

Table of Contents
 Commission Conference Agenda
 October 3, 2023

1**	Consent Agenda	1
2**PAA	Docket No. 20230093-TX – Bankruptcy cancellation of CLEC Certificate No. 8867 issued to Discount CLEC Services Corporation.....	2
3**PAA	Docket No. 20220064-WS – Application for transfer of water and wastewater facilities of Tymber Creek Utilities, Inc., water Certificate No. 303-W, and wastewater Certificate No. 252-S to CSWR-Florida Utility Operating Company, LLC, in Volusia County.....	3
4	Docket No. 20230081-WS – Application for increase in water and wastewater rates in Broward County by Royal Waterworks, Inc.....	6
5**	Docket No. 20230068-EI – Petition for approval of smart outdoor lighting services pilot program by Duke Energy Florida, LLC.	7
6**PAA	Docket No. 20230087-EU – Joint petition for renewal of territorial agreement and approval of a first amendment, in Monroe County, by Florida Keys Electric Cooperative Association, Inc. and Utility Board of the City of Key West.....	8
7	Docket No. 20230090-EI – Petition to implement 2024 generation base rate adjustment provisions in paragraph 4 of the 2021 stipulation and settlement agreement, by Tampa Electric Company.....	9
8	Docket No. 20230096-GU – Petition for approval of swing service rider rates for January through December 2024, by Florida Public Utilities Company.....	10
9	Docket No. 20230097-GU – Petition for approval of safety, access, and facility enhancement program true-up and 2024 cost recovery factors, by Florida City Gas.	11
10	Docket No. 20230098-GU – Petition for approval of 2022 true-up, projected 2023 true-up, and 2024 revenue requirements and surcharges associated with cast iron/bare steel pipe replacement rider, by Peoples Gas System.	12
11	Docket No. 20230101-GU – Petition for approval of gas utility access and replacement directive cost recovery factors for January 2024 through December 2024, by Florida Public Utilities Company.	13

Item 1

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Day, Fogleman) *CH*
Office of the General Counsel (Sparks, Marquez) *AEH*

RE: Application for Certificate of Authority to Provide Telecommunications Service

AGENDA: 10/3/2023 - Consent Agenda - Proposed Agency Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

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

<u>DOCKET NO.</u>	<u>COMPANY NAME</u>	<u>CERT. NO.</u>
20230091-TX	BIF IV Intrepid OpCo LLC	8986

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

State of Florida



Public Service Commission

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Accounting and Finance (Souchik, D. Buys) *ALM*
Office of the General Counsel (Sparks, Watrous) *AH*

RE: Docket No. 20230088-EI - Application for authority to issue and sell securities during calendar years 2024 and 2025, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company and Florida City Gas.

AGENDA: 10/3/2023 - Consent Agenda - Final Action - Interested Persons May Participate

SPECIAL INSTRUCTIONS: None

Please place the following application for authority to issue and sell securities on the consent agenda for approval.

Docket No. 20230088-EI - Application for authority to issue and sell securities during calendar years 2024 and 2025, pursuant to Section 366.04, F.S., and Chapter 25-8, F.A.C., by Florida Power & Light Company and Florida City Gas.

Florida Power & Light Company (FPL or Company) requests authorization to issue and sell and/or exchange any combination of long-term debt and equity securities and/or to assume liabilities or obligations as guarantor, endorser or surety in an aggregate amount not to exceed \$8.5 billion during calendar year 2024.

In addition, FPL requests authorization to issue and sell short-term securities in an amount or amounts such that the aggregate principal amount of short-term securities outstanding at the time of and including any such sale shall not exceed \$5.5 billion during the calendar years 2024 and 2025.

Florida City Gas (FCG) requests authorization to make long-term borrowings from FPL in an aggregate principal amount not to exceed \$300 million during 2024 and make short-term borrowings from FPL in an aggregate principal amount not to exceed \$150 million at any one time during calendar years 2024 and 2025.

Docket No. 20230088-EI
Date: September 21, 2023

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

Staff has reviewed FPL's projected capital expenditures. FPL's construction budget forecast for 2024 is \$7.756 billion for FPL and \$61 million for FCG. The amount requested by the Company (\$14 billion, of which \$450 million is for FCG) exceeds its expected capital expenditures (\$7.817 billion in 2024). The additional amount requested exceeding the forecasted capital budget expenditures allows for financial flexibility for unexpected events such as hurricanes, financial market disruptions, and other unforeseen circumstances. Staff believes the requested amounts are appropriate. Staff recommends FPL's application for authority to issue securities during calendar years 2024 and 2025 be approved.

For monitoring purposes, this docket should remain open until May 2, 2025, to allow the Company time to file the required Consummation Report.

Item 2

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Office of Industry Development and Market Analysis (Wooten, Nave)^{CH}
Office of the General Counsel (Sparks, Marquez)^{AEH}

RE: Docket No. 20230093-TX – Bankruptcy cancellation of CLEC Certificate No. 8867 issued to Discount CLEC Services Corporation.

AGENDA: 10/03/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

This recommendation addresses a telecommunications company with an active certificate of authority that has completed Chapter 7 bankruptcy proceedings. In a Chapter 7 bankruptcy proceeding, the company stops all operations and goes completely out of business.¹

Pursuant to Section 364.335(2), Florida Statutes (F.S.), applicants for certificates of authority must “. . . ensure continued compliance with applicable business formation, registration, and taxation provisions of law.” A liquidated company would be unable to comply with these requirements.

¹ U.S. Securities and Exchange Commission, “*Bankruptcy: What Happens When Public Companies Go Bankrupt*,” modified January 19, 2016, <https://www.sec.gov/reportspubs/investor-publications/investorpubsbankrupthtm.html>, accessed August 11, 2023.

Docket No. 20230093-TX

Date: September 21, 2023

Discount CLEC Services Corporation currently holds CLEC Certificate No. 8867, issued by the Commission on July 24, 2015. The company filed for Chapter 11 bankruptcy on September 14, 2016. On March 21, 2017, the bankruptcy type was converted to Chapter 7 bankruptcy, and on July 27, 2018, the case was decreed to have been fully administered.

The Commission has jurisdiction over this matter pursuant to Chapter 364, including Sections 364.01 and 364.335, F.S.

Discussion of Issues

Issue 1: Should the Commission, on its own motion, cancel Discount CLEC Services Corporation's CLEC certificate and service schedules (if any) due to the company's Chapter 7 bankruptcy liquidation?

Recommendation: Yes, the Commission, on its own motion, should cancel Discount CLEC Services Corporation's CLEC certificate and service schedules (if any) due to the company's Chapter 7 bankruptcy liquidation effective upon the issuance of a final order in this docket. (Wooten, Nave)

Staff Analysis: The Public Access to Court Electronic Records system shows that Discount CLEC Services Corporation completed a Chapter 7 bankruptcy liquidation on July 27, 2018.² According to the U.S. Securities and Exchange Commission, "(U)nder Chapter 7, the company stops all operations and goes completely out of business. A trustee is appointed to "liquidate" (sell) the company's assets and the money is used to pay off the debt, which may include debts to creditors and investors."^{3,4} A company that has undergone Chapter 7 bankruptcy proceedings will no longer be able to serve its customers or meet its obligation to maintain continued compliance with applicable business formation, registration, and taxation provisions of law.

The Florida Department of State, Division of Corporations website shows that the company filed its last annual report on October 30, 2018, and the company's status is listed as "inactive" as of September 27, 2019.⁵ The Federal Communications Commission Form 499 Filer Database lists the company as no longer active as of March 31, 2018.^{6,7}

Discount CLEC Services Corporation did not have any outstanding Regulatory Assessment Fees (RAFs) when its bankruptcy was converted to a Chapter 7 proceeding. Upon notification that a company has entered into a Chapter 7 bankruptcy case, the Commission ceases to bill for RAFs, because RAFs owed are not secured debts and, as a practical matter, are uncollectible.

Staff recommends that the Commission, on its own motion, cancel Discount CLEC Services Corporation's CLEC certificate and service schedules (if any) due to the company's Chapter 7 bankruptcy liquidation effective upon the issuance of a final order in this docket.

² See Attachment A.

³ U.S. Securities and Exchange Commission, "*Bankruptcy: What Happens When Public Companies Go Bankrupt*," modified January 19, 2016, <https://www.sec.gov/reportspubs/investor-publications/investorpubsbankrupthtm.html>, accessed August 11, 2023.

⁴ See 11 U.S.C. §721.

⁵ Florida Department of State Division of Corporations, Sunbiz Corporate Records Search, <https://dos.myflorida.com/sunbiz/>, accessed August 25, 2023.

⁶ FCC Form 499 is used to facilitate the quarterly and annual revenue reporting requirements for telecommunications companies. The FCC Form 499 Filer Database is a compilation of all telecommunications companies that are required to file either Form 499-Q or Form 499-A. It contains company information such as the company's name, address, designated agent, and jurisdictions in which it provides service.

⁷ FCC, "FCC Form 499 Filer Database Detailed Information," updated August 18, 2023, <https://apps.fcc.gov/cgb/form499/499detail.cfm?FilerNum=832119>, accessed August 25, 2023.

Issue 2: Should this docket be closed?

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

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

**Discount CLEC Services Corporation
United States Bankruptcy Court
Final Decree**

Case 16-27574-SLM Doc 75 Filed 07/27/18 Entered 07/27/18 10:12:51 Desc Final Decree Page 1 of 1
Form 177 - flddec
UNITED STATES BANKRUPTCY COURT
District of New Jersey MLK Jr Federal Building 50 Walnut Street Newark, NJ 07102
Case No.: 16-27574-SLM Chapter: 7 Judge: Stacey L. Meisel
In Re: Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address): Discount CLEC Services Corporation 650 E. Palisades Ave. Suite #101 Englewood Cliffs, NJ 07632 Social Security No.: Employer's Tax I.D. No.: 81-0737090
FINAL DECREE
The estate of the above named debtor(s) has been fully administered.
If this case is a Chapter 11 or 13, the deposit required by the plan will be distributed, and it is
ORDERED that Donald V. Biase is discharged as trustee of the estate of the above named debtor(s) and the bond is canceled; and the case of the above named debtor(s) is closed.
Dated: July 27, 2018
<u>Stacey L. Meisel</u> Judge, United States Bankruptcy Court

Item 3

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (M. Watts, Ramos) *TB*
Division of Accounting and Finance (Sewards, Thurmond) *ALM*
Division of Economics (Bruce, Hudson) *EJD*
Office of the General Counsel (J. Crawford, Thompson) *JSC*

RE: Docket No. 20220064-WS – Application for transfer of water and wastewater facilities of Tymber Creek Utilities, Inc., water Certificate No. 303-W, and wastewater Certificate No. 252-S to CSWR-Florida Utility Operating Company, LLC, in Volusia County.

AGENDA: 10/03/23 – Regular Agenda – Motion to Dismiss on Issue 1, Oral Argument Not Requested, Participation is at the Commission’s Discretion – Proposed Agency Action for Issues 3, 4 and 5 - Interested Persons May Participate (Issues 2-6)

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

Tymber Creek Utilities, Inc. (Tymber Creek, Utility or Seller) is a Class B utility serving approximately 423 water and wastewater customers in Volusia County. The Utility is located in the St. Johns River Water Management District (SJRWMD), which has permanent water restriction rules in place. Tymber Creek purchases bulk water from the City of Ormond Beach. According to the Utility’s 2022 Annual Report, combined operating revenues were \$500,625 with a total net operating income of \$34,160.

Tymer Creek was granted Certificate Nos. 303-W and 252-S in 1978.¹ The Utility was granted a name change in 2005,² and a transfer of majority organizational control and amendment in 2012.³

On March 15, 2022, CSWR-Florida Utility Operating Company, LLC (CSWR-Tymer Creek or Buyer) filed an application with the Commission for the transfer of Certificate Nos. 303-W and 252-S from Tymer Creek to CSWR-Tymer Creek in Volusia County. The sale will close after the Commission has voted to approve the transfer. In its application, the Buyer has requested a positive acquisition adjustment, which is discussed in Issue 4.

Intervention by the Office of Public Counsel (OPC) was acknowledged on March 24, 2022. OPC and staff have issued a number of discovery or data requests to CSWR-Tymer Creek in this docket.

CSWR-Tymer Creek provided notice of the application to its customers and twenty-five customers filed objections to the transfer. The customers stated that Tymer Creek failed to repair a road in the subdivision after repairing a leak and that the Utility had not confirmed compliance with a prior settlement agreement. Two customers requested a formal administrative hearing to resolve the issues raised by the objections. In response, CSWR filed a motion to dismiss the objections for being untimely and for being unrelated to the issues addressed in a transfer application proceeding. The customer objections, Motion to Dismiss, and staff's recommendation regarding this matter are further discussed in Issue 1.

On June 1, 2023, staff filed its recommendation for the instant docket. Subsequent to the filing of staff's recommendation, additional information was provided to staff regarding the Utility's warranty deeds on behalf of the Tymer Creek Homeowner's Association.⁴ Staff withdrew its recommendation on June 12, 2023, to review this information and also facilitated an informal meeting on September 5, 2023, with the parties. Based on staff's review of the information and discussions with the parties, staff has not changed its ultimate recommendation.

This recommendation addresses the motion to dismiss, the transfer of the water and wastewater systems and Certificate Nos. 303-W and 252-S, the appropriate net book value of the water and wastewater systems for transfer purposes, the request for an acquisition adjustment, and the revision of miscellaneous service charges. The Commission has jurisdiction pursuant to Sections 367.071 and 367.081, Florida Statutes (F.S.).

¹ Order No. 8242, issued April 6, 1978, in Docket Nos. 19770324-W and 19770325-S, *In re: Application of Tymer Creek Utilities for certificates to operate a water and sewer utility in Volusia County, Florida. Section 367.041, Florida Statutes.*

² Order No. PSC-05-0188-FOF-WS, issued February 18, 2005, in Docket No. 20041339-WS, *In re: Application for name change on Certificates Nos. 303-W and 252-S in Volusia County from Tymer Creek Utilities to Tymer Creek Utilities, Incorporated.*

³ Order No. PSC-12-0571-FOF-WS, issued October 24, 2012, in Docket Nos. 20110317-WS, *In re: Application for transfer of majority organizational control of Tymer Creek Utilities, Incorporated, holder of Certificate Nos. 303-W and 252-S in Volusia County, from Joseph Stanley and Steve P. Shirah to Joseph Stanley Shirah; and 20120191-WS, In re: Application for amendment of Certificate Nos. 303-W and 252-S to add territory in Volusia County by Tymer Creek Utilities, Incorporated.*

⁴ Document Nos. 03569-2023, dated June 12, 2023; 03667-2023, dated June 16, 2023; and 03748-2023, dated June 22, 2023.

Discussion of Issues

Issue 1: Should the Commission grant CSWR-Tymber Creek’s motion to dismiss the objections?

Recommendation: Yes. The objections to the application for transfer of water and wastewater facilities from Tymber Creek to CSWR-Tymber Creek fail to raise any issue relevant to the application. Consequently, staff recommends the Commission grant the Utility’s motion to dismiss and allow the transfer application to proceed. (Thompson)

Staff Analysis: Between August 17, 2022, and August 30, 2022, approximately 25 residents of the Tymber Creek subdivision, plus the Tymber Creek Homeowners’ Association (TCHOA), sent letters to the Commission, which were subsequently placed in the docket file as correspondence, objecting to the proposed certificates transfer. Specifically, Scott Buckwald filed an objection on August 17, 2022, and Anna Hannon filed an objection on August 22, 2022. The customers’ objections were based on two issues: (1) the customers believed that a repair done to a road owned by TCHOA was inadequate; and (2) the customers wanted confirmation of compliance with a 2012 Florida Department of Environmental Protection (DEP) settlement agreement between Tymber Creek and TCHOA (2012 Agreement).

It was unclear whether the letters were intending to request an administrative hearing on CSWR-Tymber Creek’s application or merely wishing to register their disapproval of the application. On November 29, 2022, legal staff sent letters to the Tymber Creek residents and TCHOA who had filed objection letters. These letters, which were posted to the docket file on December 15, 2022, asked the customers “whether you wish to merely state for the record your objection to the transfer, or whether you are requesting that an administrative hearing be held with regard to your objection.” The staff letter gave each customer and TCHOA until December 21, 2022, to respond “regarding your intention with respect to your letter of objection.” Two residents confirmed that they were requesting an administrative hearing: Mr. Buckwald on December 14, 2022, and Ms. Hannon on December 15, 2022.

