regulations.

Issue 3: Should the audit adjustments to rate base be made?

Recommendation: Yes. Plant in service should be decreased by $5,627 and accumulated depreciation should be increased by $8,916. (Richards)

Staff Analysis: Staff's audit report was filed on July 1, 2022.[8] Sunny Hills did not file a formal response to the audit. Audit Finding No. 1 determined that utility plant in service (UPIS) should be decreased by $5,627 to include the actual total additions and retirements to UPIS from March 28, 2013, through December 31, 2021. Audit Finding No. 1 also determined that accumulated depreciation should be increased by $8,916.

Conclusion

Adjustments decreasing UPIS by $5,627 and increasing accumulated depreciation by $8,916 should be made.

[8]Document No. 04419-2022, filed on July 1, 2022.

Issue 4: What are the used and useful (U&U) percentages of Sunny Hills' water treatment plant (WTP), storage, and water distribution system?

Recommendation: Staff recommends that Sunny Hills' water treatment system is 91 percent U&U, the water storage 100 percent U&U, and the water distribution system 10 percent U&U. Additionally, staff recommends that the Utility has 4.2 percent excessive unaccounted for water (EUW). (Phillips)

Staff Analysis: Rule 25-30.4325, F.A.C., provides factors to be considered in determining U&U and EUW calculations. As stated in Issue 2, Sunny Hills' water system is comprised of three wells with a permitted design capacity of 1,224,000 gpd, and three water tanks with a capacity of 170,000 gallons. Sunny Hills' U&U percentages were last determined by the Commission in Docket No. 20100330-WS.[9]

Used and Useful Percentages

Water Treatment Plant

Rule 25-30.4325(5), F.A.C., states that water treatment plant U&U is calculated by dividing the peak demand, which is based on the highest daily usage, by the firm reliable capacity, which is the capacity of all wells excluding the single largest well. The Utility calculated peak demand to be 509,142 gpd and firm reliable capacity to be 720,000 gpd, resulting in a 70.7 percent U&U. Staff's review determined that an alternate day should be used for peak demand value, as the highest demand day was during a line break and pursuant to Rule 25-30.4325(7)(b)1, F.A.C., the peak day must have no unusual occurrences. Based on staff's analysis, the peak demand is 351,480 gpd based on the next highest peak day. Staff also reviewed the firm reliable capacity and determined it should be modified to reflect storage on the Utility's system. Instead of using 24 hours of pumping, 16 hours of pumping should be used for the calculation pursuant to Rule 25-30.4325(6)(b), F.A.C. This yields a firm reliable capacity of 480,000 gpd. As a result, staff calculated a U&U level of 73.2 percent. However, in Sunny Hills' last rate case the water treatment system was determined to be 91 percent U&U. Therefore, to be consistent with the Commission's previous determination, staff recommends that the water treatment system is 91 percent U&U.

Water Storage

Rule 25-30.4325(8), F.A.C., states that water storage U&U is calculated by dividing the peak demand by usable storage. The Utility calculated the water storage system to be 299.5 percent U&U based on a usable storage capacity of 170,000 gallons. As noted above, staff modified the peak demand to reflect a day without an unusual occurrence. Staff's review also removed the two hydrodynamic tanks from the calculation of usable storage, consistent with Rule 25-30.4325(8), F.A.C., reducing the usable storage value to 150,000 gallons. As a result, staff calculated a U&U of 234.3 percent. Rule 25-30.4325(8), F.A.C., states that if storage capacity is less than the peak demand, the U&U should be considered 100 percent U&U. Therefore, consistent with the

[9]Order No. PSC-2012-0102-FOF-WS, issued March 5, 2012, in Docket No. 20100330, *In re: Application for increase in water/wastewater rates in Alachua, Brevard, DeSoto, Hardee, Highlands, Lake, Lee, Marion, Orange, Palm Beach, Pasco, Polk, Putnam, Seminole, Sumter, Volusia, and Washington Counties by Aqua Utilities Florida, Inc.*

Commission's previous determination, staff recommends the water storage system is 100 percent U&U.

Water Distribution

The Utility calculated the water distribution system to be 8.8 percent U&U based on a total system capacity of 6,384 equivalent residential connections (ERCs) and a projected 560 ERCs based on a negative growth rate of 3.2 percent. Staff notes that there are currently 577 ERCs on the Utility's system, and recommends that while Rule 25-30.431, F.A.C., requires the Commission to consider the rate of growth, a negative growth value in this instance would not be appropriate as the distribution system is currently being used to serve customers. Therefore, based on 577 current ERCs and 6,384 potential ERCs, the distribution system is 9.0 percent U&U. However, in Sunny Hills' last rate case the distribution system was determined to be 10 percent U&U. Therefore, to be consistent with the Commission's previous determination, staff recommends that the water distribution system is 10 percent U&U.

Excessive Unaccounted for Water

Rule 25-30.4325, F.A.C., provides factors to be considered in determining whether adjustments to operating expenses are necessary for EUW. EUW is defined as "unaccounted for water in excess of 10 percent of the amount produced." Unaccounted for water is all water produced that is not sold, metered, or accounted for in the records of the Utility. Sunny Hills estimated the EUW to be 4.5 percent based on producing 42,130,660 gallons, an estimated total sales of 25,494,000 gallons, and 10,516,498 gallons used for other uses, such as flushing and losses due to line breaks/leaks during the test year. Staff's review confirmed the values for water produced and other uses, but based on the audit report the actual gallons sold during the test year were slightly higher, at 25,628,000 gallons. The resulting calculation ([42,130,660 – 25,628,000 - 10,516,498] ÷ 42,130,660) for unaccounted for water is 14.2 percent; therefore, the Utility has EUW of 4.2 percent. Staff recommends an adjustment of 4.2 percent should be made to purchased power and chemical expenses.

Conclusion

Staff recommends that Sunny Hills' water treatment system is 91 percent U&U, the water storage 100 percent U&U, and the water distribution system 10 percent U&U. Additionally, staff recommends that the Utility has 4.2 percent EUW.

Issue 5: Should adjustments be made to the Utility's non-U&U balance?

Recommendation: Yes. The Utility's non-U&U balance should be decreased by $27,613. (Richards)

Staff Analysis: Based on the calculations discussed in Issue 4, staff determined the non-U&U plant balance totaled $2,177,531. When compared to the total plant balance for Sunny Hills of $4,226,841, staff calculated a non-U&U composite rate of 51.52 percent ($2,177,531 ÷ $4,226,841).

Utility Plant in Service

In MFR Schedule A-5, the Utility recorded a non-U&U balance for plant of $2,156,891. Based on staff's calculations outlined in Issue 4, staff reduced this amount by $323. The Utility also included a non-U&U adjustment of $20,963 for pro forma plant additions; staff made no adjustment to this amount.

Accumulated Depreciation

In MFR Schedule A-9, the Utility recorded a non-U&U balance for accumulated depreciation of $1,244,518. Based on staff's calculations outlined in Issue 4, staff increased this amount by $4,075. The Utility also included a non-U&U adjustment to the accumulated depreciation balance of pro forma of $476. Staff further increased this amount by $478.

Negative Acquisition Adjustment

The Utility recorded a non-U&U adjustment to the negative acquisition adjustment of $839,646, and to the accumulated amortization of the negative acquisition adjustment of $608,568. Staff used the non-U&U composite rate of 51.52 percent to decrease the Utility's non-U&U adjustments by $47,024 and $69,761 for acquisition adjustment and accumulated acquisition adjustment, respectively.

Conclusion

Staff recommends reducing the Utility's non-U&U balance by $27,613 ($323 + $4,075 + $478 - $47,024 + $69,761).

Issue 6: Should further adjustments be made to the Utility's rate base?

Recommendation: Yes. The Utility's test year rate base should further be reduced by $97,414. (Richards)

Staff Analysis: Staff made adjustments to the Utility's reported accumulated depreciation, contributions in aid of construction (CIAC), accumulated amortization of CIAC, accumulated amortization of the acquisition adjustment, and working capital. Those adjustments are detailed below.

Accumulated Depreciation

In addition to Audit Finding 1 described in Issue 3, staff made an averaging adjustment to reduce accumulated depreciation by $4,218.

CIAC and Accumulated Amortization of CIAC

To reflect an appropriate balance determined by the audit, staff increased CIAC by $8,712 and accumulated amortization of CIAC by $6,124. In MFR Schedules A-12 and A-14, the Utility recorded a non-U&U balance of $381,292 for CIAC and $183,509 for accumulated amortization of CIAC. Using the non-U&U composite rate of 51.52 percent detailed in Issue 5, staff reduced these amounts by $3,149 and $7,122 for CIAC and accumulated amortization of CIAC respectively.

Accumulated Amortization of Negative Acquisition Adjustment

The Utility's 2014 transfer order established a negative acquisition adjustment for the water system of $1,538,571.[10] Fifty percent of the acquisition adjustment was amortized over 7 years with the remainder amortized over the life of the assets, which was calculated as 21 years. In the instant case, the Utility recorded an accumulated amortization of the negative acquisition adjustment of $1,148,084. Based on the 2014 order, staff calculated the accumulated amortization from June 13, 2014, through December 31, 2021, as $1,045,888. This resulted in a decrease of $102,196 to the Utility's recorded amount.

Working Capital Allowance

In MFR Schedule A-17, the Utility recorded a working capital balance of $37,324. Rule 25-30.433(3), F.A.C., requires Class B utilities to use the formula method, or one-eighth of operation and maintenance (O&M) expenses, to calculate the working capital allowance. As discussed in Issue 12, staff recommends a total O&M balance of $293,581. Section 367.081(9), F.S., prohibits a utility from earning a return on the unamortized balance of rate case expense (RCE). As such, staff removed the RCE of $1,554; this resulted in an adjusted O&M balance of $292,027 ($293,581 - $1,554). Based on this, staff calculated working capital expense of $36,503 ($292,027 ÷ 8). This resulted in a decrease to the Utility's recorded working capital expense of $821 ($37,324 - $36,503).

[10]Order No. PSC-2014-0315-PAA-WS.

Table 6-1
Additional Staff Adjustments to Test Year Rate Base

Description	Amount
To reflect an averaging adjustment to accumulated depreciation.	$4,218
To reflect an auditing adjustment to CIAC.	(8,712)
To reflect a non-used and useful adjustment to CIAC.	(3,149)
To reflect an auditing adjustment to accum. amort. of CIAC.	6,124
To reflect a non-used and useful adj. to accum. amort. of CIAC.	7,122
To reflect the appropriate accum. amort. of negative acquisition adj.	(102,196)
To reflect 1/8 O&M expense, less RCE for working capital.	($821)
Total additional staff adjustments to test year rate base.	($97,414)

Source: Staff calculations.

Conclusion

Based on the above adjustments and detailed in Table 6-1 above, staff recommends reducing the Utility's test year rate base by $97,414.

Issue 7: Should any adjustments be made to the Utility's pro forma adjustments?

Recommendation: Yes. Pro forma accumulated depreciation should be reduced by $6,245 and depreciation expense should be increased by $5,767. Additionally, property taxes should be decreased by $1,172. There is no adjustment to the Utility's pro forma plant. (Phillips, Richards)

Staff Analysis: The Utility requested two pro forma plant additions. For its first project, Sunny Hills is seeking to add an iron filtration system to the backup well by the end of 2022. As discussed in Issue 1, the raw water located at this well contains high amounts of iron that can cause discolored water when this well is utilized. In order to reduce the iron levels, the Utility is planning on placing a "green sand" filtration system that will remove the raw iron from the water. Sunny Hills will be utilizing a retired filtration vessel skid that was previously used to remove sulfur from an affiliated utility in order to reduce cost. For the second project, Sunny Hills is also seeking to retire and replace the existing damaged generator located at Well No. 1. Rule 62-555.320(14)(a), F.A.C., requires Sunny Hills to have this generator due to the number of customers the Utility serves. As is Commission practice, the Utility received three bids for each pro forma project and selected the least cost option.

In MFR Schedule A-3, the Utility recorded a cost of $232,925 for the iron filtration system described above. Additionally, the Utility recorded a cost of $150,357 for the new generator located at Well No. 1, with a retirement amount of $112,768 for the old generator. These two projects resulted in a pro forma increase to plant of $270,514 ($232,925 + $150,357 - $112,768). Staff made no adjustments to the pro forma plant balance.

Additionally, the Utility recorded an adjustment reducing accumulated depreciation by $106,534 for the two pro forma projects. Staff recalculated this amount, and reduced the Utility's adjustment by $6,245 to reflect the appropriate accumulated depreciation.

The Utility made corresponding adjustments to increase depreciation expense by $5,757 net of non-U&U adjustment, and increased property taxes by $2,868. Staff made further adjustments to these amounts, increasing depreciation expense by an additional $5,767 net of non-U&U, and decreasing property taxes by $1,172.

Conclusion

Accumulated depreciation should be reduced by $6,245 and depreciation expense should be increased by $5,767. Additionally, property taxes should be decreased by $1,172.

Issue 8: What is the appropriate rate base for the test year ended December 31, 2021?

Recommendation: Consistent with staff's recommended adjustments, the appropriate rate base for the test year ended December 31, 2021, is $665,162. (Richards)

Staff Analysis: In its MFRs, the Utility requested a rate base of $755,752. Based on staff's previously recommended adjustments, the appropriate rate base is $665,162. The schedule for rate base is attached as Schedule No. 1-A, and the adjustments are shown on Schedule No. 1-B.

Issue 9: What is the appropriate return on equity (ROE)?

Recommendation: Based on the Commission's leverage formula currently in effect, the appropriate ROE for the Utility is 7.84 percent. (Richards)

Staff Analysis: The ROE included in the Utility's MFR Schedule D-1 is 8.74 percent. Based on the current leverage formula in effect, and the Utility's equity ratio of 97.27 percent, the appropriate ROE is 7.84 percent.[11] Staff recommends an allowed range of plus or minus 100 basis points be recognized for ratemaking purposes.

Conclusion
The appropriate ROE for the Utility is 7.84 percent.

[11]Order No. PSC-2022-0208-PAA-WS, issued June 15, 2022, in Docket No. 20220006-WS, *In re: Water and wastewater industry annual reestablishment of authorized range of return on common equity for water and wastewater utilities pursuant to Section 367.081(4)(f), F.S.*

Issue 10: What is the appropriate weighted average cost of capital based on the proper components, amounts, and cost rates associated with the capital structure for the test year ended December 31, 2021?

Recommendation: The appropriate weighted average cost of capital for the test year ended December 31, 2021, is 7.68 percent. (Richards)

Staff Analysis: In its filing, the Utility requested an overall cost of capital of 8.56 percent. The Utility's capital structure consists of common equity and customer deposits. Based upon the proper components, amounts, and cost rates associated with the capital structure, staff recommends a weighted average cost of capital of 7.68 percent. Schedule No. 2 details staff's recommended overall cost of capital.

Conclusion

The appropriate weighted average cost of capital for the test year ended December 31, 2021, is 7.68 percent.

Issue 11: What are the appropriate amount of test year revenues for Sunny Hills' water system?

Recommendation: The appropriate test year revenues for Sunny Hills' water system are $361,770 (Bethea)

Staff Analysis: Sunny Hills reflected, in its MFRs, test year revenues of $351,891. The water revenues included $344,137 of service revenues and $7,754 of miscellaneous revenues. Staff determined service revenues by applying the number of billing determinants to the rates in effect at the time of filing. As a result, staff determined that service revenues should be $356,495, which is an increase of $12,358. Staff also made an adjustment to miscellaneous revenues to remove $2,479 of Allowance for Funds Prudently Invested charges that were inaccurately reflected in miscellaneous revenues. Staff determined that miscellaneous revenues should be $5,275 ($7,754 - $2,479). Based on the above, the appropriate test year revenues for Sunny Hills' water system, including miscellaneous revenues, are $361,770 ($356,495 + $5,275).

Issue 12: Should further adjustments be made to the Utility's O&M expense?

