



**Kenneth M. Rubin**  
Senior Counsel  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
(561) 691-2512  
(561) 691-7135 (Facsimile)  
E-mail: [Ken.rubin@fpl.com](mailto:Ken.rubin@fpl.com)

September 24, 2018

**-VIA ELECTRONIC FILING -**

Ms. Carlotta S. Stauffer  
Division of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

**Re: Docket No. 20170235-EI – Florida Power & Light Company’s Petition for Authority to Charge FPL Rates to Former City of Vero Beach Customers and for Approval of FPL’s Accounting Treatment for City of Vero Beach Transaction and Docket No. 20170236-EU – Joint Petition of Florida Power & Light and the City of Vero Beach to Terminate Territorial Agreement**

Dear Ms. Stauffer:

Please find enclosed, for electronic filing in the above dockets, the prefiled Rebuttal Testimony and Exhibit of Florida Power & Light Company witnesses Sam Forrest, Scott R. Bores, Keith Ferguson and Terry Deason.

If you should have any questions regarding this transmittal, please contact me at (561) 691-2512.

Sincerely,

s/ Kenneth M. Rubin  
Kenneth M. Rubin  
Florida Bar No. 349038

cc: Counsel for parties of record (w/encl.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**FLORIDA POWER & LIGHT COMPANY**  
**REBUTTAL TESTIMONY OF SAM FORREST**  
**DOCKET NOS. 20170235-EI & 20170236-EU**  
**SEPTEMBER 24, 2018**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**I. INTRODUCTION.....3**  
**II. REBUTTAL TO OPC WITNESS KOLLEN.....4**  
**III. REBUTTAL TO CAIRC WITNESS KRAMER .....5**  
**IV. CONCLUSION.....7**

1 **I. INTRODUCTION**

2

3 **Q. Please state your name and business address.**

4 A. My name is Sam Forrest and my business address is 700 Universe Boulevard,  
5 Juno Beach, FL 33408.

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by Florida Power & Light Company (“FPL” or the  
8 “Company”) as Vice President of the Energy Marketing and Trading (“EMT”)   
9 Business Unit.

10 **Q. Did you previously file testimony in this case?**

11 A. Yes, I filed direct testimony on November 3, 2017, as part of FPL’s original  
12 filing. In that testimony I provided an overview of FPL’s acquisition of the  
13 City of Vero Beach (“COVB” or the “City”) electric utility (“COVB  
14 Transaction”), detailed the various components of the Asset Purchase and Sale  
15 Agreement (“PSA”) between FPL and COVB, and discussed the benefits of  
16 the COVB Transaction to both existing FPL customers and COVB customers.

17 **Q. Are you sponsoring any exhibits with your rebuttal testimony?**

18 A. No.

19 **Q. What is the purpose of your rebuttal testimony?**

20 A. The purpose of my rebuttal testimony is to respond to the contention by Office  
21 of Public Council (“OPC”) witness Kollen that the COVB Transaction could  
22 have been structured as a parent-level acquisition, avoiding the need for  
23 recovery of an acquisition adjustment. I also respond to the claim from Civic

1 Association of Indian River County (“CAIRC”) witness Kramer that there  
2 have never been any actual negotiations between FPL and Vero Beach.

3

4

## II. REBUTTAL TO OPC WITNESS KOLLEN

5

6 **Q. What is your response to OPC witness Kollen’s suggestion that this**  
7 **transaction could have been structured differently to avoid the need for**  
8 **recovery of an acquisition adjustment?**

9 A. Witness Kollen’s contention is misplaced. He is simply asserting that  
10 NextEra Energy, Inc. shareholders should absorb a portion of the investment  
11 cost for a transaction that produces savings for all customers, but with cost  
12 recovery permitted only for the portion of the investment that equals the net  
13 book value of the assets acquired and not for the full investment. This is no  
14 more appropriate in this instance than in any other situation where FPL invests  
15 in plant or infrastructure. Calculation of the acquisition adjustment itself is  
16 strictly a function of the difference between the total price that was paid  
17 (which provides for the buyout of COVB’s long-term purchased power  
18 obligations and purchase of the assets) and the net book value of the assets  
19 themselves. Interestingly, if COVB had no long term purchased power  
20 obligations and the net book value of its plant happened to be \$185 million,  
21 there would be no acquisition adjustment for consideration and no suggestion  
22 that a portion of the purchase price be disallowed for rate recovery, and a  
23 beneficial transaction would move forward. But because we require