On March 20, 2023, CSWR-Tymber Creek filed a motion to dismiss the objections from these two customers. In its motion to dismiss, CSWR-Tymber Creek relies on Section 367.045, F.S., to argue that the customers failed to properly raise an objection to the transfer of Certificate Nos. 303-W and 252-S in a timely manner.⁵ CSWR-Tymber Creek further argues that even if the customers had properly objected to the transfer in a timely fashion, they failed to raise issues that are relevant to the proceedings in this docket. No request for oral argument was filed by CSWR-Tymber Creek. No response to CSWR-Tymber Creek’s motion to dismiss was filed by the objecting customers and the time for doing so has expired.

⁵ Section 367.045(4), F.S., provides that “If, within 30 days after the last day that notice was mailed or published by the applicant, whichever is later, the commission receives from the Public Counsel, a governmental authority, or a utility or consumer who would be substantially affected by the requested certification or amendment a written objection requesting a proceeding pursuant to ss. 120.569 and 120.57, the commission shall order such proceeding conducted in or near the area for which application is made, if feasible.”

Legal Standard

To sustain a motion to dismiss, the moving party must show that, accepting all allegations as true, the petition fails to state a cause of action for which relief may be granted.⁶ The moving party must specify the grounds for the motion to dismiss, and all material allegations must be construed against the moving party in determining if the petitioner has stated the necessary allegations. A sufficiency determination is confined to the petition and documents incorporated therein and the grounds asserted in the motion to dismiss.⁷ All allegations in the petition must be viewed as true and in the light most favorable to the petitioner in order to determine whether there is a cause of action upon which relief may be granted.⁸

CSWR-Tymer Creek's Motion to Dismiss

This case involves the proposed transfer of water and wastewater certificates from Tymer Creek to CSWR-Tymer Creek. Therefore, the questions before the Commission are essentially whether CSWR-Tymer Creek has the financial and technical ability to operate the utility and whether the proposed transfer is in the public interest. Relying on this standard, CSWR-Tymer Creek's motion to dismiss challenges both the timeliness of the customers' objections and the sufficiency of the facts the customers allege to demonstrate that they have standing to object to the transfer.

The customers' written objections relate to two issues: an incomplete road repair and a 2012 settlement agreement between Tymer Creek, TCHOA, and DEP. The objectors argue that Tymer Creek should not be allowed to sell the Utility without properly repairing the roadway and without ensuring compliance with the DEP settlement agreement.

Timeliness of Objections

CSWR-Tymer Creek alleges that the objections of Mr. Buckwald and Ms. Hannon both fail to meet the pleading requirements for a formal hearing because they failed to properly request a formal proceeding pursuant to Sections 120.569 and 120.57, F.S., within 30 days of notice. CSWR-Tymer Creek alleges that the written objections that were filed were not compliant with Rule 28-106.201(1), Florida Administrative Code (F.A.C.). The rule contains a number of pleading requirements for initiating proceedings before administrative agencies. CSWR-Tymer Creek also contends that a strict interpretation of Section 367.045(4), F.S., provides that customers had until August 31, 2022, to file a proper written objection requesting a proceeding.

The Commission has previously held pro se litigants such as Mr. Buckwald and Ms. Hannon to a less stringent compliance standard in order to prevent delay and promote resolution of litigants' claims.⁹ There is no dispute that Mr. Buckwald and Ms. Hannon timely filed their objections before August 31, 2022, and renewed those objections in December 2022. Moreover, Mr. Buckwald and Ms. Hannon made clear in their letters that they objected to transfer of the

⁶ See *Varnes v. Dawkins*, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

⁷ *Varnes* at 350.

⁸ See, e.g., *Ralph v. City of Daytona Beach*, 471 So. 2d 1173 (Fla. 4th DCA 2000); *Kest v. Nathanson*, 216 So. 2d 233, 235 (Fla. 4th DCA 1986); *Ocala Loan Co. v. Smith*, 155 So. 2d 711, 715 (Fla. 1st DCA 1963).

⁹ See Order No. PSC-2020-0469-FOF-EI, issued November 23, 2020, in Docket No. 20200030-EI, *In re: Complaint by Juana L. Del Rosario against Florida Power & Light Company regarding backbilling for alleged meter tampering*.

certificates at issue in this docket. It is not unusual in certification matters for staff to take additional time to contact customers to ascertain whether they are merely asking their objection to be noted or whether they are requesting a formal administrative hearing. Staff believes that both customers materially complied with the requirements of Rule 25-30.031, F.A.C., in objecting to CSWR-Tymber Creek's transfer application, and that their objections should not be dismissed on grounds of timeliness.

Relevance of the Objections to a Transfer Proceeding

CSWR-Tymber Creek also argues that the objections of Mr. Buckwald and Ms. Hannon fail to raise any issue relevant to this transfer docket. CSWR-Tymber Creek notes that the basis of the objections are the road repair and the DEP settlement related to the water permit. With respect to the road repair, the objecting customers complained about damage done to a road owned by TCHOA as a result of a wastewater pipe failure. The customers believe Tymber Creek made an inadequate repair that continues to collapse. Separately, the customers want to confirm compliance with the 2012 Agreement that resulted from a complaint filed by TCHOA at DEP to require Tymber Creek to repair and upgrade some portions of the infrastructure over a 10-year period.

CSWR-Tymber Creek argues that these are not related to the financial or technical ability of CSWR-Tymber Creek to own and operate the system, nor are they part of the Commission's jurisdiction or authority over the service and rates of water and wastewater systems. CSWR-Tymber Creek further asserts that the Commission has no jurisdiction over any contract dispute between Tymber Creek, TCHOA, or DEP.

On this point, staff believes that the utility's motion has merit. In transfer proceedings, the Commission analyzes a utility's financial and technical ability and then makes a determination as to whether the proposed transfer would be in the public interest. For example, by Order No. PSC-95-0062-FOF-WS, issued January 11, 1995, in Docket No. 19940091-WS, *In re: Application for transfer of facilities to Lake Utilities*, the Commission dismissed objections raised by a municipality that the city would be better able to provide service because the objections raised did not dispute the utility's financial and technical ability. Similarly, the customers' objections in this docket relate to issues that would be outside of the scope of an administrative proceeding.

Standing for an administrative proceeding is defined by the two-part test established in *Agrico Chemical Co. v. Department of Environmental Regulation*, 406 So. 2d 478 (Fla. 2d DCA 1981). In *Agrico*, the court held that to demonstrate a substantial interest entitled to a formal hearing in an administrative proceeding, the petitioner must show both an injury in fact of sufficient immediacy as to warrant a hearing and that the alleged injury is of the type or nature that the proceeding is designed to protect. This is a threshold question for any request to initiate or participate in a formal administrative proceeding.

Staff believes that the customers have not alleged facts sufficient to show that they have a substantial interest in the outcome of this certificate transfer proceeding. While the customers certainly have an interest in their roadways and the water quality, those interests are not ones that will be substantially affected by the outcome of this proceeding. For that reason, the objections

have not alleged an injury in fact of sufficient immediacy to warrant a hearing and therefore have not met the first prong of the *Agrico* test.

The customers' objections likewise do not demonstrate that the alleged injury is of the type or nature that the proceeding is designed to protect. The questions before the Commission are whether CSWR-Tymber Creek is financially and technically able to own and operate the system and whether the transfer is in the public interest. The purpose of this proceeding is to ensure that the new certificate holder has the resources and commitment to the financial and operational viability of the utility and that the transfer serves the public interest. This proceeding would not result in the reparation of the road or the enforcement of the DEP settlement agreement. Consequently, the customers' objections also fail the second prong of the *Agrico* test.

The customers' objections do not challenge the financial or technical ability of CSWR-Tymber Creek to operate the water and wastewater facilities nor its ability to provide service. Instead, the customers' objections relate to a prior road repair by Tymber Creek and a DEP settlement agreement involving Tymber Creek. Neither of these matters are relevant to whether CSWR-Tymber Creek is financially and technically competent to operate the Utility, nor do they indicate that a transfer is against the public interest.

Staff's recommendation is consistent with the Commission's prior decisions. In addition to the Lake Utilities case discussed above, the Commission rejected a customer objection for failing to meet the *Agrico* standard in Order No. PSC-06-0094-FOF-WS, issued February 9, 2006, in Docket No. 20050499-WS, *In re: Application for authority to transfer majority organizational control of Utilities, Inc. from Nuon Global Solutions USA, B.V. to Hydro Star, LLC*. In that case, a customer objected to a stock transfer because his current utility was failing to meet DEP water standards. The objector argued that the utility's failure to fix the water quality standards should prevent the transfer as management would not change. The Commission held that the alleged injury was not able to be resolved by the stock transfer proceeding and consequently dismissed the objection. Staff believes this precedent is convincing.

Conclusion

Even viewing all allegations in customers' objections as true and in the light most favorable to the customers, the objections fail to state a cause of action upon which relief may be granted in a hearing on CSWR-Tymber Creek's transfer application. Therefore, staff recommends that CSWR-Tymber Creek's Motion to Dismiss should be granted and the customers' objections should be dismissed.

Issue 2: Should the transfer of Certificate Nos. 303-W and 252-S in Volusia County from Tymber Creek Utilities, Inc. to CSWR-Florida Utility Operating Company, LLC be approved?

Recommendation: Yes. The transfer of the water and wastewater systems and Certificate Nos. 303-W and 252-S is in the public interest and should be approved effective the date that the sale becomes final. The resultant Order should serve as the Buyer's certificate and should be retained by the Buyer. The Buyer should submit the signed contract for sale and the executed and recorded deed for continued access to the land upon which its facilities are located and copies of its permit transfer applications to the Commission within 60 days of the Order approving the transfer, which is final agency action. If the sale is not finalized within 60 days of the transfer Order, the Buyer should file a status update in the docket file. The Utility's existing rates, late payment charges, service availability charges, and initial customer deposits, as shown on Schedule No. 2, should remain in effect until a change is authorized by this Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), F.A.C. Staff has verified that the Utility is current on the filing of annual reports and regulatory assessment fees (RAFs) through December 31, 2022. The Buyer should be responsible for filing the Utility's annual reports and paying RAFs for all future years. (M. Watts, Thurmond, Bruce)

Staff Analysis: On March 15, 2022, CSWR-Tymber Creek filed an application for the transfer of Certificate Nos. 303-W and 252-S from Tymber Creek to CSWR-Tymber Creek in Volusia County. The application is in compliance with Section 367.071, F.S., and Commission rules concerning applications for transfer of certificates. The sale to CSWR-Tymber Creek will become final after Commission approval of the transfer, pursuant to Section 367.071(1), F.S.

Noticing, Territory, and Land Ownership

CSWR-Tymber Creek provided notice of the application pursuant to Section 367.071, F.S., and Rule 25-30.030, F.A.C. Twenty-five customers filed objections to the transfer, two of which requested an administrative hearing. However, as discussed in Issue 1, staff recommends that CSWR-Tymber Creek's Motion to Dismiss should be granted and the customers' objections should be dismissed.

As stated in the case background, staff received information regarding certain warranty deeds filed on behalf of the TCHOA. The two warranty deeds of concern to the TCHOA were for (1) one of the Utility's percolation ponds; and (2) for the land under the wastewater treatment plant (WWTP). The TCHOA contends that the Buyer may not have purchased these assets necessary for the provision of wastewater service to the customers.

Concerning the land for the percolation pond, in a 1990 rate case, the owner of the Utility, Mr. Stanley Shirah, indicated that land he had purchased for a percolation pond would be purchased by the Utility.¹⁰ However, while processing a subsequent rate case in 2010 for Tymber Creek, staff learned that Mr. Shirah had instead been leasing the land to the Utility on a month-to-month

¹⁰ Order No. 24206, issued March 7, 1991, in Docket No. 19900501-WS, *In re: Application for staff-assisted rate case in Volusia County by Tymber Creek Utilities*.

basis. Order No. PSC-11-0345-PAA-WS, required the Utility to provide a 99-year lease instead of the month-to-month lease, which it did.¹¹

As for the land under the WWTP, the TCHOA represents that Mr. Shirah transferred the warranty deed from the Utility to his personal ownership in 2019. The Commission was not notified of this transfer by either the Utility or Mr. Shirah.

Mr. Shirah passed away on August 10, 2020. All of his assets, including the Utility as well as his personal assets, are part of his estate. Staff notes that both the Utility and Mr. Shirah's estate are parties to the contract for sale contained in the Buyer's application for transfer in the instant docket, and all of the assets necessary for provision of wastewater service are included.

The application contains a description of the service territory which is appended to this recommendation as Attachment A. In its response to staff's May 16, 2022, deficiency letter, CSWR-Tymber Creek provided a copy of an unrecorded warranty deed as evidence that the Buyer will have rights to long-term use of the land upon which the treatment facilities are located pursuant to Rule 25-30.037(2)(s), F.A.C. CSWR-Tymber Creek should submit the executed and recorded deed to the Commission within 60 days of the Order.

Purchase Agreement and Financing

Pursuant to Rule 25-30.037(2)(g), (h), and (i), F.A.C., the application contains a statement regarding financing and a copy of the purchase agreement, which includes the purchase price, terms of payment, and a list of the assets purchased. There are no guaranteed revenue contracts, or customer advances of the Seller that must be disposed of with regard to the transfer. CSWR-Tymber Creek will review all leases and developer agreements and will assume or renegotiate those agreements on a case-by-case basis prior to closing. Any customer deposits will be refunded to customers by the Seller prior to the closing. According to the purchase and sale agreement, the total purchase price for the assets is \$1,000,000. According to the Buyer, the closing has not yet taken place and is dependent on Commission approval of the transfer, pursuant to Section 367.071(1), F.S.

Facility Description and Compliance

The Tymber Creek wastewater treatment plant (WWTP) is a 0.131 million gallon per day (MGD) annual average daily flow (AADF) permitted capacity extended aeration domestic wastewater treatment plant consisting of flow equalization, influent screening, aeration, secondary clarification, filtration, chlorination, and aerobic digestion of bio solids. Chlorinated effluent is discharged to one of four percolation ponds. The collection system consists of gravity mains served by three lift stations.

Staff reviewed the most recent DEP compliance evaluation inspection (CEI) for the WWTP. The DEP's April 14, 2021, CEI noted the following violations. First, the Discharge Monitoring Reports (DMR) contained several reporting errors. Second, the DMRs for the review period (May 31, 2020, to March 31, 2021) indicated several exceedances in the total suspended solids (TSS). Finally, an Operation and Maintenance Manual for the collection system with a Sanitary

¹¹ Order No. PSC-11-0345-PAA-WS, issued August 16, 2011, in Docket No. 20100359-WS, *In re: Application for staff-assisted rate case in Volusia County by Tymber Creek Utilities, Incorporated.*

Sewer Response Plan was not available on site. The Utility did not provide a response to the DEP regarding the violations. On January 20, 2022, the DEP issued a draft Consent Order (CO) to the Utility. Within 20 days, the Utility was required to either return the signed copy or provide comments and suggested changes. Again, the Utility did not respond. As a result, on July 14, 2022, the DEP issued a Notice of Violation of Florida Statutes and DEP Rules. On July 29, 2022, having received the signed CO from the Utility, the DEP signed and executed the CO.¹² As of April 27, 2023, Tymber Creek has complied with the terms of the CO that have come due since its execution. In Exhibit H of the Buyer's application, CSWR-Tymber Creek provided its assessment of Tymber Creek's water distribution system, wastewater treatment plant, and wastewater collection system. The assessment concludes with a list of several improvements and repairs it recommends be made to the systems. The Buyer's suggested repairs and improvements, only some of which appear to be required by a governmental authority, are discussed further in Issue 4.

The Utility purchases water from the City of Ormond Beach. Therefore, there are no sanitary surveys or secondary water quality tests required. The only testing required in the distribution system are for disinfection byproducts and chlorine residuals. The disinfection byproducts were last tested on August 9, 2021, and were within acceptable limits. The chlorine residuals were tested in two points in the distribution system on August 14 and 19, 2021, and were within required limits.¹³

Technical and Financial Ability

Pursuant to Rule 25-30.037(2)(l) and (m), F.A.C., the application contains statements describing the technical and financial ability of the Buyer to provide service to the proposed service area. As referenced in the transfer application, the Buyer will fulfill the commitments, obligations, and representation of the Seller with regards to utility matters.

CSWR-Tymber Creek's application states that it owns and operates water/wastewater systems in Missouri, Arkansas, Kentucky, Louisiana, Texas, Mississippi, Arizona, North Carolina, and Tennessee that currently serve more than 73,000 water and 117,000 wastewater customers. The Buyer plans to use qualified and licensed contractors to provide routine operation and maintenance of the systems, as well as to handle billing and customer service. The Commission

¹² DEP Consent Order, OGC No. 21-1025.