Recommendation: Yes. O&M expense should be decreased by $4,677. (Richards)

Staff Analysis: Based on its review of the test year O&M expense, staff recommends several adjustments to the Utility's O&M expense as summarized below.

Purchased Power

In its filing, Sunny Hills reflected purchased power expense of $14,677, which included an adjustment for excessive unaccounted for water (EUW). Based on the EUW calculation described in Issue 4, staff made an adjustment increasing this amount by $50.

Chemicals Expense

Sunny Hills recorded chemicals expense of $1,355 which included an adjustment for EUW, in its MFR filing. Based on the EUW calculation described in Issue 4, staff made an adjustment increasing this amount by $4.

Insurance Expense

The Utility recorded insurance expense of $2,924 for the cost of an insurance policy. During the audit, the Utility provided a copy of the insurance policy which had a total cost of $3,069. Staff allocated 50 percent of this total cost to water, and the other 50 percent to wastewater. Staff calculated the water portion of the insurance policy to be $1,535 ($3,069 ÷ 2). Therefore, staff decreased the insurance expense by $1,389 ($2,924 - $1,535).

Rate Case Expense

The Utility estimated annual amortization of rate case expense of $1,509 in its filing. Staff calculated rate case expense of $6,218 which amortized over four years is $1,554, resulting in an increase of $45. Staff's amount includes $468 for travel to the Commission Conference, a filing fee of $3,500, and total noticing costs of $2,250.[12]

Bad Debt Expense

In its filing, the Utility recorded bad debt expense of $7,246. This amount reflects the amount of bad debt expense in the Utility's 2021 Annual Report. It is Commission practice to use a 3-year average when calculating bad debt expense. Staff calculated bad debt expense of $3,859 which reflects an average of the Utility's reported 2019, 2020, and 2021 amounts. Therefore, staff recommends a decrease of $3,387 ($7,246 - $3,859) to the Utility's recorded bad debt expense.

Conclusion

Based on the adjustments above, staff recommends a decrease of $4,677 ($50 + $4 - $1,389 + $45 - $3,387) to the Utility's test year O&M expense.

[12]Document No. 02415-2022, filed on April 14, 2022.

Issue 13: Should further adjustments be made to the Utility's operating expense?

Recommendation: Yes. The Utility's operating expenses should be further decreased by $1,111. (Richards)

Staff Analysis: Staff made several adjustments to the Utility's operating expenses which are detailed below.

Net Depreciation Expense

In MFR Schedule B-13, the Utility recorded test year depreciation expense of $51,050 net of a non-U&U adjustment. Staff decreased this amount by $9,353 to reflect the removal of depreciation expense for accounts which were fully depreciated. Staff further decreased this amount by $339 to reflect the appropriate non-U&U adjustments. As discussed in Issue 7, staff increased depreciation expense by $5,767 to reflect the appropriate depreciation expense associated with pro forma additions. In the audit, staff recommended CIAC be increased by $1,134 with a decrease of $912 for a non-U&U adjustment. Therefore, staff recommends a decrease of $4,148 ($9,353 + $339 - $5,767 + $1,134 – 912) to the Utility's depreciation expense.

Amortization of Negative Acquisition Adjustment

As discussed in Issue 6, the 2014 transfer order for Sunny Hills, detailed how the negative acquisition adjustment will be amortized over the life of the assets.[13] Based on staff's calculations, the amortization of the negative acquisition adjustment is $36,633. This represents a $688 increase from the Utility's recorded amortization amount of $35,945. Using staff's composite non-U&U rate of 51.52 percent, staff decreased the amortization of the negative acquisition adjustment by $18,872 which represents a further decrease of $986 from the Utility's recorded non-U&U adjustment. Therefore, staff recommends decreasing amortization of the acquisition adjustment by $298 ($688 - $986).

Taxes Other Than Income

In the Utility's MFR Schedule B-15, Sunny Hills recorded property and tangible taxes of $18,709 net of non-used and useful adjustments. Staff increased this amount by $961 to reflect the appropriate amount of property and tangible taxes using the composite non-U&U percentage of 51.52 percent. As discussed in Issue 6, staff made an adjustment decreasing tax expense by $1,172 to reflect pro forma projects. Additionally, staff increased TOTI by $445 to reflect the appropriate regulatory assessment fees (RAFs). Taken together, this result in a test year adjustment of $234 ($961 - $1,172 + $445) to TOTI.

Additionally, as discussed in Issue 15, staff recommends revenues be increased by $55,646 in order to reflect the change in revenue required to cover expenses and allow an opportunity to earn the recommended rate of return. As a result, TOTI should be increased by $2,504 to reflect RAFs of 4.5 percent of the change in revenues.

[13]Order No. PSC-2014-0315-PAA-WS.

Conclusion

Based on the adjustment above, staff recommends further decreasing the Utility's test year operating expense by $3,615 ($4,148 - $298 - $234). This amount is offset by an increase in TOTI of $2,504 to reflect RAFs for the recommended change in revenues. As such, staff recommends a net decrease of $1,111 ($3,615 - $2,504) to the Utility's operating expense.

Issue 14: What is the appropriate operating expense for the test year ended December 31, 2021?

Recommendation: Consistent with staff's recommended adjustments, the appropriate operating expense for the test year ended December 31, 2021, is $363,822. (Richards)

Staff Analysis: In its MFRs, the Utility recorded operating expense of $372,114. Based on staff's previously recommended adjustments, the appropriate operating expense is $363,822. The schedule for water operations is attached as Schedule No. 3-A, and the adjustments are shown on Schedule No. 3-B.

Conclusion

The appropriate operating expense for the test year ended December 31, 2021, is $363,822.

Issue 15: What is the appropriate revenue requirement for the test year ended December 31, 2021?

Recommendation: Staff recommends a revenue requirement of $417,416 be approved.

Table 15-1
Staff's Recommended Revenue Requirement

Test Year Revenue	$ Increase	Revenue Requirement	% Increase
$361,770	$55,646	$417,416	15.38%

Source: Staff's calculations

(Richards, Bethea)

Staff Analysis: In its filing, the Utility requested an annual revenue requirement of $442,631. This requested revenue requirement represents an increase of $90,740, or approximately 20.50 percent, over the reported test year revenues of $351,891. Consistent with its recommendations concerning rate base, cost of capital, and operating income issues, staff recommends a revenue requirement of $417,416.

Conclusion
Staff recommends a revenue requirement of $417,416 be approved.

Issue 16: What are the appropriate rate structures and rates for Sunny Hills' water system?

Recommendation: The recommended rate structure and monthly water rates are shown on Schedule No. 4. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice. (Bethea)

Staff Analysis: Sunny Hills is located in Washington County within the Northwest Florida Water Management District. The Utility provides water service to 559 residential and 18 general service customers. Approximately 23 percent of the residential customer bills during the test year had zero gallons, indicating a seasonal customer base. The average residential water demand is 3,343 gallons per month. The average water demand excluding zero gallon bills is 4,312 gallons per month. Currently, the Utility's water rate structure consists of a monthly base facility charge (BFC) and a three-tier inclining block rate structure, which includes separate gallonage charges for discretionary and non-discretionary usage for residential water customers. The rate blocks are: (1) 0-6,000 gallons; (2) 6,001-12,000 gallons; and (3) all usage in excess of 12,000 gallons per month. The general service rate structure consists of a monthly BFC and a uniform gallonage charge.

Staff performed an analysis of the Utility's billing in order to evaluate the appropriate rate structure for the residential water customers. The goal of the evaluation was to select the rate design parameters that: (1) produce the recommended revenue requirement; (2) equitably distribute cost recovery among the utility's customers; (3) establish the appropriate non-discretionary usage threshold for restricting repression; and (4) implement, where appropriate, water conserving rate structures consistent with Commission practice.

The Utility's existing rate structure was implemented in 2012 when Sunny Hills was part of Aqua Utilities Florida, Inc. (Aqua) system.[14] In 2014, the Commission approved the transfer of certain water and wastewater facilities of Aqua to Sunny Hills with the existing rates and charges remaining in effect at the time of the transfer.[15] Staff believes that for a stand-alone system, the existing three-tier rate structure should be evaluated based on the usage characteristics of Sunny Hills' customers. Staff evaluated alternate rate structures, such as a two-tier inclining block rate structure, with usage blocks of monthly consumption of 0-4,000 gallons and all usage above 4,000 gallons. However, due to the staff-recommended relatively modest percentage increase in the total revenue requirement (15.38 percent), changing the rate structure results in higher bill increases at lower consumption levels and reductions in bills at higher consumption levels, which is contrary to a conservation-oriented rate structure. Therefore, in this instance, staff recommends an across-the-board increase to the Utility's rates at the time of filing. To determine the appropriate percentage increase to apply to the service rates, miscellaneous revenues should

[14]In 2012, Aqua provided water and wastewater service to 58 water and 27 wastewater systems in 17 counties under Commission jurisdiction.
[15]Order No. PSC-2014-0315-PAA-WS.

be removed from the test year revenues, which results in a 15.61 percent increase to be applied across-the-board.

Based on the above, the recommended rate structure and monthly water rates are shown on Schedule No. 4. The Utility should file revised tariff sheets and a proposed customer notice to reflect the Commission-approved rates. The approved rates should be effective for service rendered on or after the stamped approval date on the tariff sheets pursuant to Rule 25-30.475(1), F.A.C. In addition, the approved rates should not be implemented until staff has approved the proposed customer notice and the notice has been received by the customers. The Utility should provide proof of the date notice was given within 10 days of the date of the notice.

Issue 17: Should Sunny Hills' miscellaneous service charges be revised to conform to amended Rule 25-30.460, F.A.C.?

Recommendation: Yes. 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. Sunny Hills 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 charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice. (Bethea)

Staff Analysis: Effective June 24, 2021, Rule 25-30.460, F.A.C., was amended to remove initial connection and normal reconnection charges.[16] The definitions for initial connection charges and normal reconnection charges were subsumed in the definition of the premises visit charge. Sunny Hills' miscellaneous service charges consist of initial connection and normal reconnection charges. Therefore, staff recommends that the initial connection and normal reconnection charges be removed, and the definition for the premises visit charge be updated to comply with amended Rule 25-30.460, F.A.C. The premises visit will remain at $22.96 for normal hours and $34.44 for after hours.

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. Sunny Hills 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 charge should not be implemented until staff has approved the proposed customer notice and the notice has been received by customers. The Utility should provide proof of the date notice was given no less than 10 days after the date of the notice.

[16]Order 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.*

Issue 18: What is the appropriate amount by which rates should be reduced to reflect the removal of amortized rate case expense?

Recommendation: The water rates should be reduced, as shown on Schedule No. 4, to remove the annual amortization of rate case expense grossed-up for RAFs. The decrease in rates should become effective immediately following the expiration of the rate case expense recovery period. Sunny Hills should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass through increase or decrease and the reduction in the rates due to the amortized rate case expense. (Bethea, Richards)

Staff Analysis: The water rates should be reduced, as shown on Schedule No. 4, to remove the annual amortization of rate case expense grossed-up for RAFs. The decrease in rates should become effective immediately following the expiration of the rate case expense recovery period, pursuant to Section 367.081(8), F.S. Sunny Hills should be required to file revised tariffs and a proposed customer notice setting forth the lower rates and the reason for the reduction no later than one month prior to the actual date of the required rate reduction. If the Utility files this reduction in conjunction with a price index or pass-through rate adjustment, separate data should be filed for the price index and/or pass through increase or decrease and the reduction in the rates due to the amortized rate case expense.

Issue 19: Should any portion of the interim water revenue increase granted be refunded?

Recommendation: No. The Commission approved an interim revenue increase of $21,472 to allow the Utility to earn an operating revenue of $385,727. This amount is less than the recommended revenue requirement of $417,416. (Richards)

Staff Analysis: The Commission approved an interim rate increase of $21,472 or 5.98 percent to allow Sunny Hills to earn an operating revenue of $385,727.[17] Because this amount is less than staff's recommended revenue requirement of $417,416, no refund is necessary.

[17]Order No. PSC-2022-0227-PCO-WS, issued June 27, 2022, in Docket No. 20220066-WS; *In re: Application for increase in water rates in Washington County, by Sunny Hills Utility Company.*

Issue 20: Should the Utility be required to notify, within 90 days of an effective order finalizing this docket, that it has adjusted its books for all the applicable National Association of Regulatory Commissioners Uniform System of Accounts (NARUC USOA) associated with the Commission approved adjustments?

Recommendation: Yes. The Utility should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. Sunny Hills should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to the deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days. (Richards)

Staff Analysis: The Utility should be required to notify the Commission, in writing, that it has adjusted its books in accordance with the Commission's decision. Sunny Hills should submit a letter within 90 days of the final order in this docket, confirming that the adjustments to all the applicable NARUC USOA accounts have been made to the Utility's books and records. In the event the Utility needs additional time to complete the adjustments, notice should be provided within seven days prior to the deadline. Upon providing good cause, staff should be given administrative authority to grant an extension of up to 60 days.

Issue 21: Should this docket be closed?

Recommendation: No. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, a Consummating Order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and the Utility has provided staff with proof that the adjustments for all applicable NARUC USOA accounts have been made. Once these actions are complete, this docket should be closed administratively. (Rubottom)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, a Consummating Order should be issued. The docket should remain open for staff's verification that the revised tariff sheets and customer notice have been filed by the Utility and approved by staff, and the Utility has provided staff with proof that the adjustments for all applicable NARUC USOA accounts have been made. Once these actions are complete, this docket should be closed administratively.

Sunny Hills Utility Company — **Schedule No. 1-A**
Schedule of Water Rate Base — **Docket No. 20220066-WS**
Test Year Ended 12/31/2019

	Description	Test Year Per Utility	Utility Adjust-ments	Adjusted Test Year Per Utility	Staff Adjust-ments	Staff Adjusted Test Year
1.	Utility Plant in Service	$3,961,954	$270,514	$4,232,468	($5,627)	$4,226,841
2.	Utility Land & Land Rights	10,779	0	10,779	0	10,779
3.	Non-Used & Useful Components	0	(701,782)	(701,782)	27,613	(674,170)
4.	Accumulated Depreciation	(2,347,823)	106,534	(2,241,289)	(10,942)	(2,252,231)
5.	CIAC	(725,308)	381,292	(344,015)	(11,862)	(355,877)
6.	Accumulated Amortization of CIAC	336,263	(183,509)	152,754	13,246	166,000
7.	Acquisition Adjustments	(1,538,571)	0	(1,538,571)	0	(1,538,571)
8.	Accumulated Amort. of Acquisition Adjustments	1,148,084	0	1,148,084	(102,196)	1,045,888
9.	Working Capital Allowance	0	37,324	37,324	(821)	36,503
	Total Rate Base	$845,377	($89,625)	$755,752	($90,590)	$665,162

Sunny Hills Utility Company	**Schedule No. 1-B**
Adjustments to Rate Base	**Docket No. 20220066-WS**
Test Year Ended 12/31/21	

	Explanation	**Water**
	Utility Plant in Service	
	To reflect an auditing adjustment.	($5,627)
	Non-Used and Useful	
1.	To reflect non-used and useful adj. to UPIS.	$323
2.	To reflect a non-used and useful adj to accumulated depreciation.	4,075
3.	To reflect a non-used and useful adj. to pro forma	478
4.	To reflect a non-used and useful adj. to negative acquisition adjustment.	(47,024)
5.	To reflect a non-used and useful adj. to accumulated amortization of negative acquisition adj.	69,761
	Total	$27,613
	Accumulated Depreciation	
1.	To reflect an auditing adjustment.	($8,916)
2.	To reflect an averaging adjustment.	4,218
3.	To reflect pro forma adjustment.	(6,245)
	Total	($10,943)
	Contributions In Aid of Construction	
1.	To reflect an auditing adjustment.	($8,712)
2.	To reflect appropriate non-used and useful adjustment.	(3,149)
	Total	($11,861)
	Accumulated Amortization of CIAC	
1.	To reflect an auditing adjustment.	$6,124
2.	To reflect appropriate non-used and useful adjustment.	7,122
	Total	$13,246
	Accumulated Amortization of Negative Acquisition Adjustment	
	To reflect appropriate accumulated amortization of negative acquisition adjustment.	($102,196)
	Working Capital Allowance	
	To reflect the appropriate amount of working capital.	($821)