1 Commission approval for recovery of the acquisition adjustment on the same  
2 beneficial transaction, some perceive this as an opportunity to contend that  
3 shareholders not be allowed a return of and on their full investment. The  
4 effect of Witness Kollen's position, if adopted by the Commission, is to  
5 preclude this transaction from moving forward.

6 **Q. Why was the proposed acquisition structured as an asset sale to FPL?**

7 A. The benefits of the transaction depend on FPL being the acquirer of COVB's  
8 customer base and electric assets. With FPL acquiring COVB's transmission  
9 and distribution assets and the right to serve COVB's customer base, FPL is  
10 able to serve those customers at FPL rates. This was a prerequisite for the  
11 transaction from the standpoint of COVB. At the same time, by absorbing  
12 COVB into FPL's operations, FPL is able to spread fixed costs over a larger  
13 customer base, which as FPL witness Bores explains, is the primary driver of  
14 the approximately \$99 million CPVRR savings. Without this structure, there  
15 is no transaction and there are no benefits, either to COVB customers or to  
16 existing FPL customers.

17

### 18 **III. REBUTTAL TO CAIRC WITNESS KRAMER**

19

20 **Q. Witness Kramer, at page 3 lines 3 through 4 of his testimony, states that**  
21 **to his knowledge there have never been any negotiations between FPL**  
22 **and the City related to the COVB transaction. Were there ever such**  
23 **negotiations?**

1 A. Absolutely, yes. As I stated in my direct testimony, FPL and the City were  
2 involved in negotiations related to the COVB Transaction as far back as 2009.  
3 Preliminarily, both parties needed to understand the aims of the other,  
4 otherwise there would be no reaching agreement. Therefore, it was early in  
5 the negotiating process that the parties jointly developed the baseline goals for  
6 the COVB Transaction, which were to ensure that: (1) existing FPL customers  
7 would not subsidize the transaction through rates; and (2) COVB customers  
8 would enjoy the same retail rates as existing FPL customers. These goals  
9 simply could not have been achieved without consistent discussions and  
10 negotiations between the two parties. Through these negotiations, FPL and  
11 the City analyzed costs, reviewed scenarios, and where there were roadblocks  
12 endeavored to find mutually beneficial solutions. The transaction also had the  
13 added challenge of the City's existing power purchase obligations, which  
14 neither party could address singlehandedly. The obstacles to completion of  
15 the transaction were complex and required close attention and coordination  
16 between FPL and the City. In the end, the negotiations culminated in the  
17 signing of the Purchase and Sale Agreement between the City and FPL in  
18 October 2017, an achievement that is a credit to the commitment and  
19 problem-solving efforts of many hardworking individuals on the many sides  
20 of the transaction, including the Orlando Utilities Commission, the Florida  
21 Municipal Power Agency ("FMPPA") and 20 member cities of the FMPPA. To  
22 claim to be unaware of the existence of negotiations as witness Kramer does is

1 simply an unreasoned dismissal of the years of negotiations that were required  
2 to reach even this point.

3

4

#### IV. CONCLUSION

5

6 **Q. Have any of the positions and arguments made by the various intervenor**  
7 **witnesses changed your conclusions in your direct testimony that the**  
8 **proposed acquisition of the COVB system by FPL should be approved?**

9 A. No. I stand by my previously stated conclusions for all the reasons stated in  
10 my direct testimony.

11 **Q. Does this conclude your rebuttal testimony?**

12 A. Yes, it does.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**FLORIDA POWER & LIGHT COMPANY**  
**REBUTTAL TESTIMONY OF SCOTT R. BORES**  
**DOCKET NOS. 20170235-EI & 20170236-EU**  
**SEPTEMBER 24, 2018**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**TABLE OF CONTENTS**