¹³ Information obtained from the DEP [Chemical Sample Data for 2021](#) spreadsheet, last modified on January 27, 2022.

has also approved CSWR-Tymer Creek's purchase of eight Florida certificated utilities in prior dockets.¹⁴

Staff reviewed the financial statements of CSWR-Tymer Creek and believes the Buyer has documented adequate resources to support the Utility's water and wastewater operations. Based on the above, the Buyer has demonstrated the technical and financial ability to provide service to the existing service territory.

Rates and Charges

Tymer Creek's water and wastewater rates were last approved in 2011.¹⁵ Since the last rate case, the rates were subsequently amended by several price index and two pass-through rate adjustments with the most recent being in 2020. The Utility's current service availability charges were approved in 1991.¹⁶ The initial customer deposits have been in effect since the Utility's certification in the late 1970s. The late payment charge was approved administratively in 2012. Rule 25-9.044(1), F.A.C., provides that, in the case of a change of ownership or control of a Utility, the rates, classifications, and regulations of the former owner must continue unless authorized to change by the Commission. In addition, the Utility has miscellaneous service charges, which were also approved in 1991. However, the miscellaneous service charges do not conform to Rule 25-30.460, F.A.C., and are discussed in Issue 5. Therefore, staff recommends that the Utility's existing rates, late payment charge, service availability charges, and initial customer deposits as shown on Schedule No. 2, should remain in effect, until a change is authorized by this Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), F.A.C.

¹⁴ Order No. PSC-2022-0115-PAA-WS, issued March 15, 2022, in Docket No. 20210093-WS, *In re: Application for transfer of water and wastewater systems of Aquarina Utilities, Inc., water Certificate No. 517-W, and wastewater Certificate No. 450-S to CSWR-Florida Utility Operating Company, LLC, in Brevard County*; Order No. PSC-2022-0120-PAA-WU, issued March 18, 2022, in Docket No. 20210095-WU, *In re: Application for transfer of water facilities of Sunshine Utilities of Central Florida, Inc. and water Certificate No. 363-W to CSWR-Florida Utility Operating Company, LLC, in Marion County*; Order No. PSC-2022-0116-PAA-SU, issued March 17, 2022, in Docket No. 20210133-SU, *In re: Application for transfer of facilities of North Peninsula Utilities Corporation and wastewater Certificate No. 249-S to CSWR-Florida Utility Operating Company, LLC, in Volusia County*; Order No. PSC-2022-0364-PAA-WU, issued October 25, 2022, in Docket No. 20220019-WU, *In re: Application for transfer of water facilities of Neighborhood Utilities, Inc. and water Certificate No. 430-W to CSWR-Florida Utility Operating Company, LLC, in Duval County*; Order No. PSC-2023-0257-PAA-SU, issued August 21, 2023, in Docket No. 20220061-SU, *In re: Application for transfer of wastewater Certificate No. 318-S from BFF Corp to CSWR-Florida utility Operating Company, LLC, in Marion County*; Order No. PSC-2023-0266-PAA-WS, issued August 22, 2023, in Docket No. 20220062-WS, *In re: Application for transfer of water and wastewater facilities of C.F.A.T. H2O, Inc., water Certificate No. 552-W, and wastewater Certificate No. 481-S to CSWR-Florida Utility Operating Company, LLC, in Marion County*; and Order No. PSC-2023-0245-PAA-WS, issued August 17, 2023, in Docket No. 20220063-WS, *In re: Application for transfer of water and wastewater facilities of Tradewinds Utilities, Inc., water Certificate No. 405-W, and wastewater Certificate No. 342-S to CSWR-Florida Utility Operating Company, LLC, in Marion County*.

¹⁵ Order No. PSC-11-0345-PAA-WS, issued August 16, 2011, in Docket No. 20100359-WS, *In re: Application for staff-assisted rate case in Volusia County by Tymer Creek Utilities, Inc.*

¹⁶ Order No. 24206, issued March 7, 1991, in Docket No 19900501-WS, *In re: Application for a staff-assisted rate case in Volusia County by Tymer Creek Utilities.*

Regulatory Assessment Fees and Annual Report

Staff has verified that the Utility is current on the filing of annual reports and RAFs through December 31, 2022. The Buyer will be responsible for filing the Utility's annual reports and paying RAFs for all future years.

Conclusion

Based on the foregoing, staff recommends the transfer of the water and wastewater systems and Certificate Nos. 303-W and 252-S is in the public interest and should be approved effective the date that the sale becomes final. The resultant Order should serve as the Buyer's certificate and should be retained by the Buyer. The Buyer should submit the signed contract for sale and the executed and recorded deed for continued access to the land upon which its facilities are located and copies of its permit transfer applications to the Commission within 60 days of the Order approving the transfer, which is final agency action. If the sale is not finalized within 60 days of the transfer Order, the Buyer should file a status update in the docket file. The Utility's existing rates, late payment charges, service availability charges, and initial customer deposits, as shown on Schedule No. 2, should remain in effect until a change is authorized by this Commission in a subsequent proceeding. The tariff pages reflecting the transfer should be effective on or after the stamped approval date on the tariff sheets, pursuant to Rule 25-30.475(1), F.A.C. Staff has verified that the Utility is current on the filing of annual reports and RAFs through December 31, 2022. The Buyer should be responsible for filing the Utility's annual reports and paying RAFs for all future years.

Issue 3: What is the appropriate net book value for CSWR-Florida Utility Operating Company, LLC's water and wastewater systems for transfer purposes?

Recommendation: For transfer purposes, the net book value (NBV) of the system is \$62,485 for water and \$131,849 for wastewater, as of February 28, 2022. Within 90 days of the date of the Consummating Order, CSWR-Tymber Creek should be required to notify the Commission in writing that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in the Utility's 2023 Annual Report when filed. (Thurmond)

Staff Analysis: Rate base was last established on August 16, 2011, by Order No. PSC-2011-0345-PAA-WS.¹⁷ The purpose of establishing NBV for transfers is to determine whether an acquisition adjustment should be approved. CSWR-Tymber Creek's request for a positive acquisition adjustment is addressed in Issue 4. The NBV does not include normal ratemaking adjustments for used and useful plant or working capital. The Utility's NBV has been updated to reflect balances as of February 28, 2022.¹⁸ Staff's recommended NBV, as described below, is shown on Schedule No. 1.

Utility Plant in Service (UPIS)

According to the Utility's general ledger, the total UPIS balance was \$335,032 for water and \$1,037,526 for wastewater, as of February 28, 2022. Staff auditors compiled the plant additions and retirements to UPIS from June 30, 2010, to February 28, 2022, and traced supporting documentation. As a result, staff recommends a decrease to UPIS of \$48,765 for water and \$154,586 for wastewater as of February 28, 2022. Accordingly, staff recommends a total UPIS balance of \$286,268 for water and \$882,940 as of February 28, 2022.

Land

The Utility's general ledger reflected a land balance of \$1,131 for water and \$4,524 for wastewater, as of February 28, 2022. There have been no additions to land since June 30, 2010. Therefore, staff recommends no adjustments to its land balance.

Accumulated Depreciation

According to the Utility's general ledger, the total accumulated depreciation balance was \$262,455 for water and \$804,078 for wastewater, as of February 28, 2022. Staff auditors recalculated depreciation accruals for all wastewater accounts since the last rate case through February 28, 2022, using audited UPIS balances and the depreciation rates established by Rule 25-30.140, F.A.C. As a result, staff recommends that the accumulated depreciation balance be decreased by \$37,541 for water and \$48,464 for wastewater, as of February 28, 2022. Accordingly, staff recommends total accumulated depreciation balances of \$224,914 for water and \$755,614 for wastewater, as of February 28, 2022.

¹⁷ Order No. PSC-11-0345-PAA-WS, issued August 16, 2011, in Docket No. 20100359-WS, *In re: Application for staff-assisted rate case in Volusia County by Tymber Creek Utilities, Incorporated.*

¹⁸ Net book value is calculated through the date of the closing. According to the Utility's application, the closing will not occur until after the transaction receives Commission approval. Therefore, staff is relying on the most current information provided to staff auditors at the time of the filing.

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

According to the Utility's general ledger, the CIAC balances were \$155,893 for water and \$380,306 for wastewater, as of February 28, 2022. Also, the accumulated amortization of CIAC balances were \$155,893 for water and \$380,306 for wastewater, as of February 28, 2022. Staff auditors traced CIAC and accumulated amortization of CIAC balances from June 30, 2010, to February 28, 2022, using supporting documentation. As a result, staff recommends that the CIAC balance be decreased by \$2,510 for water as of February 28, 2022. Staff also recommends that the accumulated amortization of CIAC balance be decreased by \$2,510 for water as of February 28, 2022. Accordingly, staff recommends total CIAC and Accumulated Amortization of CIAC balances of \$153,383 and \$153,383 for water and \$380,306 and \$380,306 for wastewater, respectively, as of February 28, 2022.

Net Book Value

The Utility's general ledger reflected a NBV of \$73,708 for water and \$237,972 for wastewater as of February 28, 2022. Based on the adjustments described above, staff recommends a NBV of \$62,485 for water and \$131,849 for wastewater as of February 28, 2022. Staff's recommended NBV and the National Association of Regulatory Utility Commissioners, Uniform System of Accounts (NARUC USOA) balances for UPIS and accumulated depreciation are shown on Schedule No. 1 as of February 28, 2022. As addressed in Issue 4, a positive acquisition adjustment should not be recognized for ratemaking purposes.

Conclusion

Based on the above, staff recommends a NBV of \$62,485 for water and \$131,849 for wastewater as of February 28, 2022, for transfer purposes. Within 90 days of the date of the Consummating Order, the Buyer should be required to notify the Commission in writing, that it has adjusted its books in accordance with the Commission's decision. The adjustments should be reflected in the Utility's 2023 Annual Report when filed.

Issue 4: Should a positive acquisition adjustment be recognized for ratemaking purposes?

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

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

According to the purchase agreement, the Buyer will purchase the Utility for \$1,000,000. As discussed in Issue 3, staff is recommending a combined NBV for the two systems of \$194,334. This would result in a positive acquisition adjustment of \$805,666.

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

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

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

Deferral

In discovery, CSWR-Tymber Creek stated that it intends to ask for deferral of a decision regarding the requested acquisition adjustment. In its application, the Buyer laid out factors such as improvements to quality of service, cost efficiencies, and rate stability. These are discussed below and staff finds these factors do not constitute extraordinary circumstances.

In response to discovery, the Buyer agreed that after rate base is set, if a company provides support in a separate and subsequent case that there are utility assets that were not previously recorded, then the company can prospectively recover the unrecorded amount of that investment. Therefore, if the Buyer finds assets were incorrectly recorded on the Seller's balance sheet, the Buyer can support those costs and recover them in a future rate case. That is normal Commission practice and are not considered extraordinary circumstances.

Pursuant to Commission practice, the Buyer has the burden to prove extraordinary circumstances at the time of transfer. Staff believes in the instant case the Buyer has failed to provide proof of extraordinary circumstances. Further, the Buyer had multiple opportunities to provide pertinent

information needed to determine if a positive acquisition adjustment is appropriate. As such, staff recommends the Commission deny the request to defer a decision on the positive acquisition adjustment.

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

Improvements in Quality of Service and Compliance with Regulatory Mandates

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

Staff reviewed the complaints filed with the Commission for the five-year period prior to the application, March 2017 to March 2022. The Commission recorded a total of three complaints during this period, all of which pertained to billing. There were no complaints involving the water quality or the water distribution system, the wastewater treatment system or the wastewater collection system.

In addition to reviewing the Utility's most recent inspection reports, staff also reviewed the DEP inspection reports and enforcement actions for the three years prior to the Utility's transfer application. As discussed in Issue 2, the Utility is currently under a DEP CO for violation of its rules and regulations. As noted in the CO, the Utility's WWTP appears to have had ongoing issues with nitrate and total suspended solids (TSS) exceedances, as well as maintaining required on-site documentation. Documentation from the DEP database indicates that the Utility is on schedule with complying with the terms of the CO.

In Exhibit H of its application, CSWR-Tymer Creek noted the WWTP issues described above, as well as some minor leaks in the facility tanks, notable rust on the blowers and blower motors, and a build-up of fine solids in the sand filter. The Buyer noted that the lift stations appear to be in good condition, but it was unable to inspect the interior. Based on its inspection of the WWTP, CSWR-Tymer Creek proposed improvements it plans to make to ensure the longevity of the system. These plans include installing a sieve screen at the plant headworks for automated removal of nuisance solids, cleaning the sand filter, adding a polymer feed to the clarifier, patching leaks on the sand filter tank, replacing the blowers and blower motors, and installing a remote monitoring system.

Staff's review of the DEP water quality tests and the Commission's Consumer Activity Tracking System did not reveal any indication of problems with the water distribution system. Despite the apparent absence of problems, CSWR-Tymber Creek proposed improvements to the water system as well. These improvements include making master meter pit renovations, installing remote monitoring with a chlorine analyzer, as well as anticipating distribution system repairs and valve replacements.

Based on the above, it appears that Tymber Creek has had issues with respect to regulatory compliance leading to a CO for its wastewater treatment system, but is on-schedule with its compliance with the current CO. Tymber Creek does not appear to have issues with respect to regulatory compliance regarding its water treatment system. While the Buyer identified several improvements it intends to implement in an effort to rectify the WWTP problems, and some that it believes need to be addressed with the water system, staff does not believe the Buyer has demonstrated extraordinary circumstances in support of its requested positive acquisition adjustment. Instead, staff believes that the proposed anticipated improvements in quality of service and compliance with regulatory mandates demonstrates CSWR-Tymber Creek's intention to responsibly execute its obligations as a utility owner. While staff does not believe the Utility's anticipated improvements justify its requested positive acquisition adjustment, these improvements may be considered for prudence and cost recovery in a future rate proceeding.

Anticipated Cost Efficiencies

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

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

In response to discovery, the Buyer provided an estimated annual reduction of operations and maintenance (O&M) expense of approximately \$51,000. However, with a requested acquisition adjustment of \$805,666, the requested amount is over four times greater than the Utility's current NBV of \$194,334. Even if the Buyer was able to achieve these savings in O&M expense, the inclusion of the requested acquisition adjustment in rate base and the inclusion of the annual

amortization expense in the NOI calculation would result in an increased revenue requirement. By operation of math, the overall impact would be a net increase to customer rates.

The Buyer also stated that CSWR-Tymer Creek would bring long-term rate stability to the Utility, should the transfer be approved. Staff agrees that economies of scale and potential consolidation of several systems in Florida, as proposed by CSWR-Tymer Creek, could bring some amount of long-term rate stability. However, absent specific and detailed support for these assertions, the Buyer has failed to meet its burden of demonstrating extraordinary circumstances. Moreover, Tymer Creek has exhibited rate stability. The Utility has had only two staff-assisted rate cases since 2004.

Staff's recommendation is consistent with the Commission's decision in Order No. PSC-2020-0458-PAA-WS.¹⁹ In that docket, the Buyer identified estimates of anticipated cost efficiencies, including a reduction in O&M expense and a reduction of cost of capital that would result from the transfer. Additionally, the Buyer cited several improvements it made to the water treatment plant and wastewater lift station since acquisition to improve the quality of service and compliance with regulatory mandates. While the Commission acknowledged that the Buyer accomplished cost savings, it did not believe the actions performed demonstrated extraordinary circumstances that would justify approval of a positive acquisition adjustment.

Staff's recommendation is also consistent with the Commission's decisions to deny CSWR-Florida Utility Operating Company, LLC a positive acquisition adjustment in its previous transfer dockets (see footnote 14). In each of those cases, the Commission determined CSWR-Florida Utility Operating Company, LLC failed to provide sufficient evidence of extraordinary circumstances and denied a positive acquisition adjustment. In those cases, CSWR-Florida Utility Operating Company, LLC also requested a deferral of the decision regarding the positive acquisition adjustments which was denied by the Commission. Staff believes the facts of this case are similar to the eight cases discussed above.

Conclusion

Pursuant to Rule 25-30.0371, F.A.C., staff recommends a positive acquisition adjustment not be granted as the Buyer did not demonstrate extraordinary circumstances. Staff believes the Buyer's anticipated improvements in quality of service and compliance with regulatory mandates do not indicate extraordinary circumstances and instead demonstrates CSWR-Tymer Creek's intentions to responsibly provide utility service.

¹⁹ Order No. PSC-2020-0458-PAA-WS, issued November, 23, 2020, in Docket No. 20190170-WS, *In re: Application for transfer of facilities and Certificate Nos. 259-W and 199-S in Broward County from Royal Utility Company to Royal Waterworks, Inc.*

Issue 5: Should CSWR-Florida Utility Operating Company, LLC’s miscellaneous service charges be revised to conform to amended Rule 25-30.460, F.A.C.?