Sunny Hills Utility Company — **Schedule No. 2**
Capital Structure – Simple Average — **Docket No. 20220066-WS**
Test Year Ended 12/31/21

Description	Total Capital	Pro rata Adjust-ments	Capital Reconciled To Rate Base	Ratio	Cost Rate	Weighted Cost
Per Utility						
1. Long-Term Debt	$0	$0	$0	0.00%	0.00%	0.00%
2. Short-Term Debt	0	0	0	0.00%	0.00%	0.00%
3. Preferred Stock	0	0	0	0.00%	0.00%	0.00%
4. Common Equity	1,121,274	(386,154)	735,120	97.27%	8.74%	8.51%
5. Customer Deposits	31,448	(10,816)	20,632	2.73%	2.00%	0.05%
6. Accumulated Deferred Income Taxes	0	0	0	0.00%	0.00%	0.00%
Total Capital	$1,152,722	($396,970)	$755,752	100%		8.56%
Per Staff						
1. Long-Term Debt	$0	$0	$0	0.00%	0.00%	0.00%
2. Short-Term Debt	0	0	0	0.00%	0.00%	0.00%
3. Preferred Stock	0	0	0	0.00%	0.00%	0.00%
4. Common Equity	1,121,274	(474,258)	647,016	97.27%	7.84%	7.63%
5. Customer Deposits	31,448	(13,301)	18,147	2.73%	2.00%	0.05%
6. Accumulated Deferred Income Taxes	0	0	0	0.00%	0.00%	0.00%
Total Capital	$1,152,722	($487,560)	$665,162	100%		7.68%
		RANGE OF REASONABLENESS			**LOW**	**HIGH**
		RETURN ON EQUITY			6.84%	8.84%
		OVERALL RATE OF RETURN			6.71%	8.65%

Sunny Hills Utility Company — **Schedule No. 3-A**
Statement of Water Operations — **Docket No. 20220066-WS**
Test Year Ended 12/31/21

	Description	Test Year Per Utility	Utility Adjust-ments	Adjusted Test Year Per Utility	Staff Adjust-ments	Staff Adjusted Test Year	Revenue Increase	Revenue Requirement
1.	**Operating Revenues**	$345,265	$6,626	$351,891	$9,879	$361,770	$55,646	$417,416
							15.38%	
	Operating Expenses							
2.	Operation & Maintenance	$297,509	$749	$298,258	($4,677)	$293,581	$0	$293,581
3.	Depreciation, net of CIAC Amort, U&U	83,035	(35,560)	47,475	(4,148)	43,327	0	43,327
4.	Amortization Acquisition Adjustment	(54,261)	36,202	(18,059)	298	(17,761)	0	(17,761)
5.	Amortization Deferred Assets	7,029	0	7,029	0	7,029	0	7,029
6.	Taxes Other Than Income	35,817	1,595	37,411	235	37,646	2,504	40,150
7.	Income Taxes	0	0	0	0	0	0	0
	Total Operating Expenses	$369,129	$2,986	$372,115	($8,292)	$363,822	$2,504	$366,327
8.	**Net Operating Income**	($23,863)	$3,640	($20,223)	$18,171	($2,052)		$51,089
9.	**Rate Base**	$845,377		$755,752				$665,162
10.	**Rate of Return**							7.68%

Sunny Hills Utility Company		**Schedule No. 3-B**
Adjustments to Operating Income		**Docket No. 20220066-WS**
Test Year Ended 12/31/21		
	Explanation	**Water**
	Operating Revenues	
	To reflect appropriate test year revenues.	$9,879
	Operations and Maintenance Expense	
1.	To reflect 4.2 percent EUW for purchased power.	$50
2.	To reflect 4.2 percent EUW for chemicals expense.	4
3.	To reflect water portion of insurance expense.	(1,389)
4.	To reflect appropriate rate case expense.	45
5.	To reflect 3-year average bad debt expense.	(3,387)
	Total	($4,676)
	Depreciation Expense – Net	
1.	To reflect removal of fully depreciated items.	($9,353)
2.	To reflect non-used and useful adjustment to depreciation.	(339)
3.	To reflect appropriate depreciation expense for pro forma projects.	6,245
4.	To reflect non-used and useful adjustment to pro forma projects.	(478)
5.	To reflect appropriate amortization of CIAC.	(1,134)
6.	To reflect non-used and useful adjustment to amortization of CIAC.	912
	Total	($4,148)
	Amortization of Negative Acquisition Adjustment	
1.	To reflect appropriate amortization of negative acquisition adjustment.	($688)
2.	To reflect non-used and useful adjustment to negative acquisition adjustment.	986
	Total	$298
	Taxes Other Than Income	
1.	To reflect appropriate property and tangible taxes.	($63)
2.	To reflect appropriate non-used and useful adjustment to taxes.	1,024
3.	To reflect appropriate taxes on pro forma additions.	631
4.	To reflect non-used and useful adjustment to pro forma taxes.	(1,803)
5.	To reflect appropriate RAFs.	445
	Total	$234

Sunny Hills Utility Company					**Schedule No. 4**
Monthly Water Rates					**Docket No. 20220066-WS**
Test Year Ended 12/31/21					
	Current Rates	**Commission Approved Interim Rates**	**Utility Requested Final Rates**	**Staff Rec. Rates**	**4-Year Rate Reduc.**
Residential and General Service					
Base Facility Charge by Meter Size					
5/8"X3/4"	$19.77	$20.95	$27.99	$22.86	$0.09
3/4"	$29.66	$31.43	$41.99	$34.29	$0.14
1"	$49.43	$52.38	$69.98	$57.15	$0.23
1-1/2"	$98.85	$104.75	$139.96	$114.30	$0.45
2"	$158.16	$167.60	$223.94	$182.88	$0.72
3"	$316.32	$335.20	$447.89	$365.76	$1.44
4"	$494.25	$523.75	$699.82	$571.50	$2.25
6"	$988.50	$1,047.50	$1,399.64	$1,143.00	$4.50
8"	$1,581.60	$1,676.00	$2,239.43	$1,828.80	$7.20
10"	$2,273.55	$2,409.25	$3,219.17	$2,628.90	$10.35
Gallonage Charge - Residential Service					
0 - 6,000 Gallons	$6.82	$7.23	$7.91	$7.88	$0.03
6,001 - 12,000 Gallons	$10.24	$10.85	$11.86	$11.84	$0.05
Over 12,000 Gallons	$13.63	$14.45	$15.81	$15.76	$0.06
Charge per 1,000 gallons - General Service	$7.64	$8.10	$8.60	$8.83	$0.03
Private Fire Protection					
2"	$13.18	$13.97	$18.66	$15.24	$0.06
3"	$26.36	$27.93	$37.32	$30.48	$0.12
4"	$41.19	$43.65	$58.32	$47.63	$0.19
6"	$82.38	$87.29	$116.64	$95.25	$0.38
8"	$131.80	$139.67	$186.62	$152.40	$0.60
10"	$189.46	$200.77	$268.26	$219.08	$0.86
Typical Residential 5/8" x 3/4" Meter Bill Comparison					
2,000 Gallons	$33.41	$35.41	$43.81	$38.62	
4,000 Gallons	$47.05	$49.87	$59.63	$54.38	
6,000 Gallons	$60.69	$64.33	$75.45	$70.14	

Item 4

FILED 8/26/2022
DOCUMENT NO. 05690-2022
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 26, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Richards, Mouring) ALM
Division of Engineering (P. Buys, King, Ramos) TB
Office of the General Counsel (Sandy, Crawford) JSC

RE: Docket No. 20210184-WS – Application for limited proceeding in Highlands County by HC Waterworks, Inc.

AGENDA: 09/08/22 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Passidomo

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

HC Waterworks, Inc. (HCWW or Utility) is a Class B utility providing water service to approximately 967 residential customers, 12 general service customers, and 1 private fire protection customer in the Leisure Lakes, Lake Josephine, and Sebring Lakes subdivisions in Highlands County. The Utility also provides wastewater service to 317 residential wastewater customers in the Leisure Lakes subdivision. The service area is in the Southwest Florida Water Management District and is in a water use caution area. According to the Utility's 2021 Annual Report, operating revenues were $770,063 for water and $88,191 for wastewater. Operating expenses were $559,035 for water and $108,950 for wastewater.

By Order No. PSC-2014-0314-PAA-WS, the Commission approved the transfer of Certificate Nos. 422-W and 359-S from Aqua Utilities Florida, Inc. to HCWW.[1] As part of the transfer, the Commission approved a negative acquisition adjustment, recognizing that HCWW's purchase of the system was less than 80 percent of the system's net book value. Per the transfer order, 50 percent of the negative acquisition adjustment ($424,720 for the water system and $10,539 for the wastewater system) was to be amortized over a seven-year period, and the remaining 50 percent amortized over the remaining life of the assets. At the time of the transfer, HCWW estimated the remaining life of the applicable water assets as 24 years, and 12 years for the wastewater assets.

Water rates were last established for the Utility in 2020 in Docket No. 20190166-WS.[2] In determining the quality of service provided by HCWW, the Commission evaluated the quality of the Utility's product (water) and the Utility's attempt to address customer satisfaction (water and wastewater). The Commission determined that HCWW's overall quality of service was unsatisfactory due to the volume of customer complaints and reduced HCWW's return on equity by 50 basis points. The Commission also required HCWW to engage with its customers and the Office of Public Counsel (OPC) in an ongoing effort to address the Utility's service quality and communication issues. Subsequently, water rates were increased by a price index rate adjustment in 2021. Wastewater rates were last established in 2015 and had subsequent price index rate adjustments in 2018 and 2021.[3]

On November 18, 2021, HCWW filed its application in this docket for a limited proceeding to increase its water and wastewater rates.[4] The main issue in the limited proceeding was to address the significant financial impact of HCWW's earning levels beginning in April 2021, when the amortization period for 50 percent of the acquisition adjustment approved in the transfer order ended. Based on the Utility's filing, the negative offset of amortization would cause increases to net depreciation expense that would not be recovered through current rates, causing existing rates to no longer be compensatory. Accompanying the Utility's application were minimum filing requirement (MFR) schedules required by Section 367.081, Florida Statutes (F.S.), and Rule 25-30.445, Florida Administrative Code (F.A.C.). The Utility was notified of deficiencies in the MFRs on December 14, 2021.[5] The deficiencies were cured on December 22, 2021, which was established as the official filing date.[6]

On May 3, 2022, at a Commission Conference that members of the OPC attended, staff presented HCWW's application for a limited proceeding in Highlands County to the Commission. During its introduction of the item, staff stated the following:

[1]Order No. PSC-2014-0314-PAA-WS, issued June 13, 2014, in Docket No. 20130175-WS, *In re: Application for approval of transfer of certain water and wastewater facilities and Certificate Nos. 422-W and 359-S of Aqua Utilities Florida, Inc. to HC Waterworks, Inc. in Highlands County.*
[2]Order No. PSC-2020-0168-PAA-WS, issued May 22, 2020, in Docket No. 20190166-WS, *In re: Application for increase in water rates in Highlands County by HC Waterworks, Inc.*
[3]Order No. PSC-2015-0282-PAA-WS, issued July 8, 2015, in Docket No. 20140158-WS, *In re: Application for increase in water/wastewater rates in Highlands County by HC Waterworks, Inc.*
[4]Document No. 12849-2021, filed on November 18, 2021.
[5]Document No. 13057-2021, filed on December 14, 2021.
[6]Document No. 13148-2021, filed on December 22, 2021.

> Subsequent to the filing of this recommendation, staff is aware that a group of customers have filed a complaint with the Office of Consumer Affairs concerning the wastewater treatment plant. It's staff's understanding that Consumer Affairs has been in contact with the utility and that the utility is working with customers to resolve their concerns.

On May 23, 2022, the Commission issued PAA Order No. PSC-2022-0192-PAA-WS (PAA Order) approving the limited proceeding increase.[7] In the PAA Order, the Commission approved an increase for water rates of $35,220, or 4.64 percent, and an increase for wastewater rates of $15,862, or 18.72 percent. The Commission made no adjustment to a previously-ordered 9.17 percent return on equity, which reflected a 50 basis point reduction related to quality of service matters in a previous docket.[8] Section 367.0812, F.S., requires that in fixing rates, the Commission shall consider the extent to which the utility provides water service that meets secondary water quality standards as established by the Department of Environmental Protection. At page 3 of the PAA Order, the Commission addresses HCWW's compliance with this statute, including the following:

> As part of the instant Docket, we received 20 customer comments opposing the rate increase. *Additionally, one group of customers filed a complaint with our Customer Assistance and Outreach (CAO) division concerning the wastewater treatment plant.* Of the 20 customer comments specifically related to the instant docket, 16 of the customers also commented on poor water quality; specifically, chlorine smell, cloudy water, discolored clothes from water, unacceptable water pressure, and bad taste.[9] (Emphasis added.)

On June 13, 2022, OPC filed a timely petition protesting the Commission's PAA Order.[10] In its petition, OPC limits its protest to the portion of the order addressing the quality of service provided by HCWW. OPC contends that certain customer service and due process issues were not appropriately addressed by the Commission at the time of issuing the PAA Order; in particular, the exclusion of a specific reference to a petition signed by 143 customers of HCWW.[11] The document was not originally filed in the docket file, but was instead filed as an informal customer complaint with CAO, and did not reference Docket No. 20210184-WS. Staff assigned to the docket learned of this document subsequent to filing its written recommendation on April 21, 2022. In an abundance of caution, staff referenced the CAO complaint in its introduction of this item at the May 3, 2022 Commission Conference, both of which are captured in the quoted material referenced above.

On July 1, 2022, HCWW and OPC filed a Joint Motion for Approval of a Stipulation and Settlement Agreement (Agreement) which is Attachment A to this recommendation.[12] The

[7] The PAA Order also addresses the approval of initial customer deposits and revision to HCWW's miscellaneous service charges.
[8] Order No. PSC-2020-0168-PAA-WS, issued May 22, 2020, in Docket No. 20190166-WS, *In re: Application for increase in water rates in Highlands County by HC Waterworks, Inc.*
[9] Document No. 02990-2022, Agenda Conference transcript, at p. 2.
[10] Document No. 03794-2022, filed on June 13, 2022.
[11] OPC filed the document in question in this docket on May 4, 2022 (Document No. 02790-2022).
[12] Document No. 04416-2022, filed on July 1, 2022.

Agreement details steps HCWW has taken and will continue to take to address concerns raised by its customers. The Utility and OPC agree a final order should be issued in this case and should reference, with specificity, the petition signed by the 143 customers, as well as the Utility's subsequent communications with customers and OPC regarding plans to work toward addressing the customers' complaints.

The Commission has jurisdiction pursuant to Sections 367.081 and 367.0812, F.S.

Discussion of Issues

Issue 1: Should the Office of Public Counsel's Petition Protesting Proposed Agency Action in this docket be denied?

Recommendation: Yes. Staff recommends that the Petition be denied. While OPC's Petition disputes the characterization in the Commission's PAA Order of customer complaints, it fails to dispute an issue of material fact. Therefore, the Protest fails to meet the statutory standards required to request a hearing pursuant to Section 120.57, F.S. If the Commission approves staff's recommendation in this Issue, Issue 2 becomes moot, and PAA Order No. PSC-2022-0192-PAA-WS should be made final. (Sandy, Crawford)

Staff Analysis: Pursuant to Rule 25-22.029, F.A.C., a person whose substantial interests are affected by action proposed by the Commission may file a petition for a Section 120.569 or 120.57, F.S., hearing. Formal hearings proceeding pursuant to Section 120.57, F.S., are predicated upon there being disputed issues of material fact. A material fact is "[a] fact that is significant or essential to the issue or matter at hand."[13] Furthermore, Section 120.80(13)(b), F.S., provides that, "a hearing on an objection to proposed action of the Florida Public Service Commission may only address the issues in dispute," and that "[i]ssues in the proposed action which are not in dispute are deemed stipulated."