**I. INTRODUCTION ..... 3**

**II. FORECAST ASSUMPTIONS ..... 5**

**III. REVENUES AND PRICE FORECAST ..... 6**

**IV. CAPACITY COST ..... 8**

**V. DISCOUNT RATE ..... 9**

**VI. OTHER PROBLEMATIC STATEMENTS MADE IN OPC WITNESS  
KOLLEN’S TESTIMONY ..... 11**

1 **I. INTRODUCTION**

2

3 **Q. Please state your name and business address.**

4 A. My name is Scott R. Bores. My business address is Florida Power & Light  
5 Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

6 **Q. By whom are you employed and what is your position?**

7 A. I am employed by Florida Power & Light Company (“FPL” or the  
8 “Company”) as the Senior Director of Financial Planning and Analysis.

9 **Q. Did you previously file testimony in this case?**

10 A. Yes, I filed direct testimony on November 3, 2017, as part of FPL’s original  
11 filing. I presented the results of the Cumulative Present Value Revenue  
12 Requirements (“CPVRR”) analysis which demonstrated that FPL’s purchase  
13 of the City of Vero Beach (“COVB”) electric system is beneficial to existing  
14 FPL customers. My testimony also described the key assumptions utilized in  
15 developing the economic analysis. I also filed supplemental direct testimony  
16 on August 6, 2018. In that testimony I updated the CPVRR analysis for the  
17 latest assumptions, demonstrated and reconfirmed that there are substantial  
18 benefits for existing FPL customers as a result of the transaction, and  
19 compared the change in CPVRR benefit to that presented in my direct  
20 testimony.

21 **Q. Are you sponsoring any rebuttal exhibits in this case?**

22 A. Yes, I am sponsoring the following exhibit which is attached to my testimony:

- 1           •       Exhibit SRB-4 – Example of Discounting at after-tax Weighted  
2                   Average Cost of Capital (“WACC”).

3   **Q.    What is the purpose of your rebuttal testimony?**

4   A.    The purpose of my rebuttal testimony is to explain why the Florida Public  
5       Service Commission (“FPSC” or “Commission”) should reject the arguments  
6       of Office of Public Counsel (“OPC”) witness Lane Kollen as it relates to the  
7       claimed flaws in the CPVRR analysis presented in Exhibit SRB-2.

8   **Q.    Please summarize your rebuttal testimony.**

9   A.    In preparing the CPVRR analysis, FPL utilized the same rigor employed for  
10       all analyses presented to the Commission and the Commission can be  
11       confident that it can rely on the analysis for decision-making in this  
12       proceeding. What is unique about the City of Vero Beach (“COVB”) analysis  
13       is that it required FPL to project the future price of electricity and, in turn, the  
14       long-term revenues it would collect from customers. I will describe the  
15       forecast assumptions in greater detail in my rebuttal testimony. The views  
16       presented by witness Kollen in his direct testimony are unsupported and  
17       inaccurate. My rebuttal testimony will address these inaccuracies and  
18       reaffirm that this transaction as presented is beneficial both to FPL’s existing  
19       customers and COVB customers.

1 **II. FORECAST ASSUMPTIONS**

2

3 **Q. OPC witness Kollen states that the FPL forecasts are not reasonable. Do**  
4 **you agree?**

5 A. No. The forecasts used in the CPVRR analysis are reasonable and prepared  
6 with the same level of rigor as all forecasts used in analyses presented before  
7 the Commission. Because FPL will acquire assets from COVB with a  
8 weighted-average book life of 30 years, FPL needs to project the estimated  
9 revenues that it will collect and costs that it will incur over that period. In  
10 doing so, FPL develops a robust forecast that can be relied upon by the  
11 Commission.