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

Staff Analysis: Effective June 24, 2021, Rule 25-30.460, F.A.C., was amended to remove initial connection and normal reconnection charges.²⁰ The definitions for initial connection charges and normal reconnection charges were subsumed in the definition of the premises visit charge. The Utility’s miscellaneous service charges consist of initial connection and normal reconnection charges. The normal reconnection charge is more than the premises visit charge. Since the premises visit entails a broader range of tasks, staff believes the premises visit should reflect the amount of the normal reconnection charge of \$15 for normal hours. Therefore, staff recommends that the initial connection and normal reconnection charges be removed, the premises visit should be revised to \$15 for normal hours, and the definition for the premises visit charge be updated to comply with amended Rule 25-30.460, F.A.C. The Utility’s existing and staff’s recommended miscellaneous service charges are shown below in Tables 5-1 and 5-2.

**Table 5-1
 Utility’s Existing Miscellaneous Service Charges**

	<u>Normal Hours</u>
Initial Connection Charge	\$15.00
Normal Reconnection Charge	\$15.00
Violation Reconnection Charge - Water	\$15.00
Violation Reconnection Charge - Wastewater	Actual Cost
Premises Visit Charge (in lieu of disconnection)	\$10.00

**Table 5-2
 Staff Recommended Miscellaneous Service Charges**

	<u>Normal Hours</u>
Violation Reconnection Charge - Water	\$15.00
Violation Reconnection Charge – Wastewater	Actual Cost
Premise Visit Charge	\$15.00

²⁰ Order No. PSC-2021-0201-FOF-WS, issued June 4, 2021, in Docket No. 20200240-WS, *In re: Proposed amendment of Rule 25-30.460, F.A.C., Application for Miscellaneous Service Charges.*

Conclusion

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

Issue 6: Should this docket be closed?

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

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

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

ALL OF TYMBER CREEK SUBDIVISION AND LOST CREEK SUBDIVISION, DEVELOPED OR UNDEVELOPED, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Parcel #1 – The South 1/4 of the East 1/2 of the Northwest 1/4 except the West 25 feet in Hull Road, and the Northeast 1/4 of the Southwest 1/4 North of the creek (Little Tomoka River) except the West 25 feet in Hull Road, Section 25, Township 14 South, Range 31 East, Volusia County, Florida, containing 41 Acres, more or less.

Parcel #2 – The North 1/2 of the South 1/2 of the East 1/2 of the Northwest 1/4 except the West 25 feet in Hull Road, Section 25, Township 14 South, Range 31 East, Volusia County, Florida, containing 19.462 Acres.

Parcel #3 – The Northeast 1/4 of the Northwest 1/4 except the West 25 feet in Hull Road, Section 25, Township 14 South, Range 31 East, Volusia County, Florida, being 39.021 Acres.

Parcel #4 – A portion of the Northeast 1/4 of Section 25, Township 14 South, Range 31 East, described as follows:

As a point of reference, commence at the Northeast corner of Section 25, Township 14 South, Range 31 East; thence South 88°03'10" West a distance of 1,306.37 feet to a point in the Westerly right-of-way line of Interstate 95 (a 300 foot right-of-way as used) which is the Point of Beginning of the following described parcel: thence South 16°57'20" East along the Westerly right-of-way line of said Interstate 95 a distance of 1,333.37 feet to a point; thence South 86°26'21" West a distance of 2,034.63 feet to a point; thence North 0°44'20" West a distance of 1,296.89 feet to a point; thence North 86°22'40" East a distance of 1,661.89 feet to the Point of Beginning. Said parcel contains 55.0 Acres.

Parcel #5- A portion of the Southeast 1/4 of Section 24, Township 14 South, Range 31 East, described as follows:

As a point of reference, commence at the Southeast corner of said Section 24, Township 14 South, Range 31 East; thence South 88°3'10" West a distance of 1,306.37 feet to a point in the Westerly right-of-way line of Interstate 95 (a 300 foot right-of-way as used) which is the Point of Beginning of the following described parcel: thence South 86°22'40" West a distance of 1,661.89 feet to a point; thence North 0°58'06" West a distance of 1,383.16 feet to a point; thence North 88°29'30" East a distance of 1,282.47 feet to a point in the Westerly right-of-way line of said Interstate 95; thence South 16°57'20" East along said Westerly right-of-way line of Interstate 95 a distance of 1,371.34 feet to the Point of Beginning. Said parcel contains 45.8 Acres.

Parcel #6 – That part of the following described parcel that lies Westerly of Interstate 95 (a 300 foot right-of-way). The Easterly 264 feet of the Northwest 1/4 of the Southeast 1/4 and the Westerly 792 feet of the Northeast 1/4 of the Southeast 1/4 of Section 24, Township 14 South,

Range 31 East, Volusia County, Florida, excepting therefrom those portions used for Hull Road and for Interstate "I-95" Highway. Said parcel contains 2.10 Acres.

Parcel #7 – (Lost Creek) A part of the Southwest 1/4 of the Northeast 1/4 of Section 25, Township 14 South, Range 31 East, lying North of the Tomoka River and East of Groover Branch Creek, in Volusia County, Florida.

Lost Creek Legal Description

That portion of the Southwest 1/4 of the Northeast 1/4 of Section 25, Township 14 South, Range 31 East, lying North of the Northerly top of bank of the Tomoka River and Easterly of Groover Branch Creek, in Volusia County, Florida, being more particularly described as follows:

Commence at the Southwest corner of lot 326, after lot 326 as measured along the West line of the NE 1/4 of Section 25 1,319.05 feet South from the NW corner of the NE 1/4 of Section 25, Township 14 South, Range 31 East, Tymber Creek Phase II subdivision, as recorded in map book 35, pages 116 thru 136 of the public records of Volusia County, Florida. Said point being the Point of Beginning; thence North 87°26'54" East along the Southerly line of said Tymber Creek Phase II Subdivision, 1,330.09 feet to the East line of the said SW 1/4 of the NE 1/4 of Section 25; thence South 01°25'04" East along the said East line a distance of 516.82 feet to a meander line along the Northerly top of bank of the Tomoka River; thence along the said top of bank of the Tomoka River the following courses and distances: South 56°53'33" West 163.94 feet; South 58°00'47" West 100.98 feet; South 41°45'18" West 109.66 feet; South 63°07'13" West 100.12 feet; South 82°40'55" West 104.40 feet; South 46°41'34" West 105.94 feet; South 76°08'56" West 32.10 feet; South 44°55' 10" West 107.70 feet; South 32°45' 58" West 101.43 feet; South 20°15'20" West 100.12 feet; South 28°52' 54" West 81.18 feet; South 71°09' 07" West 40.26 feet to a meander line along the Easterly top of bank of said Groover Branch Creek; thence along said top of bank of Groover Branch Creek the following courses and distances: North 81°16'40" West 57.20 feet; North 18°23'19" West 34.56 feet; North 17°18' 38" West 38.01 feet; North 04°51'59" West 56.40 feet; North 23°33'35" West 23.18 feet; North 03°39'21" West 52.53 feet; North 13°17'07" East 45.99 feet; South 83°41' 27" East 38.88 feet; North. 39°20'57" East 56.10 feet; North 29°00'26" West 36.31 feet; North 55°22'42" West 47.25 feet; North 56°00'28" West 51.45 feet; North 15°18'09" West 72.15 feet; North 29°53'10" West 69.49 feet; South 66°30'02" West 33.57 feet; South 08°08'31" West 36.56 feet; South 43°31'28" West 41.66 feet; South 84°11'30" West 65.49 feet; North 80°37'26" West 40.34 feet; North 48°25'21" West 61.62 feet; North 12°00'14" West 26.80 feet; North 28°07'04" East 80.59 feet; North 15°29'07" E. 85.50 feet; North 27°46'29" West 19.83 feet; South 72°57'24" West 70.77 feet; South 46°51'09" West 64.30 feet; South 29°10'55" West 42.53 feet; South 51°45'35" West 22.87 feet to the West line of the said SW 1/4 of the NE 1/4 of Section 25; thence North 01°20'57" West 610.00 feet to the Point of Beginning.

Said parcel containing 23.7 acres, more or less.

**FLORIDA PUBLIC SERVICE COMMISSION
authorizes
CSWR-Florida Utility Operating Company, LLC
pursuant to
Certificate Number 303-W**

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

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
Order No. 8242	04/06/78	19770324-W	Original Certificate
Order No. 8242	04/06/78	19770325-S	Original Certificate
PSC-05-0188-FOF-WS	02/18/05	20041339-WS	Name Change
PSC-12-0571-FOF-WS	10/24/12	20110317-WS	TMOC
PSC-12-0571-FOF-WS	10/24/12	20120191-WS	Amendment
*	*	20220064-WS	Transfer

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

**FLORIDA PUBLIC SERVICE COMMISSION
authorizes
CSWR-Florida Utility Operating Company, LLC
pursuant to
Certificate Number 252-S**

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

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
Order No. 8242	04/06/78	19770324-W	Original Certificate
Order No. 8242	04/06/78	19770325-S	Original Certificate
PSC-05-0188-FOF-WS	02/18/05	20041339-WS	Name Change
PSC-12-0571-FOF-WS	10/24/12	20110317-WS	TMOC
PSC-12-0571-FOF-WS	10/24/12	20120191-WS	Amendment
*	*	20220064-WS	Transfer

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

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

**Schedule of Water Net Book Value as of
February 28, 2022**

<u>Description</u>	<u>Balance Per Utility 2/28/22</u>	<u>Adjustments</u>		<u>Staff 2/28/22</u>
Utility Plant in Service	\$335,032	(\$48,765)	A	\$286,268
Land & Land Rights	1,131	-		1,131
Accumulated Depreciation	(262,455)	37,541	B	(224,914)
CIAC	(155,893)	2,510	C	(153,383)
Amortization of CIAC	<u>155,893</u>	<u>(2,510)</u>	D	<u>153,383</u>
Total	<u>\$73,708</u>	<u>(\$11,223)</u>		<u>\$62,485</u>

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

**Schedule of Wastewater Net Book Value as of
 February 28, 2022**

<u>Description</u>	<u>Balance Per Utility 2/28/22</u>	<u>Adjustments</u>		<u>Staff 2/28/22</u>
Utility Plant in Service	\$1,037,526	(\$154,586)	A	\$882,940
Land & Land Rights	4,524	-		4,524
Accumulated Depreciation	(804,078)	48,464	B	(755,614)
CIAC	(380,306)	-	C	(380,306)
Amortization of CIAC	<u>380,306</u>	-	D	<u>380,306</u>
 Total	 <u>\$237,972</u>	 <u>(\$106,123)</u>		 <u>\$131,849</u>

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

**Explanation of Adjustments to Water Net Book Value as of
February 28, 2022**

Explanation	Amount
A. UPIS To reflect the appropriate balance.	(\$48,765)
B. Accumulated Depreciation To reflect the appropriate balance.	37,541
C. CIAC To reflect the appropriate balance.	2,510
D. Accumulated Amortization of CIAC To reflect the appropriate balance.	<u>(2,510)</u>
Total Adjustments to Water Net Book Value as of February 28, 2022	<u>(\$11,223)</u>

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

**Explanation of Adjustments to Wastewater Net Book Value as of
February 28, 2022**

Explanation	Amount
A. UPIS To reflect the appropriate balance.	(\$154,586)
B. Accumulated Depreciation To reflect the appropriate balance.	<u>48,464</u>
Total Adjustments to Wastewater Net Book Value as of February 28, 2022	<u>(\$106,123)</u>

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

**Schedule of Staff's Recommended Water Account Balances as of
February 28, 2022**

Account No.	Description	UPIS	Accumulated Depreciation
301	Organization	\$36	(\$33)
304	Structures & Improvements	179	(176)
309	Supply Mains	25,211	(12,473)
310	Power Generation Equipment	15,165	(15,165)
311	Pumping Equipment	3,742	(439)
331	Transmission and Distribution Mains	179,981	(156,222)
333	Services	11,160	(11,160)
334	Meters and Meter Installations	22,868	(5,685)
335	Hydrants	9,185	(8,502)
340	Office Furniture and Equipment	9,325	(9,320)
341	Transportation Equipment	7,812	(4,668)
345	Power Operated Equipment	373	(373)
348	Other Tangible Plant	<u>1,230</u>	<u>(697)</u>
	Total	<u>\$286,268</u>	<u>(\$224,914)</u>

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

**Schedule of Staff's Recommended Wastewater Account Balances as of
February 28, 2022**

Account No.	Description	UPIS	Accumulated Depreciation
354	Structures & Improvements	\$157,112	(\$135,004)
360	Collection Sewers - Force	12,551	(4,611)
361	Collection Sewers - Gravity	273,086	(273,086)
363	Services to Customers	43,346	(43,346)
364	Flow Measuring Devices	31,553	(13,980)
370	Receiving Wells	83,227	(9,400)
380	Treatment and Disposal Equipment	252,642	(252,642)
382	Outfall Sewer Lines	10,827	(10,827)
389	Other Plant and Misc. Equipment	5,725	(2,312)
390	Office Furniture and Equipment	6,935	(6,935)
391	Transportation Equipment	2,817	(352)
395	Power Operated Equipment	<u>3,120</u>	<u>(3,120)</u>
	Total	<u>\$882,940</u>	<u>(\$755,614)</u>

**CSWR – Florida Utility Operating Company, LLC.
 Tymber Creek Utilities, Inc.**

Monthly Water Rates

Residential and General Service

Base Facility Charge by Meter Size

5/8" x 3/4"	\$9.91
3/4"	\$14.87
1"	\$24.78
1 1/2"	\$49.55
2"	\$79.28
3"	\$158.56
4"	\$247.75
6"	\$495.50

Charge Per 1,000 gallons – Residential Service

0-6,000 gallons	\$3.88
6,001-10,000 gallons	\$4.44
Over 10,000 gallons	\$6.59

Charge Per 1,000 gallons – General Service

\$4.19

Initial Customer Deposits

	<u>Residential Service</u>	<u>General Service</u>
5/8" x 3/4"	\$20.00	N/A
1"	N/A	\$34.00
1 1/2"	N/A	\$66.00
Over 2"	N/A	\$106.00

Miscellaneous Service Charges

Late Payment Charge	\$5.90
---------------------	--------

Service Availability Charges

Main Extension Charge 5/8" x 3/4"	\$100.00
--------------------------------------	----------

**CSWR – Florida Utility Operating Company, LLC.
 Tymber Creek Utilities, Inc.**

Monthly Wastewater Rates

Residential Service

Base Facility Charge by Meter Size	
All Meter Sizes	\$34.40
Charge Per 1,000 gallons – Residential Service	
8,000 gallon cap	\$9.20

General Service

Base Facility Charge by Meter Size	
5/8" x 3/4"	\$34.40
3/4"	\$51.60
1"	\$86.00
1 1/2"	\$172.00
2"	\$275.20
3"	\$550.40
4"	\$860.00
6"	\$1,720.00
Charge Per 1,000 gallons	\$11.05

Initial Customer Deposits

	<u>Residential Service</u>	<u>General Service</u>
5/8" x 3/4"	\$20.00	N/A
1"	N/A	\$34.00
1 1/2"	N/A	\$66.00
Over 2"	N/A	\$106.00

Miscellaneous Service Charges

Late Payment Charge	\$5.90
---------------------	--------

Service Availability Charges

Main Extension Charge	
Residential per ERC	\$600.00
Plant Capacity Charge	
Residential per ERC	\$450.00

Item 4

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Engineering (P. Buys, King, Ramos) *TB*
Office of the General Counsel (Stiller) *JSC*

RE: Docket No. 20230081-WS – Application for increase in water and wastewater rates in Broward County by Royal Waterworks, Inc.

AGENDA: 10/03/23 – Regular Agenda – Tariff Suspension – Participation is at the discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: La Rosa

CRITICAL DATES: 10/13/23 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

Royal Waterworks, Inc. (Royal or Utility) is a Class B water and wastewater utility providing service to approximately 457 residential and 64 general service water customers in Broward County. Royal is located in the South Florida Water Management District. The Utility’s initial rates were established in 1983 in Docket No. 19820237-WS.¹ At that time, the Utility was owned by University Utility Corporation and subsequently underwent two transfers.²

¹ Order No. 12170, issued June 24, 1983, in Docket No. 19820237-WS, *In re: Application of University Utility Corporation for an increase in its rates to its customers in Broward County, Florida.*

² Order No. 19867, issued August 22, 1988, in Docket No. 19880557-WS, *In re: Application of Royal Utility Company for transfer of Certifications Nos. 259-W and 199-S from University Utility Corporation;* and Order No. PSC-2020-0458-PAA-WS, issued November 23, 2020, in Docket No. 20190170-WS, *In re: Application for transfer of facilities and Certificate Nos. 259-W and 199-S in Broward County from Royal Utility Company to Royal Waterworks, Inc.*

In 2022, the Utility recorded total company operating revenues of \$704,462 and \$713,819 for water and wastewater, respectively. Royal reported a net operating income for 2022 of \$12,515 for water and \$201,311 for wastewater.