At the May 3, 2022 Commission Conference, staff referenced customer complaints, including a reference to the CAO complaint, during its introduction, in addition to discussing customer complaints in its written recommendation.

On May 23, 2022, the Commission issued PAA Order No. PSC-2022-0192-PAA-WS (PAA Order). According to OPC's June 13, 2022 petition protesting the Commission's PAA Order, the material fact in dispute is as follows:

> In the broadest terms, the Citizens' ultimate factual allegation is that the PAA Order contains an incorrect, or at best vague, characterization of the number of customers who expressed dissatisfaction with the quality of both the water and wastewater service HCWW provides.

Based on what it describes as an incorrect or vague characterization, pursuant to Section 120.80(13)(b), F.S., OPC objects to and protests the applicable portions of the PAA Order as it relates to the quality of service.

Pursuant to Section 367.0812, F.S., the Commission shall consider quality of water service when fixing water and wastewater utility rates. As set out in the PAA Order, the Commission provided almost an entire page's worth of analysis, specifically addressing the Utility's quality of service issues. OPC protests the Commission's characterization of how one group of customers filed a complaint with the Commission's CAO division concerning the Utility's wastewater treatment plant.

[13] B. Garner, Black's Law Dictionary, p. 611 (7th ed. 1999).

Contrary to OPC's protest, the Commission's characterization of the customer complaint received by CAO is neither incorrect nor vague. Commission staff noted the complaint without objection during its presentation to the Commission. Furthermore, the complaint was referenced in the PAA Order in the context of quality of service. OPC's protest amounts to a nitpicking criticism of how the Commission described customer communication.

More importantly, where OPC's protest caters to its own editorial preferences, it fails to raise a substantive criticism of the Commission's decision in the instant docket. This docket is prompted by the Utility seeking a limited proceeding to increase rates that offset underearning caused by the reduction in the amortization of a negative acquisition adjustment. On this OPC remains silent. Nor does OPC contend that the Commission somehow failed to substantively consider the Utility's quality of water service before rendering its vote. Therefore, staff believes there is no legal basis for the Commission to grant the remedy that OPC requests.

Where OPC's protest merely disputes the characterization of customer complaints in the PAA Order, it fails to dispute an issue of material fact. For there is no dispute that a group of customers filed a complaint with the CAO about the waste water plant; that the Commission was aware of this complaint prior to the May 3rd Commission Conference; and that there is a petition signed by 143 customers of HCWW and filed by OPC on May 4. Therefore, the protest fails to meet the statutory standards required to request a hearing pursuant to Section 120.57, F.S. For these reasons, staff believes OPC's Petition Protesting Proposed Agency Action in this docket should be denied. If the Commission approves staff's recommendation in this Issue, Issue 2 becomes moot, and PAA Order No. PSC-2022-0192-PAA-WS should be made final.

Issue 2: Should the Joint Stipulation and Settlement Agreement filed on July 1, 2022, by HCWW and OPC be approved?

Recommendation: No. If the Commission approves staff's recommendation in Issue 1, this Issue is moot. If a decision on this Issue is required, staff recommends that the Commission deny the Joint Stipulation and Settlement Agreement because it fails to demonstrate how approval of the Agreement is in the public interest. (Sandy, Crawford)

Staff Analysis: The standard for approval of a settlement agreement is whether it is in the public interest.[14] A determination of public interest requires a case-specific analysis based on consideration of the proposed settlement taken as a whole.[15] The joint settlement agreement before the Commission proposes two remedies, neither of which are ultimately in the public interest because they violate a principle of procedural economy that the Commission relies on to effectively regulate. If approved, the precedent created by the Agreement could subject every Commission decision to protest and revision based on a party's editorial preferences. The resulting regulatory slowdown could result in inefficiency and uncertainty for utilities and ratepayers alike.

First, the Agreement proposes the following:

> The Parties agree the record for the instant Docket should reflect that prior to the May 3, 2022 Agenda Conference, 22 customers submitted comments to the Docket opposing the rate increase and lodging various complaints about poor water quality, including but not limited to, discolored clothes from the water, unacceptable water pressure and bad taste. Additionally, the Commission's Customer Assistance and Outreach (CAO) division was in possession of a petition complaint letter signed by 143 customers. The face of the petition complaint letter was stamped received by the PSC on April 22, 2022, and the text includes a "formal complaint" about HCWW's water and sewage plants, noise and odor from the sewage plant, and the statement "we find it difficult to accept a water rate increase again this year when our request for better service has not been satisfied."

This proposal is merely a more fulsome recitation of facts that are currently set forth in Order No. PSC-2022-0192-PAA-WS, described in language agreeable to OPC. Although OPC advocates on behalf of Florida's utility consumers, staff does not believe it serves the public interest for the Commission in this instance to use its finite resources to readdress facts already in the record – even if not worded in the particular manner OPC would prefer – especially where no mistake of fact actually exists.

Second, the joint settlement agreement describes the means by which the Utility is addressing customer complaints about smell, sound, and water quality. Specifically, the Utility sets forth the following:

[14] *Sierra Club v. Brown*, 243 So.3d 903 (Fla. 2018)
[15] Order No. PSC-16-0560- AS-EI, issued December 15, 2016, in Docket No. 2016-0021-EI, *In re: Petition for rate increase by Florida Power & Light Company.*

> HCWW advised a customer that the utility is in the process of conducting an engineering study and obtaining estimates for noise mitigation and odor control. HCWW advised OPC of its plans to construct a roof over the sewage blower room and to present costs for additional proposed abatement measures at a meeting with customers at the Covered Bridge HOA in the fall, when seasonal residents return to the community.

It appears as if the Utility began taking affirmative steps to address customer complaints before entering the Agreement. The language of the Agreement appears to merely memorialize those steps, rather than having initiated them.[16] Nevertheless, the Commission was already aware of customer complaints against the Utility when it deducted 50 basis points from its return on equity in Docket No. 20190166-WS, which is referenced by the PAA Order and remains in place at the time of this recommendation. The Commission was also aware of customer complaints – including a reference to the petition received by CAO – when it approved the Utility's request in the present docket.

As set forth in Order No. PSC-2021-0089-S-WS, the Utility is required to file quarterly reports regarding customer complaints and correspondence. The quarterly reports indicate a declining trend in overall customer complaints as well as complaints regarding secondary water quality issues - proof that the Utility has been proactive in addressing quality of service concerns. It is duplicative for the Commission to approve a settlement agreement that contains actions already captured by the PAA Order, or already set in motion by the Utility, especially when the crux of the agreement appears to be based upon OPC's editorial critique of a Commission Order.

For the aforementioned reasons, staff recommends that the Commission deny the Joint Stipulation and Settlement Agreement because it does not offer a material change to the Commission's PAA Order, and it is not in the public interest for parties to dictate how the Commission drafts its Orders.

[16] Document No. 02822-2022, filed on May 6, 2022.

Issue 3: Should this docket be closed?

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

Staff Analysis: If the Commission grants staff's recommendations in Issues 1 and 2, a final order should issue reflecting those decisions and consummating PAA Order No. PSC-2022-0192-PAA-WS. This docket should be closed upon the issuance of that final order.

Item 5

FILED 8/26/2022
DOCUMENT NO. 05674-2022
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 26, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Ward, Draper)
Office of the General Counsel (Brownless)

RE: Docket No. 20220089-EI – Petition for approval of modifications to rate schedule tariff sheet No. 4.122 and determination under Rule 25-6.115(12), F.A.C, by Duke Energy Florida, LLC.

AGENDA: 09/08/22 – Regular Agenda – Tariff Filing - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 12/29/22 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

On April 29, 2022, Duke Energy Florida, LLC (Duke or utility) filed a petition for approval to modify Tariff Sheet No. 4.122 and determination under Rule 25-6.115(12), Florida Administrative Code (F.A.C.), that the limited waiver of certain costs is warranted. In its petition, Duke requested that the costs identified in Rule 25-6.115(8)(b), F.A.C., be excluded from the contribution-in-aid-of-construction (CIAC) calculation for customers requesting to underground overhead distribution facilities that have not been hardened under the utility's Storm Protection Plan filed pursuant to Section 366.96, Florida Statutes (F.S.), and Rule 25-6.030, F.A.C. Rather, the utility requests that these costs be included in net plant in service per Rule 25-6.115(12), F.A.C.

In Order No. PSC-2022-0209-PCO-EI the Commission suspended Duke's proposed revisions to Tariff Sheet No. 4.122 to allow staff time to gather additional data. On June 6, 2022, staff issued

its first data request, to which Duke responded on July 6, 2022. On August 17, 2022, staff held an informal conference call with the utility to get additional information regarding Duke's proposal. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission grant Duke's petition for a determination under Rule 25-6.115(12), F.A.C., to waive certain costs and approve the associated revised Tariff Sheet No. 4.122?

Recommendation: Yes. The Commission should grant Duke's petition for a determination under Rule 25-6.115(12), F.A.C., to waive certain costs and approve the associated revised Tariff Sheet No. 4.122. As required by Rule 25-6.115(12), F.A.C., Duke has provided an analysis quantifying the benefits of waiving certain costs from the CIAC calculation for customers choosing to underground non-hardened overhead distribution facilities. Staff believes Duke's analysis showing the expected storm restoration savings as a result of undergrounding is reasonable. In addition, encouraging the undergrounding of non-hardened facilities provides benefits to the general body of ratepayers through future reductions in Storm Protection Plan costs. (Ward, Draper)

Staff Analysis:

Current CIAC Calculation

Rule 25-6.115, F.A.C., and Duke's tariff provide the terms under which applicants are to pay CIAC for the conversion of existing overhead distribution facilities to underground. The CIAC is designed to recover the incremental costs Duke incurs resulting from a conversion, over and above the cost of serving the conversion area with overhead facilities. Overhead service is paid by all customers through base rates. In lieu of overhead service, customers have the option of requesting to convert existing overhead to underground facilities. The CIAC paid by an applicant is to ensure that the general body of ratepayers do not bear any costs associated with the conversion.

The formula to calculate CIAC is defined in Rule 25-6.115(8), F.A.C., and in Duke's Tariff Sheet No. 4.122 (the tariff refers to the CIAC as Facility Charge). Paragraph (8)(b) of the rule requires Duke to include the estimated remaining net book value of the existing facilities to be removed less the estimated net salvage value of the facilities to be removed (existing facilities cost). Paragraph (12) of the rule allows a utility to waive all or any portion of the cost for providing underground facilities. If the utility waives any charge, the utility is required to reduce net plant in service unless the Commission determines that there is a quantifiable benefit to the general body of ratepayers commensurate with the waived charge.

Storm Protection Plan and Cost Recovery

In February 2020, Rules 25-6.030, F.A.C., Storm Protection Plan (SPP), and 25-6.031, F.A.C., Storm Protection Plan Cost Recovery Clause (SPP Clause), were implemented to codify Section 366.96, F.S. These rules establish a utility's process for reporting to the Commission its hardening efforts for transmission and distribution facilities from extreme weather events and to allow for the recovery of prudent hardening-related costs. Under the SPP, a utility must provide the Commission with a storm protection plan outlining its hardening initiatives for the upcoming 10-year period. In addition, the utility must update its plan with the Commission every three years. The SPP Clause allows the utility to seek recovery from the general body of ratepayers of these hardening costs through an annual cost recovery mechanism. Prior to the SPP statute being

implemented, utilities made investments in storm hardening under Rule 25-6.042, F.A.C. (storm hardening rule).

Duke's Proposal

Duke's proposed modifications would exclude the cost of existing facilities from the calculation of the CIAC for customers requesting to underground overhead facilities that have not been hardened under the utility's SPP. Attachment A to the recommendation is Duke's proposed revision to Tariff Sheet No. 4.122, which contemplates that elements a, b, and c of the CIAC formula be excluded from the CIAC calculation for an applicant that intends to convert qualifying, non-hardened overhead facilities to underground. Specifically, the elements to be excluded are: a) the remaining net book value of existing overhead facilities to be removed, b) the removal cost of existing overhead facilities, and c) the salvage value of existing overhead facilities.

In general, hardening includes the strengthening of the overhead system or the conversion of overhead to underground. To support its petition, Duke stated the utility intends to eventually harden all overhead facilities as part of its SPP and seek cost recovery through the SPP Clause paid by all customers. Duke contends that customers who pay CIAC to underground non-hardened facilities are effectively hardening the facilities and, thereby, save the general body of ratepayers from the cost of having to harden those facilities through the SPP Clause. Duke explained that the utility will review each request for undergrounding to determine if the distribution lines were previously hardened under the SPP to ensure that only facilities that have not been hardened yet are eligible for the proposed revised CIAC calculation.

Duke states in response to a staff data request that the utility has just begun the hardening of its lateral lines under its SPP and that approximately 96 percent of current lateral lines still require hardening efforts. The utility states that it will take approximately 40 years to complete the hardening of these facilities.

Duke's tariff specifies the terms and conditions for customers, or applicants, seeking the undergrounding of existing distribution facilities by Duke. The tariff also defines which distribution facilities do not qualify for underground conversions pursuant to Tariff Sheet No. 4.122. To provide context, staff included Tariff Sheet Nos. 4.120 and 4.121 (pages 1 and 2 of Attachment A), which shows which customers qualify and which do not qualify for conversion pursuant to this tariff. Municipalities are typically the type of customer requesting the undergrounding of distribution facilities. The utility noted that in 2021, three municipalities requested a conversion that would have qualified under this proposal. The average CIAC for the three municipalities was $1.53 million. If the proposed tariff revision is approved, Duke stated that customers with active underground conversion projects for facilities that were not previously hardened will receive a reduction in the CIAC estimate already received.

In addition, Duke requests that the Commission determine that there are quantifiable benefits to the general body of ratepayers from the exclusion of the existing non-storm hardened facilities cost from the CIAC calculation for the underground conversions. This Commission determination would allow Duke, pursuant to Rule 25-6.115(12), F.A.C., to treat these existing facilities costs as net plant in service costs that can be recovered from all customers.

In response to staff's first data request, Duke provided an analysis quantifying the benefits of undergrounding. Specifically, based on three undergrounding projects, Duke compared the estimated storm restoration savings for a hardened overhead system to the estimated storm restoration savings for the same underground system over 40 years. Duke explained that while both a hardened overhead system and an underground system provide savings in storm restoration costs, an underground system provides greater savings. Duke's analysis shows that an underground system, on a net present value basis, provides 45 percent greater savings in storm restoration costs on a per mile basis compared to a hardened overhead system. Staff reviewed Duke's analysis, and based on the three projects chosen by Duke, it appears reasonable.

Benefit to the General Body of Ratepayers

Duke stated in its petition four benefits to the general body of ratepayers from excluding the cost from the calculation of CIAC for underground conversions of the existing non-hardened overhead facilities. First, Duke asserts that the general body of ratepayers would not pay any additional costs related to the conversion because these costs would eventually be included as part of Duke's SPP Clause process. Second, Duke asserts that in instances where the utility's SPP is scheduled to keep the existing facilities overhead, but hardened, the utility states that undergrounding provides greater storm resiliency which would benefit all customers. Third, Duke states that because the converting customer is accelerating the timing of when the utility would have hardened the facilities, the general body of ratepayers would receive the benefits of such hardening more quickly. Finally, the utility asserts that the cost of conversion may incentivize more customers to convert, which would further reduce the hardening projects that the general body of ratepayers would have to pay through the SPP Clause.