On August 14, 2023, Royal filed an application for increased interim and final water and wastewater rates.³ However, on August 22, 2023, the Utility withdrew its request for interim rates due to calculation errors.⁴

The Utility requested that its application be processed using the Proposed Agency Action (PAA) procedure. Royal's application for increased final water and wastewater rates is based on the historical test year ending May 31, 2023. The requested final rates include adjustments for six water pro forma projects and six wastewater pro forma projects.

Royal requested final rates designed to generate revenues of \$804,969 for water operations and \$862,426 for wastewater operations. This represents a revenue increase of \$70,783, or 8.8 percent, for water and \$100,955, or 11.7 percent, for wastewater.

By letter dated September 13, 2023, staff advised the Utility that its Minimum Filing Requirements (MFRs) had deficiencies.⁵ Royal responded to that letter correcting some of the deficiencies on September 15, 2023.⁶ Staff sent a second deficiency letter on September 20, 2023.⁷ On the same day, the Utility provided responses to the second deficiency letter.⁸ Staff is still reviewing the response and as such, the official date of filing has not yet been established.

The 60-day statutory deadline for the Commission to suspend the Utility's requested final rates is October 13, 2023. This recommendation addresses the suspension of the Utility's requested final rates. The Commission has jurisdiction pursuant to Sections 367.081 and 367.082, Florida Statutes (F.S.).

³ Document No. 04709-2023, filed on August 14, 2023.

⁴ Document No. 04917-2023, filed on August 22, 2023.

⁵ Document No. 05199-2023, filed on September 13, 2023.

⁶ Document No. 05222-2023, filed on September 15, 2023.

⁷ Document No. 05292-2023, filed on September 20, 2023.

⁸ Document No. 05293-2023, filed on September 20, 2023.

Discussion of Issues

Issue 1: Should the Utility's proposed final water and wastewater rates be suspended?

Recommendation: Yes. Suspension of the Utility's proposed rates is necessary to allow sufficient time to review the request for final rate relief. (P. Buys)

Staff Analysis: Section 367.081(6), F.S., provides that the rates proposed by a utility shall become effective within sixty days after filing unless the Commission votes to withhold consent of implementation of the requested rates. Further, the above referenced statute permits the proposed final rates to go into effect, under bond, escrow, or corporate undertaking eight months after filing unless final action has been taken by the Commission.

Staff has reviewed the filing and the proposed rates, the revenues thereby generated, and the information filed in support of the rate application. Staff believes that it is reasonable and necessary to require further explanation regarding this data, and to require production of additional and/or corroborative data. This further examination will include a review by staff accountants and engineers. To date, staff has initiated an audit of Royal's books and records to examine allocated investment and operating expenses.⁹ This audit is tentatively due on October 13, 2023. Therefore, staff recommends suspension of the Utility's proposed rate increases to allow staff and any intervenors sufficient time to adequately and thoroughly examine the appropriateness of the Utility's request for final rate relief.

⁹ Document No. 04751-2023, filed August 15, 2023.

Issue 2: Should this docket be closed?

Recommendation: The docket should remain open pending the Commission's final action on the Utility's requested rate increase. (Stiller)

Staff Analysis: The docket should remain open pending the Commission's final action on the Utility's requested rate increase.

Item 5

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Ward, Hampson) *EJD*
Office of the General Counsel (Brownless) *JSC*

RE: Docket No. 20230068-EI – Petition for approval of smart outdoor lighting services pilot program by Duke Energy Florida, LLC.

AGENDA: 10/03/23 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 01/15/24 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

Case Background

On May 15, 2023, Duke Energy Florida, LLC (Duke or utility) filed a petition for approval of the smart outdoor lighting services pilot program (pilot program). Specifically, Duke is proposing to make modifications to Tariff Sheet Nos. 6.280 and 6.281 to allow certain customers who take service under the existing LS-1 lighting tariff to set their own personal lighting schedule and to dim the lights. Currently, all lights offered under the tariff operate from dusk to dawn.

In Order No. PSC-2023-0182-PCO-EI, the Commission suspended Duke's proposed modifications to Tariff Sheet Nos. 6.280 and 6.281 to allow staff time to gather additional data.¹ On June 26, 2023, staff issued its first data request, to which Duke responded on July 17, 2023. Staff issued a second data request on July 28, 2023, to which Duke responded on August 11, 2023. Staff noticed a scrivener's error in the tariff sheets filed with the petition, and Duke

¹ Order No. PSC-2023-0182-PCO-EI, issued June 26, 2023, in Docket No. 20230068-EI, *In re: Petition for approval of smart outdoor lighting services pilot program by Duke Energy Florida, LLC.*

Docket No. 20230068-EI
Date: September 21, 2023

included updated legislative and clean versions of the tariff sheets in response to staff's first data request. The proposed legislative tariffs are included in this recommendation as Attachment A. This recommendation addresses the proposed smart outdoor lighting services pilot program. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should the Commission approve Duke's smart outdoor lighting services pilot program?

Recommendation: Yes, the Commission should approve Duke's smart outdoor lighting services pilot program and the associated revised Tariff Sheet Nos. 6.280 and 6.281 effective on the date of the final Commission order approving the pilot. The pilot program would allow Duke to gather data on energy usage changes from participating customers so that it may develop a future program that is appropriately priced. Participating customers would be able to customize the operating and dimming schedule of their lights. (Ward)

Staff Analysis:

Rate Schedule LS-1

Rate schedule LS-1, Lighting Service, is available to any customer for the sole purpose of lighting roadways or other land use areas. Currently, the energy rates for the LS-1 tariff are set for all customers based on the same lighting schedule (dusk to dawn), with no option to dim the lights. Customers taking service under the LS-1 tariff pay a fixed monthly customer charge, a non-fuel energy charge based on per kWh usage, cost recovery factors, as well as per unit fixture and maintenance charges. Service is available to both metered and unmetered customers.

Proposed Pilot Program

Under the proposed pilot program, Duke would offer certain customers taking service under rate schedule LS-1 the option to set their own lighting schedules and dim the lights. The rates offered under the current tariff would remain the same. Customers would be able to schedule lighting service during the time period from 30 minutes prior to dusk until 30 minutes after dawn. The terms and conditions of the pilot program state that customers would be able to request brightness between 50 and 100 percent of the standard output of the fixture. Additionally, the terms and conditions state that participating customers would be able to request changes to their lighting schedules during the pilot program. The processing time for normal schedule changes would be five business days and the processing time for "emergent special events" would be three business days. Examples of these special events given by Duke in response to staff's first data request include turning off desired lights for a fireworks show, community concerts, or outdoor movie events.

If approved, the pilot would run for a period of 18 months beginning on the date of the final Commission order approving the petition. In response to staff's first data request, the utility stated that customers would be enrolled in the pilot program for a period of 12 consecutive months, with enrollment ending after the sixth month of the pilot program. In its petition, the utility stated that it would file an amendment to its LS-1 tariff to remove references to the pilot program no less than sixty days before its expiration.

Pilot Program Participation and Availability

In its petition, Duke stated that customers would be able to participate if they take service for at least five light-emitting diode (LED) lights with company installed smart nodes. In response to staff's first data request, Duke stated that it has begun installing the smart nodes on all

compatible LEDs through its typical installation and maintenance work. In response to staff's second data request, Duke stated that there are no incremental costs associated with the installation of a smart node. Additionally, the utility asserted that, as of July 2023, 250 customers have LED light fixtures with smart nodes installed. The utility estimates that approximately 25 to 50 customers would participate in the pilot program. Duke proposes to limit participation in the pilot program to 10,000 lights, while also reserving the right to allow additional participation.

The pilot program would be available to both metered and unmetered customers. In response to staff's first data request, Duke stated that pilot program participants on LS-1 with metered accounts would be charged based on their actual kWh usage, so their actual energy consumption would be charged based on their energy usage (which may be higher or lower). In response to staff's second data request, the utility stated that it would measure the impact of the program on unmetered customers by utilizing vendor provided software that tracks street light usage based on being on/off or dimmed and compare that to data from a normal streetlight that turns the light on from dusk to dawn.

In its petition, Duke stated that the purpose of the pilot program is to gather data on energy usage changes from participating customers so that it can develop a future permanent program that is appropriately priced. Examples of customers who might participate in the pilot include a sporting arena that may only need lights on until the late evening or a parking lot that may need to light the lot for slightly longer than dusk to dawn.

Pilot Program Costs

In response to staff's second data request, the utility stated that the marketing cost of the pilot program is estimated to be between \$3,320 and \$5,320. These costs include the one time cost for the development of a customer website and the one time cost for 500 color printouts of a pilot program factsheet. Duke stated that these costs are not included in rate base and would be included in future rate cases if applicable.

Conclusion

Having reviewed the petition and staff data request responses, staff recommends that the Commission approve Duke's proposed smart outdoor lighting services pilot program and associated revised Tariff Sheet Nos. 6.280 and 6.281 effective the date of the final Commission order approving the pilot. The proposed pilot program would allow Duke to gather data on energy usage changes from participating customers so that it may develop a permanent future program that is appropriately priced. Participating customers would be able to customize the operating and dimming schedules of their lights.

Issue 2: Should this docket be closed?

Recommendation: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should not go into effect pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Brownless)

Staff Analysis: If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariff should not go into effect pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.



6.280

SECTION NO. VI
~~FORTIETH-FORTY-FIRST~~ REVISED SHEET NO. 6.280
CANCELS ~~THIRTY-NINTH~~~~FORTIETH~~ REVISED SHEET NO.

Page 1 of 8

RATE SCHEDULE LS-1
LIGHTING SERVICE

Availability:

Available throughout the entire territory served by the Company.

Applicable:

To any customer for the sole purpose of lighting roadways or other outdoor land use areas; served from either Company or customer owned fixtures of the type available under this rate schedule. Service hereunder is provided for the sole and exclusive benefit of the customer, and nothing herein or in the contract executed hereunder is intended to benefit any third party or to impose any obligation on the Company to any such third party.

Character of Service:

Continuous dusk to dawn automatically controlled lighting service (i.e. photoelectric cell); alternating current, 60 cycle, single phase, at the Company's standard voltage available; provided, however, that Customers electing to participate in the Smart Outdoor Lighting Service Pilot Program may choose a different period of time.

Smart Outdoor Lighting Services Pilot Program:

Any customer, who is in good financial standing and takes service under LS-1 for certain LED fixtures with Company-installed smart nodes, may apply to participate in the Smart Outdoor Lighting Services Pilot Program ("Smart Pilot"). During the 18-month Smart Pilot period, customers can schedule lighting service during the time period from 30 minutes prior to dusk until 30 minutes after dawn. Participants in the Smart Pilot will agree to the Smart Pilot's Terms and Conditions and will continue to be billed through the LS-1 rates. Participation in the Smart Pilot is limited to 10,000 lights, but the Company reserves the right to allow additional participation.

Limitation of Service:

Availability of certain fixture or pole types at a location may be restricted due to accessibility.

Standby or resale service not permitted hereunder. Service under this rate is subject to the Company's currently effective and filed "General Rules and Regulations Governing Electric Service."

Rate Per Month:

Customer Charge:

Unmetered:	\$ 1.65 per line of billing
Metered:	\$ 4.71 per line of billing

Energy and Demand Charge:

Non-Fuel Energy Charge:	2.852¢ per kWh
-------------------------	----------------

Plus the Cost Recovery Factors listed in Rate Schedule BA-1, <i>Billing Adjustments</i> , except the Fuel Cost Recovery Factor and Asset Securitization Charge Factor:	See Sheet No. 6.105 and 6.106
--	-------------------------------

Per Unit Charges:

I. Fixtures:

(Continued on Page No. 2)

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

EFFECTIVE: **January 1, 2023**



6.280

SECTION NO. VI
FORTIETH-FORTY-FIRST REVISED SHEET NO. 6.280
 CANCELS ~~THIRTY-NINTH~~~~FORTIETH~~ REVISED SHEET NO.

Page 1 of 8

BILLING TYPE	DESCRIPTION	LAMP SIZE ²			CHARGES PER UNIT		
		INITIAL LUMENS OUTPUT	LAMP WATTAGE	kWh	FIXTURE	MAINTENANCE	NON-FUEL ENERGY ³
Incandescent: ¹							
110	Roadway	1,000	105	32	\$1.02	\$4.70	\$0.91
115	Roadway	2,500	205	66	1.60	4.32	1.88
170	Post Top	2,500	205	72	20.01	4.32	2.05
Mercury Vapor: ¹							
205	Open Bottom	4,000	100	44	\$2.38	\$1.80	\$1.25
210	Roadway	4,000	100	44	3.06	1.80	1.25
215	Post Top	4,000	100	44	3.60	1.80	1.25
220	Roadway	8,000	175	71	3.10	1.77	2.02
225	Open Bottom	8,000	175	71	2.45	1.77	2.02
235	Roadway	21,000	400	158	3.75	1.79	4.54
240	Roadway	62,000	1,000	386	5.49	2.07	11.04
245	Flood	21,000	400	158	4.92	1.79	4.54
250	Flood	62,000	1,000	386	5.77	2.07	11.04

(Continued on Page No. 2)

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

EFFECTIVE: **January 1, 2023**



6.281

SECTION NO. VI
 THIRTY-FIFTH-SIXTH REVISED SHEET NO. 6.281
 CANCELS THIRTY-FOURTH-FIFTH REVISED SHEET NO.

Page 2 of 8

RATE SCHEDULE LS-1 LIGHTING SERVICE (Continued from Page No. 1)							
I. Fixtures: (Continued)							
BILLING TYPE	DESCRIPTION	LAMP SIZE ²			CHARGES PER UNIT		
		INITIAL LUMENS OUTPUT	LAMP WATTAGE	kWh	FIXTURE	MAINTENANCE	NON-FUEL ENERGY ³
	<u>Mercury Vapor: ¹ Continued</u>						
235	Roadway	21,000	400	158	3.75	1.79	4.51
240	Roadway	62,000	1,000	386	5.49	2.07	11.01
245	Flood	21,000	400	158	4.92	1.79	4.51
250	Flood	62,000	1,000	386	5.77	2.07	11.01
	<u>Sodium Vapor: ¹</u>						
300	HPS Deco Rdwy White	50,000	400	168	\$10.50	\$1.87	\$4.79
301	Sandpiper HPS Deco Roadway	27,500	250	104	13.61	1.85	2.97
302	Sandpiper HPS Deco Rdwy Blk	9,500	100	42	13.16	1.84	1.20
305	Open Bottom	4,000	50	21	2.49	1.86	0.60
306	100W HS Deco Rdwy Blk	9,500	100	42	10.19	1.84	1.20
310	Roadway	4,000	50	21	3.06	1.86	0.60
313	Open Bottom	6,500	70	29	4.11	1.84	0.83
314	Hometown II	9,500	100	42	3.83	1.84	1.20
315	Post Top - Colonial/Contemp	4,000	50	21	4.95	1.86	0.60
316	Colonial Post Top	4,000	50	34	3.97	1.86	0.97
318	Post Top	9,500	100	42	2.45	1.84	1.20
320	Roadway-Overhead Only	9,500	100	42	4.04	1.84	1.20
321	Deco Post Top - Monticello	9,500	100	49	12.59	1.84	1.40
322	Deco Post Top - Flagler	9,500	100	49	15.53	1.84	1.40
323	Roadway-Turtle OH Only	9,500	100	42	4.84	1.84	1.20
325	Roadway-Overhead Only	16,000	150	65	4.57	1.85	1.85
326	Deco Post Top - Sanibel	9,500	100	49	18.69	1.84	1.40
330	Roadway-Overhead Only	22,000	200	87	3.40	1.85	2.48
335	Roadway-Overhead Only	27,500	250	104	5.68	1.85	2.97
336	Roadway-Bridge	27,500	250	104	6.28	1.85	2.97
337	Roadway-DOT	27,500	250	104	5.47	1.85	2.97
338	Deco Roadway-Maitland	27,500	250	104	9.65	1.85	2.97
340	Roadway-Overhead Only	50,000	400	169	5.79	1.87	4.82
341	HPS Flood-City of Sebring only	16,000	150	65	3.78	1.85	3.08
342	Roadway-Turnpike	50,000	400	168	8.33	1.87	4.79
343	Roadway-Turnpike	27,500	250	108	8.50	1.85	3.08
345	Flood-Overhead Only	27,500	250	103	5.18	1.85	2.94
347	Clemont	9,500	100	49	20.49	1.84	1.40
348	Clemont	27,500	250	104	21.51	1.85	2.97
350	Flood-Overhead Only	50,000	400	170	5.36	1.87	4.85
351	Underground Roadway	9,500	100	42	5.68	1.84	1.20
352	Underground Roadway	16,000	150	65	6.21	1.85	1.85
353	Underground Roadway	22,000	200	87	6.21	1.85	2.48
354	Underground Roadway	27,500	250	108	7.33	1.85	3.08
356	Underground Roadway	50,000	400	168	7.44	1.87	4.79
357	Underground Flood	27,500	250	108	8.83	1.85	3.05
358	Underground Flood	50,000	400	168	9.01	1.87	4.79
359	Underground Turtle Roadway	9,500	100	42	6.59	1.84	1.20
360	Deco Roadway Rectangular	9,500	100	47	11.93	1.84	1.34
365	Deco Roadway Rectangular	27,500	250	108	11.39	1.85	3.08
366	Deco Roadway Rectangular	50,000	400	168	11.39	1.87	4.79
370	Deco Roadway Round	27,500	250	108	16.48	1.85	3.08
375	Deco Roadway Round	50,000	400	168	16.48	1.87	4.79
380	Deco Post Top - Ocala	9,500	100	49	10.42	1.84	1.40
381	Deco Post Top	9,500	100	49	3.77	1.84	1.40
383	Deco Post Top-Biscayne	9,500	100	49	13.21	1.84	1.40
385	Deco Post Top - Sebring	9,500	100	49	6.67	1.84	1.40
393	Deco Post Top	4,000	50	21	8.13	1.86	0.60
394	Deco Post Top	9,500	100	49	16.92	1.84	1.40

(Continued on Page No. 3)

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

EFFECTIVE: January 1, 2023

Item 6

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey, McClelland)
Office of the General Counsel (Stillet)

RE: Docket No. 20230087-EU – Joint petition for renewal of territorial agreement and approval of a first amendment, in Monroe County, by Florida Keys Electric Cooperative Association, Inc. and Utility Board of the City of Key West.

AGENDA: 10/03/23 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Clark

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

Case Background

On August 2, 2023, Florida Keys Electric Cooperative Association, Inc. (FKEC) and the Utility Board of the City of Key West, d/b/a Keys Energy Services (KEYS), filed a joint petition for renewal of territorial agreement and approval of a first amendment (First Amendment). The Commission approved a territorial agreement between FKEC and KEYS, (collectively, the parties) in 1991 (1991 Territorial Agreement).¹ The 1991 Territorial Agreement expired in September 2021 at the end of its 30-year term and automatically renewed for an additional 30 years. Although the two utilities did not seek Commission approval of their renewed 1991 Territorial Agreement at the end of its first 30-year term, as required by the 1991 Territorial

¹ Order No. 25127, issued on September 27, 1991, in Docket No. 910765-EU, *In re: joint Petition of Florida Keys Electric Cooperative association, Inc., and the Utility board of the City of Key West for approval of a territorial agreement.*

Agreement, the parties stated that they have abided by the conditions of the agreement with the exception of the provision of electric service to Pigeon Key.²

The proposed First Amendment addresses a modification to the existing service territory boundary to allow FKEC to provide electric service to Pigeon Key, which currently lies in KEYS' service territory. Pigeon Key was designated as a National Historic Landmark in 1990. In 1992, the Pigeon Key Foundation, Inc., (Foundation) was created as a non-profit organization to preserve and protect Pigeon Key. The Foundation has been utilizing self-service generators during the past 29 years and has requested electric service and hence the need for the proposed First Amendment.

The 1991 Territorial Agreement and territorial map are Attachment A and the proposed First Amendment, including the map depicting the modified service boundary, is included in Attachment B to this recommendation.

During the review process, staff issued two data requests to the parties on August 10 and 29, 2023. Responses were received on August 23 and on September 7, 2023. Staff also had an informal telephonic meeting with the parties on September 7, 2023. This recommendation addresses the renewal of the 1991 Territorial Agreement, proposed First Amendment to the 1991 Territorial Agreement and associated revised boundary map. The Commission has jurisdiction over this matter pursuant to Sections 366.04 and 366.05, Florida Statutes (F.S.).

² Response No. 2 in Staff's First Data Request, Document No. 04944-2023.

Discussion of Issues

Issue 1: Should the Commission approve the renewal of the 1991 Territorial Agreement and the proposed First Amendment to the 1991 Territorial Agreement and associated revised boundary map between Florida Keys Electric Cooperative Association, Inc. and the Utility Board of the City of Key West, d/b/a Keys Energy Services, in Monroe County?

Recommendation: Yes, the Commission should approve the renewal of the 1991 Territorial Agreement and the proposed First Amendment to the 1991 Territorial Agreement and associated revised boundary map between FKEC and KEYS in Monroe County. The renewal of the 1991 Territorial Agreement and proposed First Amendment would enable FKEC to provide electric service to the Foundation pursuant to the proposed revised service boundary and avoid duplication of service. (Guffey, McClelland)

Staff Analysis: FKEC is a rural electric cooperative and KEYS is a municipal electric utility. Pursuant to Section 366.04(2)(d), F.S., and Rule 25-6.0440(2), F.A.C., the Commission has the jurisdiction to approve territorial agreements between and among rural electric cooperatives, municipal electric utilities, and other electric utilities. Unless the Commission determines that the agreement will cause a detriment to the public interest, the agreement should be approved.³

1991 Territorial Agreement

FKEC and KEYS entered into an electric service territorial agreement in June 1991, which the Commission approved in September 1991.⁴ The 1991 Territorial Agreement which had a 30-year term, clearly identified the geographic areas to be served by each utility which allowed the two utilities to prevent potential uneconomic duplication of facilities and hazardous situations within their specified service territories. There were no customer or facility transfers contemplated in the 1991 Agreement.

The 1991 Territorial Agreement's 30-year term expired in September 2021 and automatically renewed for an additional 30 years since neither of the parties gave notice to not renew. Paragraph 11 of the 1991 petition recognized that any modifications, changes, or corrections must be approved by this Commission. Additionally, Section 5.1 of the 1991 Agreement states that:

each such renewal of this Agreement shall require prerequisite approval of the Commission with the same effect as the original Commission approval of this Agreement as required and approved for in Article 4 hereof.

The parties explained that due to staffing changes there was a delay in filing a petition with the Commission for renewal of the 1991 Territorial Agreement. However, the parties stated that with the exception of the provision of electric service to Pigeon Key, which is discussed below

³ Utilities Commission of the City of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (Fla. 1985).

⁴ Order No. 25127, issued on September 27, 1991, in Docket No. 910765-EU, *In re: joint Petition of Florida Keys Electric Cooperative association, Inc., and the Utility board of the City of Key West for approval of a territorial agreement*.

and the subject of the proposed First Amendment, the parties abided by the 1991 Territorial Agreements and have had no disputes.

Proposed First Amendment to the 1991 Agreement

Through the proposed First Amendment to the 1991 Territorial Agreement, the parties seek to modify the service territory boundary and allow FKEC to provide electric service to Pigeon Key at the request of the Foundation. Prior to the Foundation's request for electric service, neither KEYS nor FKEC provided electric service to the island. Provision of electricity by KEYS to the Pigeon Key poses significant engineering and economic challenges due to the geographic and environmental conditions. Although KEYS owns electric transmission poles approximately 350 feet from the island, the poles do not carry distribution lines and KEYS does not have the ability to step down the electricity. The parties state that if KEYS were to extend the distribution lines to Pigeon Key, the most economical method to do so would cost approximately \$6 million.

The costs incurred by FKEC to add facilities within its service boundary in order to connect to the Foundation's point of service is \$6,011.53.⁵ Considering the above-stated challenges if KEYS were to provide electric service to the Foundation, allowing FKEC to provide electric service to the Foundation is the most economical and practical solution.

In response to staff discovery, the parties stated that FKEC has been providing service to the Foundation since May 2021.⁶ The parties acknowledge that they should have requested Commission approval of the First Amendment to the 1991 Agreement prior to providing service to the Foundation; however, the parties explained that due to staffing changes there was a delay in filing a petition with the Commission.

Pursuant to Rule 25-6.0440(1)(d), F.A.C., affected customers must be notified of difference in service and rates. In June 2023, FKEC provided the Foundation a customer notice indicating the rates and tariffs that would be applicable to the Foundation. The Foundation receives electric service under FKEC's General Service Demand tariff. In response to staff's data request, the parties provided a copy of FKEC's customer notification and applicable tariff information.⁷ The parties informed staff that there have been no customer comments or objections regarding this proposed territorial amendment and no customer comments have been filed in the docket file.

Conclusion

After review of the petition, the 1991 Territorial Agreement, the First Amendment to the 1991 Territorial Agreement, evaluation of responses to staff's data requests, and informal telephonic meeting with the parties, staff believes that the renewal of the 1991 Territorial Agreement and First Amendment would not be a detriment to the public interest and would enable FKEC to serve the Pigeon Key Foundation in an efficient manner. It appears that the 1991 Agreement and First Amendment and associated modified boundary map would eliminate any potential uneconomic duplication of facilities and not cause a decrease in the reliability of electric service. As such, staff believes that the Commission should approve the renewal of the 1991 Territorial Agreement between FKEC and KEYS along with the proposed First Amendment to the 1991

⁵ Paragraph 11 of the petition and customer notification referenced in Response No. 10 in staff's First Data Request.

⁶ Response No. 2 in Staff's First Data Request, Document No. 04944-2023.

⁷ Response No. 11 and attachments in Staff's First Data Request, Document No. 04944-2023.

Territorial Agreement and associated revised service boundary map, effective on the date of the final Commission order. FKEC and KEYS should be put on notice that any further modifications to the Territorial Agreement should be promptly submitted to the Commission for its review and approval.

Issue 2: Should this docket be closed?

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

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

AGREEMENT

Section 0.1 THIS AGREEMENT, made and entered into this 17TH day of JUNE, 1991 by and between the Utility Board of the City of Key West, using the trade name "City Electric System," (referred to in this Agreement as "CES") organized and existing under the laws of the State of Florida and an electric utility as defined in Chapter 366.02(2) Florida Statutes, and Florida Keys Electric Cooperative Association, Inc. (referred to in this Agreement as "FKEC"), a rural electric cooperative organized and existing under Chapter 425, Florida Statutes, and Title 7, Chapter 31, United States Code and an electric utility as defined in Chapter 366.02(2), Florida Statutes, each of whose retail service territories are subject to regulation pursuant to Chapter 366, Florida Statutes and which are collectively referred to in this Agreement as the "Parties";

WITNESSETH:

Section 0.2: WHEREAS, the Parties are authorized, empowered and obligated by their corporate charters and the laws of the State of Florida to furnish electric service to persons requesting such service within their respective service areas; and

Section 0.3: WHEREAS, each of the Parties presently furnishes electrical service to consumers in Monroe County, Florida; and

Agreement/CES/FKEC
Page 2

Section 0.4: WHEREAS, although the respective service areas of the Parties are contiguous, their respective areas have an existing and natural boundary between Knight Key and Little Duck Key, which boundary is intersected by the Seven Mile Bridge, and

Section 0.5: WHEREAS, the unique geographic location of the service areas of the Parties and the unique topography of the Florida Keys affords a rational and non-controversial boundary between the Parties, and

Section 0.6: WHEREAS, the Parties desire to minimize their costs to their respective rate payers by avoiding duplication of generation, transmission, and distribution facilities, and by avoiding the costs of litigation that may result in territorial disputes; and

Section 0.7: WHEREAS, the Parties desire to avoid adverse ecological and environmental consequences that may result when competing utilities attempt to expand their service facilities into areas where other utilities have also constructed service facilities; and

Section 0.8: WHEREAS, The Florida Public Service Commission (referred to in this Agreement as the "Commission"), has previously recognized that duplication of facilities results in needless and wasteful expenditures and may create hazardous situations, detrimental to the public interest; and

Agreement/CES/FKEC
Page 3

Section 0.9: WHEREAS, the Parties desire to avoid and eliminate the circumstances giving rise to potential duplication of facilities and hazardous situations, and toward that end have established a Territorial Boundary Line to delineate their respective retail Territorial Areas; and

Section 0.10: WHEREAS, the Commission is empowered by Section 366.04(2)(d), Florida Statutes, to approve and enforce territorial agreements between electric utilities, has recognized the wisdom of such agreements, and has held that such agreements, subject to Commission approval, are advisable in proper circumstances, and are in the public interest;

Section 0.11: NOW, THEREFORE, in consideration of the premises aforesaid and the mutual covenants and agreements herein set forth the Parties agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1: Territorial Boundary Line. As used in this Agreement, the term "Territorial Boundary Line" shall mean the boundary line shown on the map attached hereto as Exhibit "A", which differentiates and divides the FKEC Territorial Area and the CES Territorial Area.

Section 1.2: FKEC Territorial Area. As used in this Agreement, the term "FKEC Territorial Area" shall mean the geographic areas of Monroe County shown on Exhibit "A" designated

Agreement /CES /FKEC
Page 4

"FKEC", and the balance of the geographic area of Monroe County, not shown on Exhibit "A" which lies North by Northeast of the Territorial Boundary Line.

Section 1.3: CES Territorial Area. As used in this Agreement, the term "CES Territorial Area" shall mean the geographic areas of Monroe County, shown on Exhibit "A", designated "CES", and the balance of the geographic area of Monroe County not shown on Exhibit "A" which lies South by Southwest of the Territorial Boundary Line.

Section 1.4: Transmission Line. As used in this Agreement, the term "Transmission Line" shall mean any Transmission Line of either Party having a rating of 69 kV or greater.

Section 1.5: Distribution Line. As used in this Agreement, the term "Distribution Line" shall mean any Distribution Line of either Party having a rating of up to, but not including 69 kV.

Section 1.6: Person. As used in this Agreement, the term "Person" shall have the same inclusive meaning given to it in Section 1.01(3), Florida Statutes.

Section 1.7: New Customer. As used in this Agreement, the term "New Customer" shall mean any Person that applies to either FKEC or CES for retail electric service after the effective date of this Agreement.

Agreement/CES/FKEC
Page 5

Section 1.8: Existing Customer. As used in this Agreement, the term "Existing Customer" shall mean any Person receiving retail electric service from either FKEC or CES on the effective date of this Agreement.

Section 1.9: End Use Facilities. As used in this Agreement, the term "end use facilities" means those facilities at a geographic location where the electric energy used by a customer is ultimately consumed.

ARTICLE 2

AREA ALLOCATIONS AND NEW AND EXISTING CUSTOMERS

Section 2.1: Territorial Allocations. During the term of this Agreement, FKEC shall have the exclusive authority to furnish retail electric service for end use within the FKEC Territorial Area and CES shall have the exclusive authority to furnish retail electric service for end use within the CES Territorial Area.

Section 2.2: Service to New and Existing Customers. The Parties agree that neither of them will knowingly serve or attempt to serve any New or Existing Customer whose end-use facilities are or will be located within the Territorial Area of the other Party.

Section 2.3: Bulk Power for Resale. Nothing herein shall be construed to prevent either Party from providing a bulk power supply for resale purposes to any other electric utility

Agreement/CES/FKEC
Page 6

regardless of where such other electric utility may be located. Further, no other Section or provision of this Agreement shall be construed as applying to a bulk power supply for resale purposes.

Section 2.4: Service Areas of Other Utilities. This Agreement between FKEC and CES does not constitute an agreement on or allocation of any geographic area of Monroe County, that is currently being provided electric service by electric utilities not parties to this Agreement.

Section 2.5: CES Facilities in FKEC Territorial Area. The Parties agree that the location, use, or ownership of transmission facilities by CES (or the use or right to the use of FKEC's transmission facilities) in FKEC's Territorial Area as defined herein, shall not grant CES any right or authority, now or in the future, to serve any consumers whose end use facilities are, or will be, located in FKEC's Territorial Area.

Section 2.6: Distribution Facilities. Neither Party has any distribution facilities located in the territorial area of the other Party, and neither Party shall construct, operate, or maintain distribution facilities in the Territorial Area of the other Party.

Section 2.7: No Transfer of Customers. Neither Party has any customers located in the Territorial Area of the other Party as of the date of this Agreement, and no customers will be transferred from one Party to the other by virtue of this Agreement.

Agreement /CES /FKEC
Page 7

ARTICLE 3

OPERATION AND MAINTENANCE

Section 3.1: Facilities to Remain. Electric facilities which currently exist or are hereafter constructed or used by a Party in conjunction with its electric utility system, which are directly or indirectly used and useful in service to its customers in its Territorial Area, shall be allowed to remain where situated and shall not be subject to removal or transfer hereunder except as provided in the Transmission Agreement dated February 6, 1985 between the Parties or as provided in any successor agreement; provided, however, that such facilities shall be operated and maintained in such a manner as to minimize interference with the operations of the other Party.