The Commission has previously recognized the benefits of undergrounding. In 2007, Rule 25-6.115, F.A.C., was amended to include in the CIAC calculation the cost of maintenance and storm restoration activities over time to capture the longer-term costs and benefits of undergrounding. Prior to this rule amendment, the CIAC was based on estimated work order cost only.

In 2018, the Commission approved the same revision to the CIAC calculation and the request to include the waived existing facilities cost in net plant in service for Florida Power & Light Company (FPL).[1] The SPP Clause rule was not in effect in 2017; however, utilities made storm hardening investments pursuant to the storm hardening rule with Commission-approved costs being born by the general body of ratepayers through base rates.

Conclusion

Based on the discussion above, staff recommends that the Commission should grant Duke's petition for a determination under Rule 25-6.115(12), F.A.C., to waive certain costs and approve associated revised Tariff Sheet No. 4.122. As required by Rule 25-6.115(12), F.A.C., Duke has provided an analysis quantifying the benefits of waiving certain costs from the CIAC calculation for customers choosing to underground non-hardened overhead distribution facilities. Staff believes Duke's analysis showing the expected storm restoration savings as a result of

[1] Order No. PSC-2018-0050-TRF-EI, issued January 22, 2018, in Docket No. 20170148-EI, *in Re: Petition for determination under Rule 25-6.115, F.A.C., and approval of associated revised tariff sheet 6.300, by Florida Power & Light Company.*

undergrounding is reasonable. In addition, encouraging the undergrounding of non-hardened facilities provides benefits to the general body of ratepayers through future reductions in Storm Protection Plan costs.

Issue 2: Should this docket be closed?

Recommendation: If a protest is filed within 21 days of the issuance of the order approving the proposed tariffs, the current tariffs should remain in effect pending resolution of the protest. If no timely protest is filed, the approved tariffs should go into effect, and the docket be closed, upon the issuance of a consummating order. (Brownless)

Staff Analysis: If a protest is filed within 21 days of the issuance of the order approving the proposed tariffs, the current tariffs should remain in effect pending resolution of the protest. If no timely protest is filed, the approved tariffs should go into effect, and the docket be closed, upon the issuance of a consummating order.

DUKE ENERGY.

SECTION NO. IV
FOURTH REVISED SHEET NO. 4.120
CANCELS THIRD REVISED SHEET NO. 4.120

PART XII

CHARGES FOR CONVERSION OF EXISTING OVERHEAD TO UNDERGROUND ELECTRIC DISTRIBUTION FACILITIES

12.01 DEFINITIONS:

The following words and terms used under this Part shall have the meaning indicated:

(1) Applicant: The Applicant is the person or entity seeking the undergrounding of existing or newly planned electric distribution facilities by the Company. When a developer requests local government development approval, the local government shall not be deemed the Applicant for purposes of these rules.

(2) Commission: Florida Public Service Commission.

(3) Cost Estimate Fee: A fee charged an Applicant by the Company for the purpose of preparing a cost estimate of the amount required for the Company to construct or convert particular distribution facilities as underground.

(4) Company: Duke Energy Florida, LLC

(5) Distribution Facilities: All electrical equipment of the Company required to deliver electricity to homes and businesses.

(6) Facility Charge: That charge required to be paid by an Applicant for the Company to construct or convert particular distribution facilities as underground.

(7) Overhead: Pertains to distribution facilities consisting of conductors, switches, transformers, etc. which are installed above ground on supporting poles.

(8) Underground: Pertains to distribution facilities consisting of conductors, switches, transformers, etc. which are installed below ground or on the ground.

12.02 GENERAL:

(1) Application:

Underground electric distribution facilities are offered in lieu of overhead facilities in accordance with these rules.

(2) Applicant Request:

An Applicant shall submit a request in writing for the Company to develop a cost estimate to accomplish the undergrounding of particular electric facilities. The request shall be accompanied by an appropriate fee and shall specify the following information:

(a) the area(s) being sought to be undergrounded;

(b) a list of all electric customers affected;

(c) an estimated time frame for undergrounding to be accomplished;

(d) details of any construction by the Applicant; and

(e) any other pertinent information which the Applicant possesses that may aid the Company in preparing an appropriate cost estimate.

(Continued on Next Page)

ISSUED BY: Thomas G. Foster, Vice President, Rates & Regulatory Strategy – FL
EFFECTIVE: January 1, 2022

DUKE ENERGY.

SECTION NO. IV
SIXTH REVISED SHEET NO. 4.121
CANCELS FIFTH REVISED SHEET NO. 4.121

12.03 INSTALLATIONS NOT COVERED:

The following types of electrical installations are not addressed in these rules:

(A) Distribution lines, new or existing, in urban commercial area, urban residential area, rural residential area, or existing subdivisions will not be considered for undergrounding if sufficient permits or easements cannot be obtained. The request will not be considered unless all customers on both sides of the road or street who are served by the supply system to be undergrounded are included in the proposed conversion.

(B) Distribution lines in new residential subdivisions. These installations are covered under "Rules of the Florida Public Service Commission", Chapter 25-6, Part V, "Rules for Residential Electric Underground Extensions", and the Company's "General Rules and Regulations Governing Electric Service", Part XI.

(C) Individuals applying for undergrounding of service laterals from existing overhead lines. These applications will be covered by rules referenced in 12.03(B) above.

(D) Electrical distribution circuits serving street or area lighting. Requests for undergrounding circuits of this category will be treated on an individual basis.

12.04 COST ESTIMATE FEES:

(1) Non-Binding Cost Estimate Fee:

The Company will provide a non-binding cost estimate related to the request at no cost to the Applicant. Such estimate shall not have any guarantee as to its accuracy and shall not be binding upon the Company.

(2) Binding Cost Estimate Fee

The following schedule of fees shall apply to the Applicant for engineering design time to establish a binding cost estimate by the Company for the request. Such fee shall be recognized as a credit in the Facility Charge determination if the Applicant enters into a construction contract within 180 days from date of receipt of the binding cost estimate. At the discretion of the Company, the time from submittal of the cost estimate to entering a contract may be extended beyond 180 days. A major scope change by the Applicant may require a new fee amount.

SCHEDULE OF BINDING COST ESTIMATE FEES

Facility Classification	Fee
Urban Commercial	$4,234 per mile
Urban Residential	$3,476 per mile
Rural Residential	$2,549 per mile
Low Density Subdivision	$ 15 per lot
High Density Subdivision	$ 13 per lot

(Continued on Next Page)

ISSUED BY: Thomas G. Foster, Vice President, Rates & Regulatory Strategy – FL
EFFECTIVE: January 1, 2022

DUKE ENERGY.

SECTION NO. IV
~~EIGHTH~~ NINTH REVISED SHEET NO. 4.122
CANCELS ~~SEVENTH~~ EIGHTH REVISED SHEET NO. 4.122

Page 3 of 6

12.05 CONSTRUCTION CONTRACT:

(1) GENERAL:

Upon acceptance by the Applicant of the binding cost estimate, the Applicant shall execute a contract with the Company to perform the construction of the underground distribution facilities. The contract shall specify the type and character of system to be provided; establish the Facility Charge to be paid by Applicant prior to commencement of construction; specify details of construction to be performed by Applicant, if any; and address any other pertinent terms and conditions including those described in Part (4) below.

(2) FACILITY CHARGE:

Charge = a) Remaining net book value of existing overhead facilities to be removed*;

plus, b) removal cost of existing overhead facilities*;

minus, c) salvage value of existing overhead facilities*;

plus, d) estimated construction cost of underground facilities including underground service laterals to residential customers meters or point of delivery for general service customers;

minus, e) estimated construction cost of overhead facilities including overhead service drops to customers' meters;

minus, f) qualifying binding cost estimate fee.

plus/minus, g) the net present value of the lifecycle operational costs differential including storm restoration.

* In calculating the Applicant's Facility Charge, elements a, b, and c of the Facility Charge formula above are to be excluded from Facility Charge due from an Applicant who submits an application providing a binding notification that the Applicant intends to convert existing non-hardened overhead facilities to underground facilities.

The actual or estimated costs applied to the facility charge shall be consistent with the standards of the Company's approved Storm Protection Plan.

3) CONSTRUCTION BY APPLICANT:

If agreed upon by both the Applicant and the Company, the Applicant may construct or install portions of the underground system as long as such work meets the Company's engineering and construction standards. The Company will own and maintain the completed distribution facilities upon accepting the system as operational. The type of system provided will be determined by the Company's standards.

Any facilities provided by the Applicant will be inspected by Company inspectors prior to acceptance. Any deficiencies discovered as a result of these inspections will be corrected by the Applicant at Applicant's sole expense, including the costs incurred by performing the inspections. Corrections must be made in a timely manner by the Applicant, otherwise the Company will undertake the correction and bill the Applicant for all costs of such correction. These costs shall be added to the original binding estimate.

(Continued on Next Page)

ISSUED BY: Thomas G. Foster, Vice President, Rates & Regulatory Strategy – FL
EFFECTIVE: ~~January 1, 2022~~

Item 6

State of Florida

Public Service Commission

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

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

DATE: August 26, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Iturralde, Barrett, Guffey) JGH
Office of the General Counsel (Sandy) JSC

RE: Docket No. 20220003-GU – Purchased gas adjustment (PGA) true-up

AGENDA: 09/08/22 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On August 8, 2022, St. Joe Natural Gas Company, Inc. (SJNG or Company) filed a Petition for a Mid-Course Correction of its purchased gas adjustment factor cap (PGA cap). After input from staff, the Company replaced the original filing with a Revised Petition on August 11, 2022 (Petition).[1] SJNG asserts that, without a mid-course adjustment to its PGA cap for the last three months of 2022, it expects an under-recovery of costs to total $348,459 by the end of December. In its Petition, SJNG is requesting to increase its PGA cap effective with the first billing cycle in October through the last billing cycle for December 2022. The currently-effective PGA cap was established by Order No. PSC-2021-0437-FOF-GU (2021 PGA Order).[2] At Page 3 in the 2021

[1]Document No. 05406-2022, the Revised Petition for a Mid-Course Correction, was filed on August 11, 2022. Instructions to the Clerk indicated that the Revised Petition was intended to replace Document No. 05304-2022, the August 8, 2022 filing.

[2]Order No. PSC-2021-0437-FOF-GU, Final Order Approving Purchased Gas Adjustment True-up Amounts and Establishing Purchased Gas Cost Recovery Factors To Be Applied During the Period of January 2022 through

PGA Order, the Commission approved a levelized PGA cap for SJNG for the period January through December 2022 of $0.6170 per therm. Although the Commission sets a levelized PGA cap, utilities have the flexibility to charge a lower factor on the monthly bill. The Company seeks a mid-cycle adjustment because recent market price projections for natural gas significantly exceed the price projections that were used to set the current PGA cap. Absent a correction, this projected increase in the price of natural gas is expected to result in a relatively large under-recovery of PGA costs by the end of 2022.[3]

SJNG's Petition conforms to requirements previously established by the Commission for seeking a mid-course correction to forecasted gas expenses.[4] The Commission recently approved a mid-course correction to a PGA cap for Peoples Gas System on July 7, 2022. Prior to that decision, the Commission has previously approved mid-course corrections to the PGA cap for several utilities when the amount of projected under-recovery was substantial.[5]

Issue 1 in this recommendation addresses the actual and projected PGA cost differences and the proposed related adjustment to the PGA cap. The proposed effective date of the revised PGA cap, as reflected in the proposed tariff sheet revision, is addressed in Issue 2. The revised tariff sheet is included as Attachment A to this recommendation.

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

December 2022, issued November 22, 2021, in Docket No. 20210003-GU, *In re: Purchased Gas Adjustment (PGA) true-up.*

[3]An annual docket is established to review the actual and estimated purchased gas costs. Ordinarily, the appropriate levelized purchased gas cost recovery (cap) factors for SJNG and the other investor-owned natural gas utilities are set/reset for a full 12-month period on an annual basis. The next hearing for the Purchased Gas Adjustment docket is scheduled to begin on November 1, 2022.

[4]*See* Order No. PSC-05-1029-PCO-GU (2005 Mid-course Order, issued October 21, 2005, in Docket No. 20050003-GU, *In re: Purchased Gas Adjustment (PGA) true up*. (The Commission has adopted a method for recovery of purchased gas costs by regulated natural gas utilities by means of a levelized Purchased Gas Adjustment (PGA) factor to serve as a cap, or maximum recovery factor, for each calendar year commencing January 1 through December 31. The Commission has also adopted a method by which a utility may, at its option, request a mid-course correction if revised projected expenses for the remainder of the period significantly exceed projected revenues as calculated under the Commission-approved cap. The Commission has previously approved mid-course corrections to the PGA cap for several utilities when the amount of projected under-recovery was substantial.)

[5]*See* Order No. PSC-00-1910-PCO-GU, Chesapeake Utilities Corporation Mid-Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In re: Purchased Gas Adjustment (PGA) True-up;* Order No. PSC-00-1422-PCO-GU, City Gas Company of Florida Mid-Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In re: Purchased Gas Adjustment (PGA) True-up*; Order No. PSC-00-2137-PCO-GU, Florida Public Utilities Mid-Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In re: Purchased Gas Adjustment (PGA) True-up*; Order No. PSC-00-1524-PCO-GU, Peoples Gas System Mid Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In re: Purchased Gas Adjustment (PGA) True-up*; Order No. PSC-00-1909-PCO-GU, Indiantown Gas Company Mid Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In re: Purchased Gas Adjustment (PGA) True-up*; Order No. PSC-00-2138-PCO-GU, St. Joe Natural Gas Company Mid-Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In re: Purchased Gas Adjustment (PGA) True-up;* Order No. PSC-2022-0287-PCO-GU, Peoples Gas System Mid Couse Correction, issued July 22, 2022, in Docket No. 20220003-GU, *In re: Purchased Gas Adjustment (PGA) True-up*.

Discussion of Issues

Issue 1: Should the Commission approve the Petition for Mid-Course Correction filed by SJNG?

Recommendation: Yes. Staff recommends the Commission approve the Petition for Mid-Course Correction filed by SJNG. Adjusting the PGA cap to $1.60 per therm as proposed by the Company would allow SJNG the opportunity to timely recover a portion of the recent market-driven escalation in the Company's actual and forecasted costs for natural gas that are expected to be much higher than originally forecasted. (Barrett, Iturralde)

Staff Analysis:

Summary of Petition

By the 2021 PGA Order, the Commission approved SJNG's levelized PGA cap factor of $0.6170 per therm, effective with the first billing cycle for January 2022. On an ongoing basis, SJNG monitors its natural gas cost recovery revenue and expenses, and based upon the actual 2021 results and updated estimates for 2022, the Company now projects that an under-recovery greater than 10 percent is likely to occur absent a modification to the current PGA cap.

Based upon a revised projection of revenues and expenses for the remainder of 2022, the Company estimates that the expense for purchasing natural gas will significantly exceed the revenues that are projected to be recovered via the currently-approved levelized PGA cap. Specifically, the revised 2022 expense for purchasing natural gas is estimated to be $779,685, while the projected revenues for the same period would be $541,062. When this difference between expenses and revenues is coupled with the true-up balances, interest charges, and other adjustments, the beginning of the year true up balance of $107,920 is projected to grow to $348,459 by the end of December 2022.[6] The mid-course correction the Company is proposing would recover only a portion ($172,099) of that imbalance.[7]

SJNG asserts that the primary cause of the projected 2022 under-recovery is a significant increase in actual and projected 2022 natural gas prices, yielding higher costs than the projected costs that were used to establish the currently-approved PGA cap. According to SJNG, since the issuance of the 2021 PGA Order, a convergence of inter-related factors has "resulted in an extraordinary environment affecting natural gas pricing." These factors include geopolitical uncertainty caused by Russia's military invasion of Ukraine and demand for natural gas exceeding current natural gas production levels. (Petition at 9) SJNG believes resetting the PGA cap for October through December of 2022 would allow it the flexibility to provide its customers with the appropriate price signal, while at the same time allow it to recover a portion of the reprojected costs for purchased natural gas.