ARTICLE 4

PREREQUISITE APPROVAL

Section 4.1: Commission Approval and Continuing Jurisdiction. The provisions of and the Parties' performance of this Agreement are subject to the regulatory authority of the Commission. Approval by the Commission of the provisions of this Agreement shall be an absolute condition precedent to the validity, enforceability and applicability hereof. This Agreement shall have no effect whatsoever until Commission approval has been obtained, and the date of the Commission's

Agreement/CES/FKEC
Page 8

order granting Commission approval of this Agreement shall be deemed to be the effective date of this Agreement. Any proposed modification to this Agreement shall be submitted to the Commission for prior approval. In addition, the Parties agree to jointly petition the Commission to resolve any dispute concerning the provisions of this Agreement or the Parties' performance of this Agreement. The Parties recognize that the Commission has continuing jurisdiction to review this Agreement during the term hereof, and the Parties agree to furnish the Commission with such reports and other information as requested by the Commission from time to time.

Section 4.2: No Liability in the Event of Disapproval. In the event approval of this Agreement pursuant to Section 4.1 hereof is not obtained, neither Party will have any cause of action against the other arising under this document.

Section 4.3: Supersedes Prior Agreements. Upon its approval by the Commission, this Agreement shall be deemed to specifically supersede any and all prior agreements between the Parties defining the boundaries of their respective Territorial Areas in Monroe County.

ARTICLE 5

DURATION

Section 5.1: This Agreement shall continue and remain in effect for a period of thirty (30) years from the date of the

Agreement/CES/FKEC
Page 9

Commission's initial Order approving this Agreement, and shall be automatically renewed for additional thirty (30) year periods unless either Party gives written notice to the other of its intent not to renew at least six (6) months prior to the expiration of any period; provided, however, that each such renewal of this Agreement shall require prerequisite approval of the Commission with the same effect as the original Commission approval of this Agreement as required and provided for in Article 4 hereof.

ARTICLE 6

CONSTRUCTION OF AGREEMENT

Section 6.1: Intent and Interpretation. It is hereby declared to be the purpose and intent of the Parties that this Agreement shall be interpreted and construed, among other things, to further the policy of the State of Florida to: actively regulate and supervise the service territories of electric utilities; supervise the planning, development, and maintenance of a coordinated electric power grid throughout Florida; avoid uneconomic duplication of generation, transmission and distribution facilities; and to encourage the installation and maintenance of facilities necessary to fulfill the Parties' respective obligations to serve the citizens of the State of Florida within their respective service areas.

Agreement/CES/FKEC
Page 10

ARTICLE 7

MISCELLANEOUS

Section 7.1: Negotiations. Regardless of any other terms or conditions that may have been discussed during the negotiations leading up to the execution of this Agreement, the only terms or conditions agreed upon by the parties are those set forth herein, and no alteration, modification, enlargement or supplement to this Agreement shall be binding upon either of the Parties hereto unless the same shall be in writing, attached hereto, signed by both of the parties and approved by the Commission in accordance with Article 4, Section 4.1 hereof.

Section 7.2: Successors and Assigns; for Benefit Only of Parties. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended, or shall be construed, to confer upon or give to any person other than the Parties hereto, or their respective successors or assigns, any right, remedy, or claim under or by reason of this Agreement, or any provision or condition hereof; and all of the provisions, representations, covenants, and conditions herein contained shall inure to the sole benefit of the Parties or their respective successors or assigns.

Section 7.3: Notices. Notices given hereunder shall be deemed to have been given to FKEC if mailed by certified mail, postage prepaid to

Agreement/CES/FKEC
Page 11

General Manager
Florida Keys Electric Cooperative Association, Inc.
91605 Overseas Highway
Tavernier, Florida 33070

and to CES if mailed by certified mail, postage prepaid to:

General Manger
City Electric System
P. O. Box 6100
Key West, Florida 33041-6100

The person or address to which such notice shall be mailed may, at any time, be changed by designating a new person or address and giving notice thereof in writing in the manner herein provided.

Section 7.4: Petition to Approve Agreement. Upon full execution of this Agreement by the Parties, the Parties agree to jointly file a petition with the Commission seeking approval of this Agreement, and to cooperate with each other and the Commission in the submission of such documents and exhibits as are reasonably required to support the petition.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in duplicate in their respective corporate names and their corporate seals affixed by their duly authorized officers on the day and year first above written.

Agreement/CES/FKEC
Page 12

ATTEST:

UTILITY BOARD OF THE CITY OF
KEY WEST, "CITY ELECTRIC SYSTEM"


Robert R. Padron,
Secretary

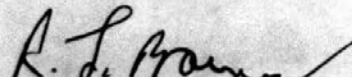
By: 
William T. Cates

Title: Chairman

(SEAL)

ATTEST:

FLORIDA KEYS ELECTRIC COOPERATIVE
ASSOCIATION, INC.

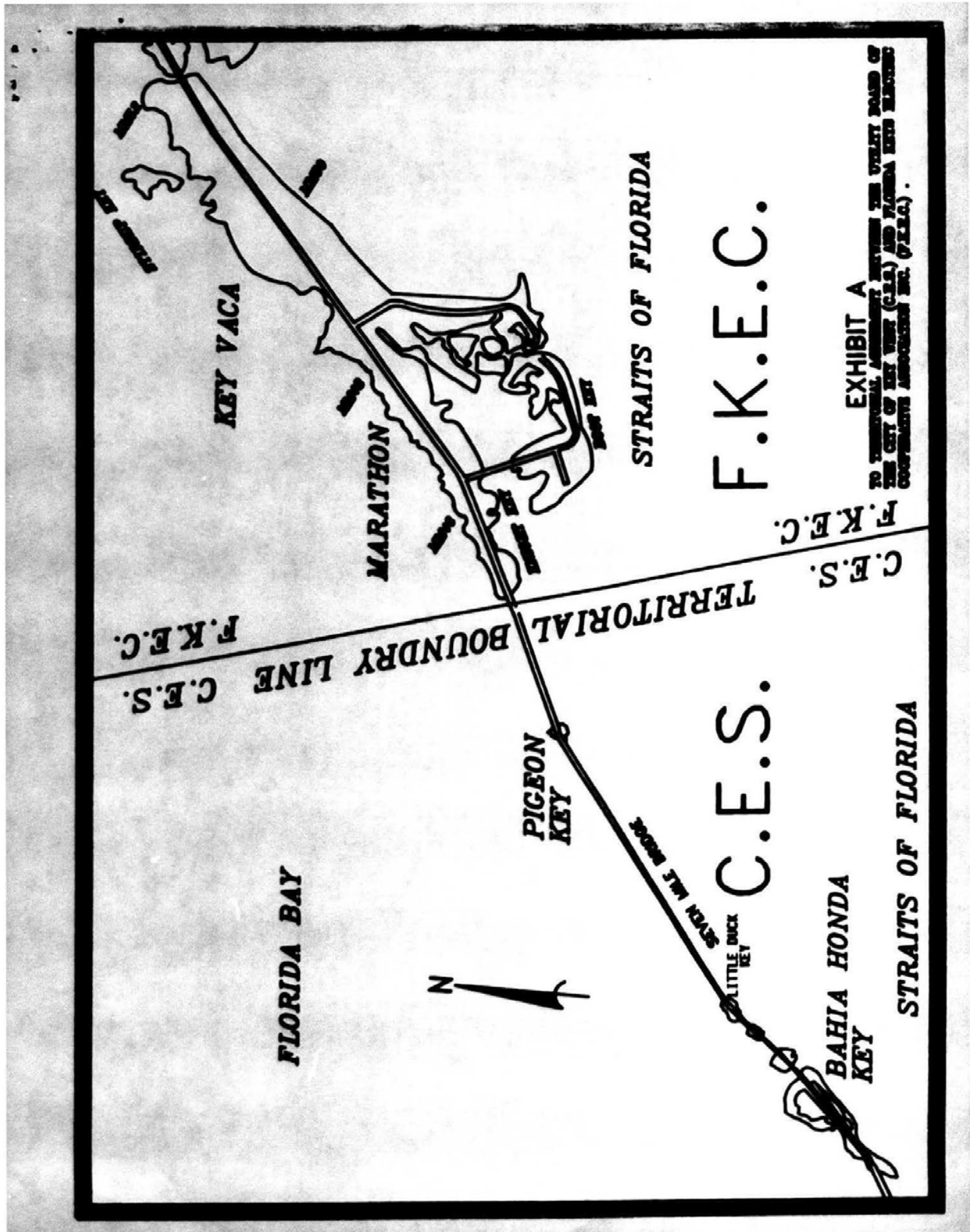

R. L. Barnes, Secretary

By: 
B. L. Schwartz

Title: President

(SEAL)





**FIRST AMENDMENT TO
TERRITORIAL AGREEMENT BETWEEN
FLORIDA KEYS ELECTRIC COOPERATIVE ASSOCIATION, INC.
AND THE UTILITY BOARD OF THE CITY OF KEY WEST,
A/K/A KEYS ENERGY SERVICES**

This is the First Amendment ("First Amendment") to that certain Territorial Agreement ("Agreement") dated June 17, 1991, between Florida Keys Electric Cooperative Association, Inc. ("FKEC") and the Utility Board of the City of Key West f/k/a City Electric System, now d/b/a "Keys Energy Services" ("KEYS"). The Agreement was approved by the Florida Public Service Commission on September 27, 1991, in Document No. 910765-EU and Order No. 25127 (Order).

1. The existing territorial boundary line, approved by the Florida Public Service Commission, is shown on page 16 of the Order. The parties hereto desire to modify that boundary to allow FKEC to provide electric service to Pigeon Key which currently lies in KEYS' territory. The rationale for entering into this First Amendment is set forth in the parties' Joint Petition for Approval of this First Amendment, which is incorporated herein. The revised territorial boundary line ("Revised Boundary") is attached hereto as Exhibit 1.

2. Pigeon Key Foundation, Inc. ("Foundation") initially requested service from FKEC, which declined to provide such service because Pigeon Key is currently in KEYS' service territory. Foundation then arranged for the construction and installation of electric service facilities (conduit, wire, labor, engineering fees, constructing underground on the island, transformers and a power pole), with the approval of the Florida DOT to run from the island, across a portion of the old 7-mile Bridge to a point of service inside FKEC's assigned territory. The facilities constructed by the Foundation are wholly owned by the Foundation. FKEC has constructed no facilities outside of its current service area. Because of the Florida Supreme Court's decision in *Lee County vs. Marks*, the parties deem it appropriate to obtain the approval of the Florida Public Service Commission for this unique situation.

**EXHIBIT 1 to
Joint Petition for Renewal of
Territorial Agreement &
Approval of First Amendment**

3. The Revised Boundary is hereby agreed to and adopted by the parties, and shall be deemed incorporated into the Agreement, as of the effective date hereof. Except as otherwise stated herein, the parties ratify and confirm the terms and conditions of the Agreement dated June 17, 1991. The effective date of this agreement shall be the date that the last of the parties signs this First Amendment, or the date the Florida Public Service Commission approves the parties' Joint Petition for Renewal of Territorial Agreement, or any agreed successor petition, whichever is later. The terms hereof shall have no effect unless approved by the Florida Public Service Commission.

IN WITNESS WHEREOF, this First Amendment to the Agreement has been caused to be executed by FKEC in its name by its President and its corporate seal hereto affixed, and attested by the Secretary of FKEC, and by KEYS in its name by its Utility Board Chair, and its corporate seal hereto affixed and attested by its Clerk on the dates set forth by their signatures, and each acknowledges receipt of a signed duplicate original hereof.

FLORIDA KEYS ELECTRIC COOPERATIVE
ASSOCIATION, INC.

By: *Karl Wagner*
Karl Wagner, President

Attest: *Grethen Holland*
Grethen Holland, Secretary

Dated: 6/26/2023

THE UTILITY BOARD OF THE
CITY OF KEY WEST, D/B/A KEYS ENERGY
SERVICES

By: *Timothy Root*
Timothy Root, Utility Board Chair

Attest: *Lynne Tejeda*
Lynne Tejeda, Clerk

Dated: 07/26/2023



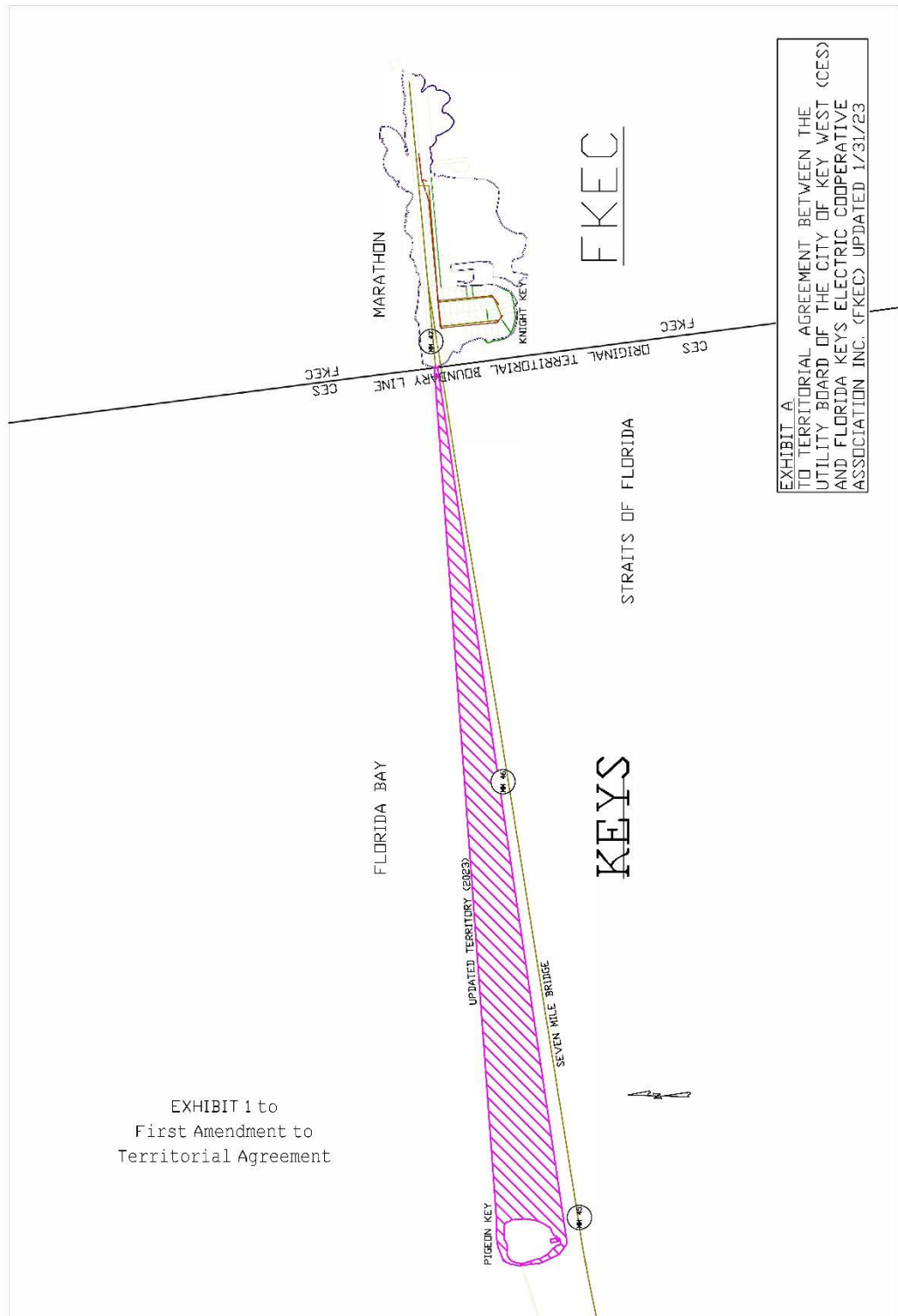


EXHIBIT 1 to
First Amendment to
Territorial Agreement

Item 7

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey) *GP*
Office of the General Counsel (Dose) *JSC*

RE: Docket No. 20230090-EI – Petition to implement 2024 generation base rate adjustment provisions in paragraph 4 of the 2021 stipulation and settlement agreement, by Tampa Electric Company.