[6]Schedules E-1/R and E-2, from Appendix A, attached to Revised Petition.
[7]As reflected in Schedules E-1/R and E-2 from Appendix B, SJNG's proposed PGA cap implemented for October through December 2022 is projected to produce higher revenue to offset most, but not all of the projected higher costs for 2022. If approved, the revised PGA cap is projected to result in revenues of $712,861.

SJNG is proposing to reset its PGA cap from $0.6170 per therm to $1.60 per therm, effective with the first billing cycle of October 2022 through the last billing cycle of December 2022. In SJNG's proposed notice to its customers that will be included in September bills, the Company states:

> St Joe Natural Gas has asked [the Public Service Commission to approve] a cap of $1.60 [per therm] for October through December 2022. St Joe Natural Gas is allowed to charge anything up to the cap to cover the costs of natural gas that is bought and sold to its customers. There is no profit on the fuel charge and it is a direct pass through to the customer. Waiting until 2023 would cause the cap to be set even higher to recover the unbilled gas costs associated with 2022's loss. This does not mean that the fuel charge will be $1.60 [per therm] on your bill. It means that we are able to charge up to $1.60 [per therm] should fuel prices continue to climb. Starting with your October bill, the fuel charge portion will likely increase from $0.617 [per therm] up to no more than $1.60 [per therm] to cover the cost of gas purchased from the pipeline and delivered to your meter. The fuel charge will more likely be set around $1.10 to $1.30 [per therm] in order to cover the current price and recover the unbilled fuel costs associated with 2022 so far.

If approved, applying this revised PGA cap will allow the Company to address much of the under-recovered true-up balance for 2022, although it will not eliminate the full amount of the true-up balance, or even the full amount of the re-projected expenses for 2022.[8] However, Commission approval of this mid-cycle correction would allow the Company to reduce the impact of the true-up balance in 2022, and thereby mitigate having to do so during the year 2023, for customers who are subject to the PGA. If approved, staff's calculation of the bill impact indicates than an average RS-2 residential customer with monthly consumption of 20 therms would incur an additional gas cost of $19.66 per month, based upon projections that implement the proposed new PGA cap at its full value between October and December 2022. The Company, however, has indicated in its notice to customers that it may set the fuel recovery charge at a lower rate that, if implemented, would result in a lower bill impact.

A revised tariff sheet in "clean" and "legislative" formats is attached to the Revised Petition, with the requested effective date beginning with the first billing cycle in October 2022. SJNG requested consideration of this Petition on or before the September 8, 2022 Commission Agenda Conference in order to allow it to provide notice to customers. The Company's proposed effective date and revisions to its tariff are addressed in Issue 2.

Analysis

In projecting its costs for natural gas, the Company evaluates New York Mercantile Exchange (NYMEX) natural gas futures settlement prices, recent historical records for therm sales, and the balance within its true up account. With that data, the Company observed NYMEX values in August of 2021 in the range of $4.50 per MMBTU, with NYMEX futures for 2022 forecasted between $5.00 and $6.00 for most of 2022. The Company states that at the time it revised its

[8]With its mid-course correction, SJNG is proposing to recover $172,099 of the $348,458 total estimated true up balance. The deferred portion ($176,359) includes the remainder of the actual under-recovery balances from 2021, through six months of 2022, and also includes $21,721 in reprojected expenses for 2022.

price projection, the NYMEX forecasted values for September through December 2022 were in the range of $8.00 to $9.00 per MMBTU, with most of 2023 forecasted to be back in the range of $5.00 per MMBTU. In its Petition, the Company also noted that current events in Ukraine have influenced natural gas market prices, and in a Data Request response, SJNG indicated that federal government policies related to production and leases has also influenced natural gas markets.

Staff evaluated historic NYMEX settlement prices and observed that when SJNG prepared its forecast of 2022 (in August of 2021), the NYMEX 12-month average of natural gas was $3.42 per MMBTU. Beginning in the second quarter of 2022, significant changes in the market impacted settlement prices, which ranged from $6.60 to $8.15 per MMBTU (through August 2022). Near-term forecasts of monthly futures for September through December 2022 are over $9.00 per MMBTU for all months. However, forecasted NYMEX futures extending into 2023 indicate that by the middle and later months in 2023, forecasted prices are considerably lower, with estimates ranging from $5.35 to $5.85 per MMBTU.

As noted above, SJNG's revised PGA cap will not eliminate the full amount of the projected year-end true-up balance. As presented, the SJNG Petition seeks to recover a total of $172,099 in projected true up costs, while deferring recovery of $176,359, as a mitigation to limit the impact its request will have on customer bills. Table 1-1 below presents information to demonstrate the calculations. Based on analyzing NYMEX future prices for 2023, which are lower than current prices, the Company structured its mid-course correction to only recover a portion of its full under-recovered balance, with the hope that lower market prices in 2023 will enable it to address the deferred under-recovery balance naturally.

Table 1-1
True-Up Calculations for SJNG's Mid-Course Correction

Components	Current (No Mid-Course Recovery)	Mid-Course Correction, as proposed	Difference
Reprojected Actual/Estimated 2022 Costs	$779,685	$779,685	$0
Reprojected Actual/Estimated 2022 Revenue	$541,062	$712,861	$171,799
Difference Between Reprojected Actual/Estimated 2022 Costs and Revenue	$238,623	$68,821	
Prior Year True Up and Interest Provision	$109,835	$109,535	$300
Projected Year End (2022) Total True Up	$348,458 Under	$176,359 Under	$172,099 Under

Source: Schedules E-1/R and E-2, from Appendices A and B, attached to Revised Petition.

Absent the instant pleading, November's cost recovery hearing would be the forum for SJNG to seek recovery of its actual and estimated costs. However, as the Petition demonstrates, SJNG has experienced and is expecting to continue to incur higher market prices than originally projected for natural gas, resulting in an estimated 2022 year-end under-recovery balance of $348,459.

Staff believes addressing the imbalance in costs at an earlier occasion is preferred over waiting until November's hearing to do so. Although the Commission sets a levelized PGA cap, utilities have the flexibility to charge a lower factor on monthly bills. Staff notes, however, that the revenue projections the Company provided with its Revised Petition are based on setting the PGA to the cap for October through December 2022. A mid-cycle change to reset the PGA cap is an opportunity for the Commission to be responsive to the market-driven escalation in actual and forecasted costs. While it is possible that market prices between now and November's hearing could change in a manner that would reduce the projected under-recovery balance, the opposite is possible as well. Absent any action, the higher or lower true-up balance would be addressed at the November evidentiary hearing in this docket, when the Commission sets the Company's 2023 PGA cap. However, staff believes a PGA cap change implemented for the October through December 2022 billing cycles is more timely. Staff believes this action will reduce the true-up balance through the remaining months of 2022, and would, in turn, moderate the portion of the 2023 PGA cap that is calculated from the end-of-year (2022) true-up balance.

In addition, it is important to note that, while the instant Petition addresses a proposed revision to the PGA cap for SJNG, the determination of prudence of PGA costs incurred is reserved as an issue to be resolved at the time of the hearing or in a subsequent Commission Agenda Conference. Any costs found to be imprudently incurred and recovered would be a matter to be addressed by the Commission at that time.

Bill Impact for typical residential customer

The revised PGA cap the Company is recommending is $1.60 per therm, an increase of approximately $0.98 cents per therm. For comparative purposes, staff assumes typical residential usage of 20 therms per month. Staff's calculation of the bill impact for a residential customer on the RS-2 rate schedule using 20 therms of natural gas is shown below in Table 1-2. Based on the Company's proposed PGA cap adjustment, a residential customer taking service under the RS-2 tariff with monthly consumption of 20 therms would incur an additional gas cost of up to $19.66 per month, for the October through December 2022 billing cycles.

Table 1-2
Sample Bill for a Residential Customer on the RS-2 Rate Schedule Using 20 Therms

Invoice Component	Currently-Approved Charges ($) (with PGA Cap at $0.617)	Proposed Charges for Oct-Dec, 2022 ($) (with PGA Cap at $1.60)	Current to Proposed Difference ($)	Current to Proposed Difference (%)
Customer Charge	$16.00	$16.00	-	-
Distribution Charge	24.66	24.66	-	-
Purchased Gas Adjustment	12.34	32.00	$19.66	159.3%
Total Bill	$53.00	$72.66	$19.66	37.1%

Source: Staff's calculation, noting that utility and gross receipts taxes were not included.

Staff observes, however, that this example demonstrating a bill impact of about 36 percent is based on SJNG setting its PGA factor at the full cap of $1.60 per therm for October through December 2022.[9] However, as expressed in its customer notification, SJNG seeks the flexibility to set its PGA cap at $1.60 per therm, but is hopeful that market conditions for what it pays for gas may allow it to set its PGA recovery amount at a level below the $1.60 per therm upper limit. If the PGA recovery factor was set at an amount less than $1.60 per therm, then the bill impact would be lower than as shown in Table 1-2. In addition, the Company has filed its projection testimony and exhibits for 2023, which forecast a lower PGA cap in 2023 than the $1.60 per therm under consideration in this pleading, if its mid-course correction is approved.[10]

By requesting a mid-course correction for only a portion of it estimated total true up balance, staff believes the Company is balancing the uncertainty of whether market conditions will be more or less favorable for reducing the under-recovery balances at a later time, against the near-term impact the requested correction will have on its customers. Staff believes this is a reasonable approach for two reasons. First, market conditions are at historically high levels, which has created the under-recovery balance that prompted the Company to request relief. By requesting only a portion of its total estimated true up balance, the Company is attempting to moderate the impact of what customers would pay in order to address the under-recovery of its purchased gas costs. Second, NYMEX future prices for 2023 are reflecting that market prices may recede from current levels, which is favorable in 2023 for the imbalance between costs and revenues to improve. Table 1-3 below illustrates what the remaining true-up balances would be with and without the requested mid-course correction. If the mid-course correction is approved, the projected year end (2022) under-recovery balance will be $176,359, rather than $348,458, if no mid-course correction is implemented.

Table 1-3
True-Up Calculations for SJNG

Components of True Up	Current PGA Rates (Without a Mid-Course Correction)	SJNG Mid-Course Correction
Beginning of 2022 Balance	$107,920	$107,920
Amount authorized in prior order	$45,103	$45,103
Actual/Estimated Results of 2022	$193,520	$21,721
Interest Provision	$1,915	$1,615
Projected Year End (2022) Balance	$348,458	$176,359

Source: Schedules E-1/R and E-2, from Appendices A and B, attached to Revised Petition.

[9]Table 1-2 was prepared as an example of a typical residential bill. Staff research indicates that November and December are months when usage is higher than the average of other months, which means the actual bill impacts could be higher in those months than as presented as in Table 1-2.

[10]In its Projection filing, the Company prepared schedules with and without the approval of the instant Petition. If the mid-course correction is granted, the Company projects that its 2023 PGA cap will be $1.495 per therm, and without, the 2023 PGA cap is estimated to be $1.713 per therm.

Conclusion

Staff recommends the Commission approve the Petition for Mid-Course Correction filed by SJNG. Adjusting the PGA cap to $1.60 per therm as proposed by the Company would allow SJNG the opportunity to timely recover a portion of the recent market-driven escalation in the Company's actual and forecasted costs for natural gas that are expected to be much higher than originally forecasted.

Issue 2: If approved by the Commission, what is the appropriate effective date for SJNG's revised levelized PGA cap?

Recommendation: The appropriate revised levelized PGA cap shown on Attachment A (Fifteenth Revised Sheet No. 103) should become effective with the first billing cycle of October 2022. (Guffey)

Staff Analysis: In its Petition, SJNG has requested that the proposed revisions to the PGA cap and associated tariffs become effective beginning with the first billing cycle of October 2022, which starts October 1, 2022. Under this request, the effective date of the increase would be 23 days post-Commission vote. The Company will provide the relevant tariff sheet to correspond with the given decision by the Commission.

The Commission has considered the effective date of rates and charges of the revised PGA cap and for the levelized purchased gas adjustment cost recovery factors on a case-by-case basis. While petitions for purchased gas adjustment cost recovery mid-course corrections are infrequent, the Commission has approved an effective date less than 30 days from the Commission's vote.

In Order No. PSC-05-1029-PCO-GU, the Commission approved a mid-course correction to Florida Public Utilities Company's PGA cap on the effective date of the Commission's vote.[11] In 2001, the Commission approved requests by six natural gas utilities for mid-course corrections to their caps. In each of these cases, the Commission allowed the new cap to take effect the day of the Commission's vote.[12] In the 2001 cases, the Commission stated that the requests were driven by drastic increases in the price of natural gas. For the recent Peoples Gas mid-course correction, the Commission approved an effective date of 26 days after the vote.

For comparison purposes, over the last 20 years, in the electric Fuel Cost Recovery Clause docket, the Commission has approved fuel cost recovery factor rate decreases effective sooner than the next full billing cycle after the date of the Commission's vote, with the range between the vote and effective date being from 25 to 2 days. The rationale for that action being that it was in the customers' best interests to implement the lower rate as soon as possible. With regard to fuel cost recovery factor/rate increases, the Commission has approved an effective date of the revised factors ranging from 14 to 29 days after the vote. In two of these cases, the Commission noted that the utility had given its customers 30 days' written notice before the date of the vote

[11]Order No. PSC-2005-1029-PCO-GU, Final Order Approving Mid-Course Correction, issued October 21, 2005, in Docket No. 20050003-GU, *In re: Purchased Gas Adjustment (PGA) true-up.*

[12]*See* Order No. PSC-00-1910-PCO-GU, Chesapeake Utilities Corporation Mid-Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In re: Purchased Gas Adjustment (PGA) True-up;* Order No. PSC 00-1422-PCO-GU, City Gas Company of Florida Mid-Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In Re: Purchased Gas Adjustment (PGA) True-up*; Order No. PSC-00-2137-PCO-GU, Florida Public Utilities Mid-Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In Re: Purchased Gas Adjustment (PGA) True-up*; Order No. PSC-00-1524-PCO-GU, Peoples Gas System Mid Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In Re: Purchased Gas Adjustment (PGA) True-up*; Order No. PSC-00-1909-PCO-GU, Indiantown Gas Company Mid Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In Re: Purchased Gas Adjustment (PGA) True-up*; Order No. PSC-00-2138-PCO-GU, St. Joe Natural Gas Company Mid-Course Correction, issued February 19, 2001, in Docket No. 010003-GU, *In Re: Purchased Gas Adjustment (PGA) True-up*.

that a fuel cost recovery factor increase had been requested and provided the proposed effective date of the higher fuel factors. Staff believes the same rationale is applicable to a gas mid-course correction.

As previously noted, there are 23 days between the Commission's vote on September 8, 2022, and the beginning of SJNG' billing cycle on October 1, 2022. Staff notes that an effective date in October 2022 will provide the greatest number of months within 2022 over which to spread recovery, resulting in a lower potential monthly bill impact for SJNG's customers.

Conclusion

Based on the above, staff recommends that the appropriate revised levelized PGA cap shown on Attachment A (Fifteenth Revised Sheet No. 103) should become effective with the first billing cycle of October 2022.

Issue 3: Should this docket be closed?

Recommendation: No. Docket No. 20220003-GU is an on-going proceeding and should remain open. (Sandy)

Staff Analysis: Docket No. 20220003-GU is an on-going proceeding and should remain open.

ST. JOE NATURAL GAS COMPANY, INC. ~~Fourteenth~~ Fifteenth Revised Sheet No. 103
Original Volume No. 4 Cancels ~~Thirteenth~~ Fourteenth Revised Sheet No.103

RATE SCHEDULE
BILLING ADJUSTMENTS

1. Purchased Gas Adjustment Clause

A. The fuel charge of the Monthly Purchase Gas Adjustment Rate for Gas supplied in any billing period shall be adjusted by the Company's expected weighted average cost of gas (WACOG). The WACOG may not exceed the Commission approved purchased gas cost recovery factor based on estimated gas purchases for the twelve-month period of January through December, in accordance with the methodology adopted by the Commission on May 19, 1998, in Order No. PSC-98-0691-FOF-PU, Docket No. 980269-PU, including seasonal factors, or as such methodology may be amended from time to time by further order of the Commission. The factor determined as set forth above shall be multiplied by 1.00503 for regulatory fees, and rounded to the nearest $0.000001 per therm, to be applied to the total number of therms consumed by the customer during the billing period.

B. The purchased gas cost recovery factor for the billing months of ~~January~~ October 2022 through December 2022 is ~~61.7 cents~~ $1.60 per therm. This factor was approved by the Commission on ~~November 22, 2021~~ by Order No. ~~PSC-2021-0437-FOF-GU.~~

C. The purchased gas cost recovery factor shall serve as a cap or maximum recovery factor. If re-projected expenses for the remaining period exceed projected recoveries by at least 10.0% for the twelve-month period, a mid-course correction may formally be requested by the Company. For changes in market conditions and costs, the Company, upon one day's notice to the Commission, shall have the option of flexing downward (reducing the WACOG), or upward (increasing the WACOG) to the extent that the increase does not exceed the authorized cap. The current WACOG may be adjusted for prior month's differences between projected and actual costs of gas purchased, but may not exceed the approved cap.

Issued By: Stuart L. Shoaf, President Effective: ~~January 01, 2021~~
Issued On: ~~July 14, 2008~~

RATE SCHEDULE
BILLING ADJUSTMENTS

1. Purchased Gas Adjustment Clause

A. The fuel charge of the Monthly Purchase Gas Adjustment Rate for Gas supplied in any billing period shall be adjusted by the Company's expected weighted average cost of gas (WACOG). The WACOG may not exceed the Commission approved purchased gas cost recovery factor based on estimated gas purchases for the twelve-month period of January through December, in accordance with the methodology adopted by the Commission on May 19, 1998, in Order No. PSC-98-0691-FOF-PU, Docket No. 980269-PU, including seasonal factors, or as such methodology may be amended from time to time by further order of the Commission. The factor determined as set forth above shall be multiplied by 1.00503 for regulatory fees, and rounded to the nearest $0.000001 per therm, to be applied to the total number of therms consumed by the customer during the billing period.

B. The purchased gas cost recovery factor for the billing months of October 2022 through December 2022 is $1.60 per therm. This factor was approved by the Commission on by Order No.

C. The purchased gas cost recovery factor shall serve as a cap or maximum recovery factor. If re-projected expenses for the remaining period exceed projected recoveries by at least 10.0% for the twelve-month period, a mid-course correction may formally be requested by the Company. For changes in market conditions and costs, the Company, upon one day's notice to the Commission, shall have the option of flexing downward (reducing the WACOG), or upward (increasing the WACOG) to the extent that the increase does not exceed the authorized cap. The current WACOG may be adjusted for prior month's differences between projected and actual costs of gas purchased, but may not exceed the approved cap.

Item 7

FILED 8/26/2022
DOCUMENT NO. 05675-2022
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 26, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Bethea, Hudson)
Office of the General Counsel (Sandy)

RE: Docket No. 20220112-WS – Application for approval to establish a service availability charge for new radio frequency meter installations, by Southlake Utilities, Inc.

AGENDA: 08/18/22 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 3/15/2023 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

Southlake Utilities, Inc. (Southlake or utility) is a Class B utility which provides water and wastewater service to approximately 3,371 water and 3,194 wastewater customers in Lake County. According to the utility's 2021 annual report, the utility's operating revenues were $981,750 for water and $1,329,614 for wastewater. The utility's operating expenses were $719,108 for water and $1,224,689 for wastewater.

On June 15, 2022, Southlake filed an application to establish service availability charges for new radio frequency meter installations. The official filing date was established as July 15, 2022. On July 27, 2022, the utility waived the 60-day suspend provision of Section 367(6), Florida Statutes (F.S.). Service availability charges are cash contributions new customers or developers make to a utility prior to connecting to the facilities; meter installation charges are a type of service availability charge. This recommendation addresses radio frequency meter installation charges

for Southlake. The Commission has jurisdiction pursuant to Sections 367.081, 367.091 and 367.101, F.S.

Discussion of Issues

Issue 1: Should Southlake's request to revise its meter installation charges be approved?

Recommendation: Yes. Southlake's request to revise its meter installation charges should be approved. The appropriate meter installation charges should be $402.31 for the 5/8 x 3/4 inch meter, $556.49 for the 1-inch meter, and at actual cost for all other meter sizes. The utility should file a revised tariff sheet and a proposed notice to reflect the Commission-approved meter installation charges. Southlake should provide notice to property owners who have requested service beginning 12 months prior to the establishment of this docket. The approved charge should be effective for connections made on or after the stamped approval date on the tariff sheet. The utility should provide proof of noticing within 10 days of rendering the approved notice. (Bethea, Hudson)

Staff Analysis: Pursuant to Section 367.101, F.S., the Commission shall set just and reasonable charges and conditions for service availability. The utility's existing meter installation charges were set in 1991 at $130 for the 5/8 x 3/4 inch meter, $210 for the 1-inch meter, and at actual cost for all other meter sizes.[1] The existing meters are manual read while the new meters the utility will install are radio frequency (RF) meters. The utility indicated that, in time, the RF meters would help lower Southlake's meter reading labor costs and provide more system information from meter reads.

Southlake's proposed material and installation costs for RF meters are $402.31 for the 5/8 x 3/4 inch meter and $556.49 for the 1-inch meter. All other meter sizes are at actual cost. Pursuant to Rule 25-30.565(3)(t), Florida Administrative Code, Southlake is required to provide a schedule showing, by meter size, the cost of meters, connecting fittings, meter boxes or enclosures and also showing sufficient data on labor and any other applicable costs to allow the determination of an average cost for meter installation by type. Table 1-1 reflects the utility's cost justification for its requested meter installation charges.

[1]Order No. 24564, issued May 21, 1991, in Docket No. 900738-WS, *In re: Application of Southlake Utilities, Inc. for water and wastewater certificates in Lake County*.

Table 1-1
Service Availability Charges
Meter Installation Cost

New Meter Cost		
	5/8 x 3/4”	**1”**
Radio Frequency Meters	$225.77	$376.64
Double Meter Box	$46.22	$46.22
Meter Coupling	$9.29	$10.48
Backflow Check Valve	$89.88	$92.00
Total Material Cost	**$371.16**	**$525.34**
Labor to install (one hour)	$23.08	$23.08
Overhead (35 percent)	$8.08	$8.08
Total Meter Installation Cost	**$402.31**	**$556.49**

Source: Utility’s Cost Justification

Southlake’s proposed meter installation charges are based on the estimated cost to install RF meters, the required backflow prevention device for each meter size, and labor associated with the installation. The utility provided invoices to support the material charges. The labor costs are based on the average hourly rate of two employees. The Commission has previously approved meter installation charges at this amount for the 5/8 x 3/4 inch meter.[2] Staff believes the meter installation charges are reasonable and should be approved.

At this time, the proposed meter installation charges are applicable only to new customers who would be contributing infrastructure to the utility. Southlake explained that it has replaced existing meters with the RF meters in localized communities, at its own expense, in order to offset the expense of hiring additional personnel. The utility indicates a complete change out of existing manual read meters would be a capital project in the future.

Based on the above, Southlake’s request to revise its meter installation charges should be approved. The appropriate meter installation charges should be $402.31 for the 5/8 x 3/4 inch meter, $556.49 for the 1-inch meter, and at actual cost for all other meter sizes. The utility should file a revised tariff sheet and a proposed notice to reflect the Commission-approved meter installation charges. Southlake should provide notice to property owners who have requested service beginning 12 months prior to the establishment of this docket. The approved charge should be effective for connections made on or after the stamped approval date on the tariff sheet. The utility should provide proof of noticing within 10 days of rendering the approved notice.

[2]Order No. PSC-18-0271-PAA-WS, issued May 30, 2018, in Docket No. 20160220-WS, *In re: Application for original water and wastewater certificates in Sumter County, by South Sumter Utility Company, LLC.*

Issue 2: Should this docket be closed?

Recommendation: The docket should remain open pending staff's verification that the revised tariff sheet and notice have been filed by Southlake and approved by staff. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with the charge held subject to refund pending resolution of the protest. If no timely protest is filed, a consummating order should be issued and, once staff verifies that the notice of the charge has been given to property owners, the docket should be administratively closed. (Sandy)

Staff Analysis: The docket should remain open pending staff's verification that the revised tariff sheet and notice have been filed by Southlake and approved by staff. If a protest is filed within 21 days of the issuance date of the Order, the tariff should remain in effect with the charge held subject to refund pending resolution of the protest. If no timely protest is filed, a consummating order should be issued and, once staff verifies that the notice of the charge has been given to property owners, the docket should be administratively closed.

Item 8

FILED 8/26/2022
DOCUMENT NO. 05691-2022
FPSC - COMMISSION CLERK

State of Florida

Public Service Commission

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

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

DATE: August 26, 2022

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (Phillips, Ellis, King) *TB*
Division of Accounting and Finance (Norris, Thurmond) *ALM*
Division of Economics (Bruce, Hudson) *JGH*
Office of the General Counsel (Crawford, Sandy) *JSC*

RE: Docket No. 20200226-SU – Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.

AGENDA: 09/08/22 – Regular Agenda – Decision on Motion for Reconsideration – Oral Argument Requested - Participation is at Discretion of the Commissioners

COMMISSIONERS ASSIGNED: Clark, La Rosa, Passidomo

PREHEARING OFFICER: La Rosa

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On October 13, 2020, Environmental Utilities, LLC (EU or Utility) filed its application for an original wastewater certificate in Charlotte County (County). The Utility seeks to provide central sewer service to residents of the barrier islands of Little Gasparilla, Don Pedro, and Knight, which are currently served by septic tanks, with the exception of parts of Knight Island which is served by a central sewer system. The proposed service territory includes an estimated 860 existing equivalent residential connections (ERCs) and 388 potential future ERCs, for a total of 1,248 ERCs at buildout. The Utility seeks to begin serving customers by the end of 2023. With its application, EU filed a petition for temporary waiver of portions of Rule 25-30.033, Florida Administrative Code (F.A.C.), so that the Utility's initial rates and charges would be set at a date

subsequent to the granting of the certificate of authorization. The Commission denied the petition for temporary rule waiver.[1]

Prior to the Commission addressing the application, timely objections were filed on behalf of Palm Island Estates Association, Inc. (PIE) and Linda Cotherman (LC). The Office of Public Counsel (OPC) intervened on September 24, 2021.[2]

On February 8, 2022, the Commission held an evidentiary hearing in Venice, Florida. This hearing included two customer service hearings: one on February 8, 2022, and one the following morning on February 9, 2022. A total of 53 customers spoke at the service hearings and over 1,000 written customer comments were received by the Commission and placed in the correspondence side of the docket.

On June 7, 2022, the Commission voted to deny EU's application for a certificate to provide wastewater service in the County, predicated largely upon a finding that EU failed to demonstrate a need for the proposed Utility. Final Order No. PSC-2022-0267-FOF-WS (Final Order), commemorating the Commission's vote, issued on July 8, 2022.[3]

EU filed a timely motion for reconsideration of the final order on July 22, 2022, along with a request for oral argument on its motion for reconsideration.[4] On July 25, 2022, EU filed a "Notice of Filing Attachments to its Motion for Reconsideration," consisting of a letter dated June 28, 2022, from the Charlotte County Board of Commissioners.[5] That letter itself references and attaches another letter dated September 27, 2021, authored by former County Utilities Director Craig Rudy[6] and County Water Quality Manager Brandon Moody, supporting EU's project.[7] OPC, PIE, and LC timely filed responses to EU's motion for reconsideration and request for oral argument.

Staff's recommendation addresses EU's request for oral argument (Issue 1) and the appropriate disposition of EU's motion for reconsideration (Issue 2). The Commission has jurisdiction pursuant to Sections 367.031 and 367.045, Florida Statutes (F.S.).

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[1] Order No. PSC-2021-0066-PAA-SU, issued February 2, 2021, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.*

[2] Order No. PSC-2021-0376-PCO-SU, issued September 28, 2021, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.*

[3] Order No. PSC-2022-0267-FOF-SU, issued July 8, 2022, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.*

[4] Document Nos. 04918-2022 and 04920-2022, filed on July 22, 2022, in Docket No. 20200226-SU, *In re: Application for certificate to provide wastewater service in Charlotte County, by Environmental Utilities, LLC.*

[5] Document No. 04945-2022

[6] As discussed in the Final Order at p. 5, Charlotte County was not a party to this docket, but its designated representative Mr. Craig Rudy provided testimony via a deposition resulting from a subpoena by PIE. Pursuant to the Prehearing Order, EU was permitted to utilize the deposition at hearing.

[7] The September 27, 2021 letter was placed in the correspondence side of the docket on September 28, 2021 (see Document Nos. 11672-2021, 11627-2021, 11623-2021, 11622-2021, and 11620-2021).

Discussion of Issues

Issue 1: Should the Commission grant Environmental Utilities, LLC's Request for Oral Argument?

Recommendation: No. Staff recommends that the pleadings are sufficient on their face for the Commission to evaluate and decide EU's motion for reconsideration. However, if the Commission wishes to hear oral argument, staff recommends that 10 minutes per side is sufficient. (Sandy, Crawford)

Staff Analysis:

Parties' Arguments

EU's Motion

EU filed a request for oral argument on its motion for reconsideration.[8] As discussed in its motion, EU contends that the Commission incorrectly applied a new standard for determining need in this docket, and that oral argument would help the Commission understand the ramifications of the new standard and whether it is good public policy. EU requests that each party have fifteen minutes for oral argument to address whether the Commission "overlooked, ignored, and misapplied certain statutory requirements concerning the need and public interest issues."

OPC Response

In its response, OPC took no position on EU's request for oral argument.

PIE Response

PIE argues that EU's motion for reconsideration should be denied on its face, thereby rendering oral argument unnecessary. PIE contends that requiring oral argument would create a significant financial burden to PIE when the record has been set, EU's arguments have already been rejected, and the motion for reconsideration is an attempt to re-argue resolved positions in the proceedings.

LC Response

LC contends that EU's pleadings are sufficient on their face for the Commission to render a decision on the motion for reconsideration. Furthermore, LC argues that if EU's request for oral argument is granted, EU should not be given further opportunity in oral argument to rely upon the County letter that was submitted subsequent to both the closing of the record and the posting of the final order.

[8] Rule 25-22.0022(3), F.A.C., states that the Commission has the sole discretion to grant or deny oral argument.

Staff Analysis

Staff recommends that the pleadings are sufficient on their face for the Commission to evaluate and decide EU's motion for reconsideration. Staff does not believe that oral argument would aid the Commission in understanding and evaluating the issues presented in EU's motion for reconsideration. Thus, staff recommends that EU's request for oral argument be denied. However, if the Commission, in its discretion, chooses to hear oral argument, staff recommends 10 minutes per side is sufficient.

Issue 2: Should EU's Motion for Reconsideration of Order No. PSC-2022-0267-FOF-SU be granted?