AGENDA: 10/03/23 – Regular Agenda – Tariff Suspension – Participation is at the Commission’s Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 10/15/23 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

On August 16, 2023, Tampa Electric Company (TECO or Company) filed a petition to implement the 2024 Generation Base Rate Adjustment (GBRA) provisions pursuant to its 2021 rate case Stipulation and Settlement Agreement (settlement agreement). The Commission previously approved the settlement agreement in Order No. PSC-2021-0423-S-EI (settlement order).¹ The GBRA provisions of the settlement order and agreement provide for an increase in base rates to reflect the 2024 GBRA amount of \$21,376,909, effective with the first billing cycle of January 2024.² In this petition, TECO proposed to increase the GBRA amount to \$21,689,323

¹ Order No. PSC-2021-0423-S-EI, issued November 10, 2021, in Docket No. 20210034-EI, *In re: Petition for rate increase by Tampa Electric Company*.

² See page 20 in Order No. PSC-2021-0423-S-EI, issued November 10, 2021, in Docket No. 20210034-EI, *In re: Petition for rate increase by Tampa Electric Company*.

to reflect the updated 10.20 percent mid-point return on equity (ROE) allowed by a trigger provision of the 2021 settlement agreement and approved by the Commission on August 16, 2022, in Docket No. 20220122-EI.³ In Order No. PSC-2022-0434-TRF-EI, the Commission approved TECO's 2023 GBRA provision of the 2021 settlement agreement.⁴ During the review process, staff issued a data request to TECO on September 7, 2023, for which the responses are pending. This is staff's recommendation to suspend the proposed tariffs. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

³ Order No. PSC-2022-0322-FOF-EI, issued September 12, 2022, in Docket No. 20220122-EI, *In re: Petition for limited proceeding rate increase to implement return on equity provisions in 2021 agreement, by Tampa Electric Company.*

⁴ Order No. PSC-2022-0434-TRF-EI, issued December 21, 2022, in Docket No. 20220148-EI, *In re: Petition to implement 2023 generation base rate adjustment provisions in 2021 agreement, by Tampa Electric Company.*

Discussion of Issues

Issue 1: Should TECO's revised tariffs to implement the 2024 GBRA increase effective January 2024 be suspended?

Recommendation: Yes. Staff recommends that TECO's revised tariffs to implement the 2024 GBRA increase effective January 2024 be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the proposed tariff modifications. (Guffey)

Staff Analysis: Staff recommends that TECO's revised tariffs to implement the 2024 GBRA increase effective January 2024 be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the proposed tariff modifications.

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

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending the Commission decision on TECO's proposed GBRA amount of \$21,689,323 and associated tariff modifications. (Dose)

Staff Analysis: This docket should remain open pending the Commission decision on TECO's proposed GBRA amount of \$21,689,323 and associated tariff modifications.

Item 8

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (McClelland, Hampson) *EJD*
Office of the General Counsel (Watrous) *JSC*

RE: Docket No. 20230096-GU – Petition for approval of swing service rider rates for January through December 2024, by Florida Public Utilities Company.

AGENDA: 10/03/23 – Regular Agenda – Tariff Suspension – Participation is at the Commission’s discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 10/28/2023 (60-Day-Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

On August 29, 2023, Florida Public Utilities Company (FPUC) filed a petition for approval of revised Swing Service Rider rates and associated tariffs for the period January 2024 through December 2024.

The Commission first approved FPUC’s swing service rider tariff in Order No. PSC-16-0422-TRF-GU (swing service order) and the initial swing service rider rates were in effect for the period March through December 2017.¹ As required in the swing service order, FPUC submitted the instant petition with revised 2024 swing service rider rates for Commission approval by September 1, 2023. The January through December 2023 swing service rider rates were

¹ Order No. PSC-16-0422-TRF-GU, issued October 3, 2016, in Docket No. 160085-GU, *In re: Joint petition for approval of swing service rider, by Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade, and Florida Division of Chesapeake Utilities Corporation.*

approved in Order No. PSC-2022-0378-TRF-GU.² The swing service rider is a cents per therm charge that is included in the monthly gas bill of transportation customers, who purchase gas from third party marketers, and therefore do not pay the purchased gas adjustment charge. During its evaluation of the petition, staff issued a data request to the company on September 14, 2023. This is staff's recommendation to suspend the proposed tariffs. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

² Order No. PSC-2022-0378-TRF-GU, issued November 7, 2022, Docket No. 20220154-GU, *In re: Joint petition for approval of swing service rider rates for January through December 2023, by Florida Public Utilities Company, Florida Public Utilities Company-Indiantown Division, Florida Public Utilities Company-Fort Meade, and Florida Division of Chesapeake Utilities Corporation.*

Discussion of Issues

Issue 1: Should the Commission suspend FPUC's proposed revised Swing Service Rider rates and associated tariffs for the period January through December 2024?

Recommendation: Yes. Staff recommends that FPUC's proposed revised Swing Service Rider rates and associated tariffs for the period January through December 2024 be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the tariff proposals. (McClelland)

Staff Analysis: Staff recommends that the FPUC's proposed revised Swing Service Rider rates and associated tariffs for the period January through December 2024 be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the tariff proposal.

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

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending the Commission decision on the proposed revised tariffs. (Watrous)

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

Item 9

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (P. Kelley) *EDD*
Office of the General Counsel (Thompson) *JSC*

RE: Docket No. 20230097-GU – Petition for approval of safety, access, and facility enhancement program true-up and 2024 cost recovery factors, by Florida City Gas.

AGENDA: 10/03/23 – Regular Agenda – Tariff Suspension – Participation at the Commission’s discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 10/31/23 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

On August 31, 2023, Florida City Gas (FCG or utility) filed a petition for approval of its safety, access, and facility enhancement program (SAFE) true-up and 2024 cost recovery factors. The SAFE program was originally approved by the Commission in Order No. PSC-15-0390-TRF-GU (2015 order) to recover the cost of relocating on an expedited basis certain existing gas mains and associated facilities from rear lot easements to the street front.¹ In the 2015 order, the Commission found that the relocation of mains and services to the street front provides for more direct access to the facilities and will enhance the level of service provided to all customers through improved safety and reliability. The SAFE factor is a surcharge on customers' bills.

¹ Order No. PSC-15-0390-TRF-GU, issued September 15, 2015, in Docket No. 20150116-GU, *In re: Petition for approval of safety, access, and facility enhancement program and associated cost recovery methodology, by Florida City Gas.*

In the 2015 Order, the Commission required the utility to file an annual petition, beginning in 2016, for review and resetting of the SAFE factors to true-up any prior over-or under-recovery and to set the surcharge for the coming year. The SAFE program was originally approved as a 10-year program and was planned to finish in 2025. The current 2023 SAFE factors were approved by Order No. PSC-2022-0403-TRF-GU (2022 order).²

During the utility's 2022 rate case, the Commission approved a stipulation for the expansion of the SAFE program in Order No. PSC-2023-0177-FOF-GU (Rate Case Order).³ The parties agreed and the Commission found that the continuation of the SAFE program beyond its 2025 expiration date and the relocation of an additional approximately 150 miles of mains and services was reasonable.⁴

In the Rate Case Order, the Commission further approved a stipulation for the replacement of approximately 160 miles of "orange pipe."⁵ All parties to the rate case agreed that orange pipe is a specific plastic material that was used in the 1970s and 1980s that has been studied by the United States Department of Transportation Pipeline and Hazardous Materials Safety Administration and shown through industry research to exhibit premature failure in the form of cracking. The parties agreed and the Commission ordered that FCG should expedite the replacement of 160 miles of orange pipe through the SAFE program to address this safety risk in a timely manner.

Furthermore, in the Rate Case Order, the Commission required FCG to propose a new investment/construction schedule and term for the SAFE program in its next applicable annual SAFE filing. Subsequently, FCG now proposes in this petition to extend the SAFE program for an additional 10-year period through 2035 for the replacement of orange pipe and relocation of rear lot mains and services to the street front. The utility proposes to begin the replacement of orange pipe in 2024 and continue through 2033. FCG also proposes to begin the relocation of mains and services in 2026 and continue through 2035.

Commission staff issued one data request to FCG on September 13, 2023, for which responses are currently pending. This is staff's recommendation to suspend the proposed tariffs. The Commission has jurisdiction over the matter pursuant to Sections 366.04, 366.041, 366.05, and 366.06, Florida Statutes (F.S.).

² Order No. PSC-2022-0403-TRF-GU, issued November 21, 2022, in Docket No. 20220153-GU, *In re: Petition for approval of safety, access, and facility enhancement program true-up and 2023 cost recovery factors, by Florida City Gas.*

³ Order No. PSC-2023-0177-FOF-GU, issued June 9, 2023, in Docket No. 20220069-GU, *In re: Petition for rate increase by Florida City Gas.*

⁴ See page 72, Section X, B. of Order No. PSC-2023-0177-FOF-GU.

⁵ See page 72, Section X, C. of Order No. PSC-2023-0177-FOF-GU.

Discussion of Issues

Issue 1: Should the Commission suspend FCG's proposed revised SAFE tariff for the period of January through December 2024?

Recommendation: Yes. Staff recommends that FCG's proposed revised SAFE tariffs for the period of January through December 2024 be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the tariff proposals. (P. Kelley)

Staff Analysis: Staff recommends that FCG's proposed revised SAFE tariffs for the period January through December 2024 be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the tariff proposals.

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

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending the Commission decision on the proposed revised tariffs. (Thompson)

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

Item 10

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Ward, Hampson) *EJD*
Office of the General Counsel (Sandy) *JSC*

RE: Docket No. 20230098-GU – Petition for approval of 2022 true-up, projected 2023 true-up, and 2024 revenue requirements and surcharges associated with cast iron/bare steel pipe replacement rider, by Peoples Gas System.

AGENDA: 10/03/23 – Regular Agenda – Tariff Suspension – Participation is at the Commission’s discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 10/31/23 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

On September 1, 2023, Peoples Gas System, Inc. (Peoples or utility) filed a petition for approval of the 2022 true-up, projected 2023 true-up, and 2024 revenue requirements and surcharges associated with its cast iron/bare steel (CI/BS) pipe replacement rider. The rider was originally approved in Order No. PSC-12-0476-TRF-GU (2012 Order) to recover the cost of accelerating the replacement of cast iron and bare steel pipes through a surcharge on customers' bills.¹ As established by the 2012 Order, Peoples would roll replaced infrastructure into rate base during a rate case, and the CI/BS surcharge would be “reset to zero.”² The surcharge is set to terminate when all applicable CI/BS pipes have been replaced and included in rate base. During the 2020

¹ Order No. PSC-12-0476-TRF-GU, issued September 18, 2012, in Docket No. 20110320-GU, *In re: Petition for approval of Cast Iron/Bare Steel Pipe Replacement Rider (Rider CI/BSR), by Peoples Gas System.*

² See page 3 of Order No. PSC-12-0476-TRF-GU.

Docket No. 20230098-GU

Date: September 21, 2023

Peoples rate case, CI/BS investments as of December 31, 2020, were moved into rate base pursuant to Order No. PSC-2020-0485-FOF-GU.³

Currently, Peoples has an ongoing rate case in Docket No. 20230023-GU and has proposed to move CI/BS investments made between January 1, 2021, and December 31, 2023, into rate base. The parties reached a Type 2 stipulation on the issue, which the Commission approved at the beginning of the hearing on September 12, 2023.⁴

As part of its petition in the subject docket, Peoples is requesting Commission approval of the final true-up amount for the calendar year of 2022 of \$787,888 under-recovery (including interest). Additionally, Peoples is requesting an estimated end of period total true-up for 2023 of an under-recovery of \$10,683, and projected capital expenditures for replacement during 2024 of \$18,802,302. Peoples is also requesting approval of revised CI/BS replacement rider surcharges that would go into effect January 1, 2024. Peoples' current surcharges were approved in Order No. PSC-2022-0405-TRF-GU.⁵

Staff issued a data request to the utility on September 12, 2023, to which responses are pending. This is staff's recommendation to suspend the proposed tariffs. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

³ Order No. PSC-2020-0485-FOF-GU, issued December 10, 2020, in Docket No. 20200051-GU, *In re: Petition for rate increase by Peoples Gas System*.

⁴ See page 46, Issue 14 in Order No. PSC-2023-0273-PHO-GU, in Docket No. 20230023-GU.

⁵ Order No. PSC-2022-0405-TRF-GU, issued November 21, 2022, in Docket No. 20220152-GU, *In re: Petition for approval of 2021 true-up, projected 2022 true-up, and 2023 revenue requirements and surcharges associated with cast iron/bare steel pipe replacement rider, by Peoples Gas System*.

Discussion of Issues

Issue 1: Should the Commission suspend Peoples' proposed revised CI/BS rates and associated tariff for the period January through December 2024?

Recommendation: Yes. Staff recommends that Peoples' proposed revised CI/BS rates and associated tariff for the period January through December 2024 be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the tariff proposals. (Ward)

Staff Analysis: Staff recommends that Peoples' proposed revised CI/BS rates and associated tariff for the period January through December 2024 be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the tariff proposal.

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

Issue 2: Should this docket be closed?

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

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

Item 11

FILED 9/21/2023
DOCUMENT NO. 05320-2023
FPSC - COMMISSION CLERK

State of Florida



Public Service Commission

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

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

DATE: September 21, 2023

TO: Office of Commission Clerk (Teitzman)

FROM: Division of Economics (Guffey) *GP*
Office of the General Counsel (Dose) *JSC*

RE: Docket No. 20230101-GU – Petition for approval of gas utility access and replacement directive cost recovery factors for January 2024 through December 2024, by Florida Public Utilities Company.

AGENDA: 10/03/23 – Regular Agenda – Decision on Suspension of Rates – Participation is at the Commission’s Discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 10/31/23 (60-Day Suspension Date)

SPECIAL INSTRUCTIONS: None

Case Background

On September 1, 2023, Florida Public Utilities Company (FPUC or Company) filed a petition for approval of its Gas Utility Access and Replacement Directive (GUARD Program) cost recovery factors for the period January through December 2024. In Order No. PSC-2023-0235-PAA-GU (2023 Order), the Commission approved FPUC’s 10-year GUARD program, consisting of two components of (1) replacement of problematic pipes and facilities and (2) relocation of mains and service lines located in rear easement and other difficult to access areas to the front lot easements.¹ The 2023 Order allows FPUC to recover the revenue requirements of expedited programs to replace problematic pipes and facilities and enhance the safety and accessibility of

¹ Order No. PSC-2023-0235-PAA-GU, issued August 15, 2023, amended by Order No. PSC-2023-0235A-PAA-GU, issued August 18, 2023, in Docket No. 20230029-GU, *In re: Petition for approval of gas utility access and replacement directive, by Florida Public Utilities Company.*

portions of FPUC's natural gas distribution system through a monthly surcharge on customers' bills.

In the 2023 Order, the Commission directed FPUC to file its annual GUARD program petition to revise the surcharge on or before September 1 of each year and implement the revised surcharge effective January 1 through December 31 of the following year, and file its first petition on September 1, 2023. FPUC, in its petition, included revised tariff sheets 7.000 through 7.002 (Index), 7.403, 7.404, and 7.405.

The Commission further ordered FPUC to (1) include all calculations to show a final true-up, actual-estimated true-up, projected year investments and associated revenue requirements, and the calculations of the GUARD factors by rate class, (2) provide a report including the location, date, description, and associated costs of all replacement projects completed and all projects scheduled for the following year, and (3) include any remaining GRIP over- or under-recovery in the 2024 GUARD cost recovery. FPUC has complied with the 2023 Order directives stated above.

During the review process, staff issued a data request to FPUC on September 11, 2023, for which the responses were received on September 18, 2023. This is staff's recommendation to suspend the proposed tariffs. The Commission has jurisdiction over this matter pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes (F.S.).

Discussion of Issues

Issue 1: Should FPUC's Gas Utility Access and Replacement Directive (GUARD) cost recovery factors and associated revised tariff sheets (7.000 through 7.002, 7.403, 7.404, and 7.405) to implement the 2024 GUARD factors to be effective January 2024 be suspended?

Recommendation: Yes. Staff recommends that FPUC's GUARD cost recovery factors and associated revised tariff sheets (7.000 through 7.002, 7.403, 7.404, and 7.405) to implement the 2024 GUARD factors to be effective January 2024 be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the proposed tariff modifications. (Guffey)

Staff Analysis: Staff recommends that FPUC's GUARD cost recovery factors and associated revised tariffs to implement the 2024 GUARD factors to be effective January 2024 be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission with an informed recommendation on the proposed tariff modifications.

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

Issue 2: Should this docket be closed?

Recommendation: No. This docket should remain open pending the Commission decision on FPUC's GUARD cost recovery factors and associated revised tariffs to implement the 2024 GUARD factors. (Dose)

Staff Analysis: This docket should remain open pending the Commission decision on FPUC's GUARD cost recovery factors and associated revised tariffs to implement the 2024 GUARD factors.