Recommendation: No. Staff believes that EU's motion fails to raise a point of fact or law that the Commission overlooked or failed to consider in rendering its decision. (Sandy, Crawford)

Staff Analysis:

Standard of Review

The standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that Commission overlooked or failed to consider in rendering the order.[9] In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered.[10] Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review."[11]

Parties' Arguments

EU's Motion

EU alleges numerous points of fact and law that it believes the Commission overlooked or failed to consider in denying EU's application. The majority of EU's arguments touch on whether EU demonstrated there was a need for service in its proposed service area. EU relies on the following text of the order to argue that the Commission created a new standard for determining need for service:

> The evidence in this docket does not contain any requests for service from existing property owners or potential developers. In addition, no evidence was presented to demonstrate that any state or local environmental regulator has mandated the installation of central sewer wastewater service in the proposed service territory at this time…

(Final Order at p. 10). According to EU, the Commission disregards how its decision will promote an anti-environmental precedent that will make it virtually impossible for private utilities to implement septic-to-sewer projects along Florida's coastline. The motion goes on to propose several ways in which the Commission ignored or failed to consider the County's support of EU's application, concluding that the Commission totally overlooked the testimony of the County's representative, witness Craig Rudy (witness Rudy), as well as the September 27, 2021 letter. EU argues that Commission overlooked or misunderstood the significance of Charlotte County's Mandatory Connection Ordinance (Ordinance) as it relates to EU's

[9] *See Stewart Bonded Warehouse, Inc. v. Bevis*, 294 So. 2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So. 2d 889 (Fla. 1962); and *Pingree v. Quaintance*, 394 So. 2d 162 (Fla. 1st DCA 1981).
[10] *Sherwood v. State*, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing *State ex. rel. Jaytex Realty Co. v. Green*, 105 So. 2d 817 (Fla. 1st DCA 1958).
[11] *Stewart Bonded Warehouse, Inc.* at 317.

application.[12] EU also suggests that the Commission erroneously overlooked how EU's application for a wastewater certificate is in compliance with the County's Comprehensive Plan (Comp Plan). Likewise, EU suggests that without making a definitive ruling, the Commission ignored, misinterpreted or overlooked the intent of the County's Sewer Master Plan (Master Plan). Moreover, EU posits that the Commission's order completely ignores the significance of the Bulk Sewer Service Agreement entered into between EU and the County. Ultimately, EU concludes that the Commission's decision is not in the public interest.

OPC Response

OPC states that its response is offered "solely for purposes of protecting the record in this case and for preservation of the principles of fairness" in Commission proceedings. Specifically referencing the June 28, 2022 letter from the County provided in EU's "Notice of Filing Attachments to its Motion for Reconsideration," OPC believes that EU's motion is unauthorized since the letter was mailed to the Commission months after the record closed in February and weeks after the Commission took final agency action on June 7, 2022. As such, OPC contends the motion should be denied, as it is predicated primarily - if not entirely - on information that is blatantly outside the record.

PIE Response

PIE argues that despite EU's protestations, the record is replete with evidence and testimony supporting the Commission's determination that there was no need for service, and that findings of fact by the Commission cannot be disturbed if there is competent substantial evidence in the record.[13] According to PIE, the Commission appropriately determined there was no need for service and that, therefore, the public interest would not be served if the application was granted. EU cannot point to anything in the record that would undercut this finding; it provides no facts, only counsel's previously rejected arguments, and its attempt to go outside the record to inject Charlotte County's post-hearing unsworn correspondence as support for the application is wholly improper. PIE contends that EU's motion should be denied because the record provides ample competent substantial evidence in support of the Commission's findings of fact and conclusions of law.

LC Response

LC argues that the Commission should deny EU's motion. LC posits that EU appears to be testifying after the fact, using words like "intent," "obviously," "apparent," and "tantamount to" – language frequently employed in the absence of evidence. While EU states that reconsideration should be based on "specific factual matters set forth in the record and susceptible to review," the motion introduces elements that were not part of the record and were delivered after the order was posted. And while EU points out that "it is not appropriate to reargue matters that have

[12] Section 3-8-41(a), Charlotte County Ordinances provides that "[a]ll developed property must connect the plumbing system or any structure on the property to an available public or private sewer system within three hundred sixty-five (365) days after written notification by the public or private sewer system that the system is available for connection."
[13] *Citizens v. Brown*, 269 So. 3d 498 (Fla. 2019).

already been considered," LC maintains that much of the motion consists of relitigating points that were previously made and reviewed.

Staff Analysis

Staff disagrees with EU that there are points of fact or law that the Commission overlooked or failed to consider in denying EU's application for wastewater certification. EU's criticism of the Commission's decision is merely reargument, which is not grounds for reconsideration.

A. New Legal Standard (Need for Service)

EU claims that the Commission derived a new standard for determining need for service. Rule 25-30.033(1)(k), F.A.C, sets forth the information to be filed in order to demonstrate there is a need for service in a proposed service area as follows:

1. The number of customers currently being served and proposed to be served, by customer class and meter size, including a description of the types of customers currently being served and anticipated to be served, i.e., single family homes, mobile homes, duplexes, golf course clubhouse, or commercial. If the development will be in phases, this information shall be separated by phase;
2. A copy of all requests for service from property owners or developers in areas not currently served;
3. The current land use designation of the proposed service territory as described in the local comprehensive plan at the time the application is filed. If the proposed development will require a revision to the comprehensive plan, describe the steps taken and to be taken to facilitate those changes, including changes needed to address the proposed need for service; and,
4. Any known land use restrictions, such as environmental restrictions imposed by governmental authorities.

This information may be weighed at the Commission's discretion when determining whether a need for service exists. Exercising that discretion does not itself create a new legal standard as argued in EU's motion. To the contrary, discretion is an essential feature of any request for wastewater certification because no two service areas are ever the same.

The Commission held two service hearings in this docket: one on February 8, 2022, and one the following morning on February 9, 2022. Customers participating at those service hearings were overwhelmingly opposed to EU's application. So too was the correspondence received by the Commission while the record remained open. While EU strenuously argues that this customer communication was the inflated presence of a vocal minority, nothing in the record substantiates that argument.

Giving weight to EU's failure to demonstrate requests for service from EU corresponds with the requirements of Rule 25-30.033(1)(k)(2), F.A.C. Had EU presented evidence of customer support while the record was open, or had supportive property owners been present at service

hearings or written the Commission, then those sentiments could have been weighed by the Commission when deciding whether there was a need for service in the proposed service area.

B. County Support of EU's Application

EU argues at length in its motion that the Commission clearly misapplied or ignored the law when it failed to consider the County's support of EU's application. The different ways in which the Commission allegedly failed to consider the County's position of EU's application are addressed in the following subsections.

I. Craig Rudy's Testimony

EU contends that the Commission ignored the testimony of witness Rudy or failed to weigh his testimony as the County's designated representative. But staff believes EU misstates the clarity and weight to be given to witness Rudy's testimony.

It is true that in his deposition, witness Rudy stated that the County believed EU's application to be consistent with the Comp Plan; but, there is ample evidence in the record to show inconsistencies between EU's application and the Comp Plan, which will be referenced in a subsequent subsection. And witness Rudy's testimony did little to resolve the competing arguments presented by the parties in the course of the formal hearing held in this docket. Importantly, witness Rudy's testimony was but one piece of evidence in an extensive evidentiary record, which the Commission weighed in its entirety. While the Commission received witness Rudy's testimony in his capacity as the County's representative, his deposition offered little substance for the Commission to rely on in making its final decision. Ultimately, his testimony was given the weight the Commission believed it deserved.

The County letter authored by witness Rudy, and Brandon Moody, dated September 27, 2021, placed in the docket as correspondence, mirrored much of the substance of witness Rudy's deposition testimony. Therefore, like witness Rudy's testimony, it was given the weight the Commission believed it deserved. The crux of EU's argument is that the Commission should have relied more on witness Rudy's testimony and the County's correspondence, but such arguments are not grounds for reconsideration.

II. Environmental Restrictions and Need

During the hearing and in its post-hearing brief, EU argued that there is a need for its central sewer system due to failing septic tanks in the proposed service territory contributing to red tide and water quality degradation of Lemon Bay and the Gulf of Mexico. EU also cited the Florida Governor as making the environmental remediation of the area a priority. According to EU, all of these factors led the County to support its application. Yet, based on Rule 25-30.033(1)(k)(4), F.A.C., the Commission found the absence of a specific environmental restriction or mandate more compelling than the general assertions made by EU. Although EU disagrees with how the Commission weighed evidence of an environmental need, such disagreements are not grounds for reconsideration.

III. Mandatory Connection Ordinance

EU contends that the Commission overlooked or misunderstood the significance of the Ordinance. Yet, there is no evidence in the record to support this claim.

The County's Ordinance was discussed at length during the formal hearing held in this docket. The parties presented arguments about the Ordinance in their post-hearing briefs. In the Commissioners' deliberations during the June 7, 2022 Agenda Conference, the Ordinance was discussed before voting to deny EU's application for certification. Unlike what is described in EU's motion, the Ordinance and its implications were fully fleshed out. As discussed in the Commission's final order, "[the Commission] did not consider the existence of the mandatory connection ordinance dispositive of the issue of need for service." (Final Order pp. 8-9).

Nor did the Commission misunderstand the Ordinance. The words in a statute are the best guide to legislative intent:[14] a statute's text is the most reliable and authoritative expression of the legislature's intent.[15] Like a statute, an Ordinance's text is the most reliable and authoritative expression of the County's intent. Section 3-8-41(a), Charlotte County Ordinances, states in pertinent part, "[a]ll developed property must connect the plumbing system for any structure on the property to an available public or private sewer system within three hundred sixty-five (365) days after written notification by the public or private sewer system that the system is available for connection." The plain text of the Ordinance shows that it only becomes operative once a system is available for connection. Thus where there is no system to speak of, the Ordinance has no legal effect. Nothing in the text of the Ordinance references whether a sewer system should be present in a service area in the first place. It appears as if EU is asking the Commission to infer motivations of the County from the mere existence of the Ordinance, which staff believes is not supported by the record evidence.

IV. Comprehensive Plan

EU's motion contends that, "when determining that central wastewater service was inconsistent with the County's comprehensive plan this Commission overlooked that compliance with the Comprehensive Plan is obvious from the fact that central Utility services are already being provided on the islands."

The Commission is granted the discretion whether to defer to a comprehensive plan when deciding whether to grant a wastewater certificate.[16] In compliance with the statute, the Commission considered the plan, and in addressing the relationship between EU's application and the comprehensive plan found inconsistencies between the two. For example, the record reflects that EU's proposed service area is designated as a Rural Service Area, according to the comprehensive plan. The Commission's order notes the following:

[14] *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067 (Fla. 2006).
[15] *Hill v. Davis*, 70 So. 3d 572 (Fla. 2011); *Florida Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815 (Fla. 2007); *Brass & Singer, P.A. v. United Auto. Ins. Co.*, 944 So. 2d 252 (Fla. 2006).
[16] *City of Oviedo v. Clark*, 699 So. 2d 316, 318 (Fla. 1st DCA 1997) ("The plain language of the statute only requires the Commission to consider the comprehensive plan. The Commission is expressly granted discretion in the decision of whether to defer to the plan.")

> [T]he Rural Service Area designation has multiple elements that explicitly reference Commission-regulated utilities and does not appear to support the construction of central sewer systems. WSW Policy 3.2.4 states "The County shall discourage expansion of service areas of Utility companies regulated by the [Commission] to any areas outside of the Urban Service area . . ." PIE witness Hardgrove highlighted FLU Policy 3.2.4 which states that the Rural Service Area shall "continue to rely primarily upon individual on-site septic systems as the method of disposal of wastewater." The same policy further bans new developments in the Rural Service Area from being constructed with central sewer systems, but does allow an exemption if it is "clearly and convincingly demonstrated by the proponents of the system expansion that a health problem exists in a built but unserved area for which there is no other feasible solution."

(Final Order p. 10). The aforementioned land designation and policies contained within the comprehensive plan led the Commission to conclude that EU's application is inconsistent with the plan.

This is yet another instance where EU offers reargument instead of a point of fact or law that the Commission overlooked or failed to consider in rendering the order. Therefore, EU's arguments that the Commission overlooked EU's compliance with the Comp Plan are without merit, and staff believes they are not grounds for reconsideration.

V. Sewer Master Plan

EU suggests that without making a "definitive" ruling,[17] the Commission ignored, misinterpreted or overlooked the intent of the Sewer Master Plan. As noted in its order, the Commission has no statutory or rule requirement to consider the Master Plan. Just as the Commission is not bound by a local comprehensive plan in a certificate proceeding, a document such as the Master Plan – which is not contemplated in Section 367.045, F.S., or Rule 25-30.033, F.A.C. – is not binding either. All the same, as set out in its order, the Commission chose to address the Master Plan because it was identified as an issue in this docket, and there was substantial evidence and discussion at the hearing regarding this issue.

Contrary to EU's contention, the Commission's inclusion of an analysis of the Sewer Master Plan in its own order is evidence that it was considered. Moreover, the Master Plan was interpreted based on the evidence presented at the final hearing. Although EU characterizes the Commission's finding as "indecisive," it is clear that the Commission did not find the Sewer Master Plan as compelling evidence towards the demonstration of need. Staff recommends that EU's criticism of the Commission's analysis of the Master Plan is reargument and does not merit reconsideration.

[17] In the Final Order at page 12, the Commission found that "Based on our evaluation, we find that EU's application does not appear to be consistent with Charlotte County's Sewer Master Plan." EU characterizes this finding as "indecisive."

VI. Bulk Sewer Service Agreement

As it argued in its post-hearing brief, EU's motion contends that the County's approval of the Bulk Sewer Agreement infers the County's support of EU's application for wastewater certification. EU appears to be conflating the existence of the Bulk Sewer Agreement with the intent behind the Bulk Sewer Agreement's existence. Staff believes that the mere existence of such an agreement is insufficient, without more, to support a finding of the County's support for EU's application.

But even if the Bulk Sewer Agreement made clear the County's intent, the Commission is still granted discretion in the weight it gives to such evidence. The Commission was fully apprised of the existence of the Bulk Sewer Agreement; however, it does not appear it gave the existence of the agreement the same weight that EU would urge be given. As with virtually all of the other points raised by EU, a disagreement over the weight which evidence should be given is not enough to warrant a reconsideration.

C. Evidence Not Present in the Record

In advocating for reconsideration, EU provided in its July 25, 2022 "Notice of Filing Attachments to its Motion for Reconsideration" a letter from the Charlotte County Board of Commissioners, dated June 28, 2022. This letter was never introduced – indeed, it did not exist – while the record in this docket was open. The Board's letter attaches and incorporates by reference a September 27, 2021, letter by County employees Rudy and Moody. While EU did not offer the September 2021 letter into evidence at the February 8, 2022 evidentiary hearing, the document was placed in the correspondence side of the docket, along with other items of correspondence, where it was available for review by the parties to the proceeding, Commission staff, and Commissioners. While staff does not take issue with the September 27, 2021 letter any more than it does with letters filed by potential customers of the Utility, the June 28, 2022 letter by the County Board is clearly outside the scope of the record, and appears to be an after-the-fact attempt by EU to bolster its claim of County support for its application. As correctly pointed out in the intervenors' responses, reliance on this extra-record material would be improper, as no opportunity to cross-examine, challenge, or rebut the material has been afforded, in contravention to the requirements of Section 120.57(1), F.S. Staff therefore strongly recommends that the Commission give no consideration, substantive discussion, or weight to the June 28, 2022 letter.

Conclusion

The standard of review for reconsideration of a Commission order is whether the motion identifies a point of fact or law that Commission overlooked or failed to consider in rendering the order. The lack of a particular discussion of one item in a document or proceeding is not presumptive proof that the item or matter was not considered by the tribunal. Furthermore, a motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review."[18]

EU, who has the burden of proof in this matter, has offered only reargument to support its claims. In other words, EU disagrees with the weight the Commission gave to the record evidence, and instead would urge the Commission rule in accordance with EU's position. Instead, the matters raised by EU in its motion have been considered, but rejected as unpersuasive, by the Commission. Accordingly, staff recommends that EU's motion for reconsideration should be denied.

[18] *Stewart Bonded Warehouse, Inc.* at 317.

Issue 3: Should this docket be closed?

Recommendation: Yes, the docket should be closed. (Sandy, Crawford)

Staff Analysis: If the Commission denies EU's motion for consideration, no further action is required by the Commission and staff recommends that the docket should be closed.