12 **Q. Can the Commission rely on the CPVRR analysis which demonstrates**  
13 **savings to existing FPL customers?**

14 A. Yes. I have reviewed the underlying assumptions and the forecast  
15 methodology and they are reasonable and consistent with how FPL has  
16 conducted forecasts for prior projects that have been approved by the  
17 Commission. While there has been an update to the CPVRR analysis to  
18 account for changes in FPL's load forecast, generation plan and long-term  
19 price of electricity since the original testimony was filed, the bottom line  
20 remains the same – this transaction is expected to provide significant savings  
21 for existing FPL customers. These savings will be realized through leveraging  
22 FPL's current and planned generation fleet to serve COVB's customers as  
23 well as through economies of scale that allow FPL to provide service to the

1 COVB customers at a lower overall cost than FPL's average cost of service  
2 reflected in FPL's rates.

3

4

### III. REVENUES AND PRICE FORECAST

5

6 **Q. Are the revenues overstated as contended by OPC witness Kollen?**

7 A. No. The projection of revenues is reasonable, and can be relied upon in the  
8 economic evaluation of this transaction. The revenue forecast utilized in the  
9 CPVRR analysis was properly prepared utilizing FPL's long-term price of  
10 electricity, which projects the future price of electricity for the 30-year term of  
11 the analysis. In contrast, witness Kollen asserts that the revenues are  
12 overstated without offering any support for that claim, or proposing any  
13 alternative for revenues, and his assertion should be rejected.

14 **Q. What assumptions were made to develop FPL's long-term price of  
15 electricity?**

16 A. In preparing the long-term price of electricity, FPL assumed base rate  
17 increases both in 2022 and 2023 commensurate with its current forecast and  
18 capital investment plan, including the addition of the Dania Beach Energy  
19 Center in mid-2022. Additionally, FPL assumed annual base rate increases of  
20 approximately 1%, less than the estimated cost of inflation, for the remaining  
21 25 years of the analysis.

1 **Q. Did FPL perform any sensitivities on the long-term price to assess their**  
2 **impact on the CPVRR analysis presented in Exhibit SRB-2?**

3 A. Yes. FPL performed a sensitivity in which it assumed no other base rate  
4 increases other than the increase in base rates in 2022 and 2023. Even under  
5 this extreme and unrealistic sensitivity, the CPVRR analysis would still  
6 demonstrate an estimated \$60 million benefit to FPL's existing customers  
7 from the COVB transaction. Additionally, FPL performed another even more  
8 extreme sensitivity that removed all future assumed base rate increases,  
9 including the 2022 and 2023 increases. That analysis demonstrates a CPVRR  
10 cost of less than \$5 million over the 30-year period. Thus, even at this  
11 extreme assumption, FPL's existing customers would essentially be held  
12 harmless.

13 **Q. Is it realistic to assume that FPL's base rates will never increase over the**  
14 **subsequent 30-year period covered in this analysis?**

15 A. No, the assumption that FPL would have no base rate increases for the next  
16 30-years is highly unrealistic. Over the prior 30-years, even with FPL's  
17 aggressive approach to controlling costs, FPL's base rates have grown at a  
18 compound annual growth rate of approximately 1.1%, consistent with what  
19 was assumed in the CPVRR analysis.

1 **IV. CAPACITY COST**

2

3 **Q. Is OPC witness Kollen correct that FPL’s CPVRR analysis understates**  
4 **the cost of capacity to serve the COVB load?**

5 A. No. FPL’s current Ten-Year Site Plan assumes that FPL will add the Dania  
6 Beach Energy Center in mid-2022 as well as additional cost-effective solar in  
7 the 2019-2027 time period that will allow FPL to have sufficient capacity that  
8 it can utilize to serve the COVB customers. Rather than the cost of that  
9 capacity being borne solely by existing FPL customers, COVB customers will  
10 be contributing revenues that will help pay for a portion of that cost and thus  
11 provide a benefit to existing FPL customers. Any additional capacity that is  
12 needed to serve COVB customers can be met through purchase power  
13 agreements (“PPAs”) in the interim, the cost of which are included in the  
14 CPVRR analysis.

15 **Q. How did FPL account for the lost capacity revenues described by OPC**  
16 **witness Kollen?**

17 A. FPL did not include, nor should it have included, revenues in the CPVRR  
18 analysis that are highly speculative and cannot be appropriately quantified.  
19 FPL does not currently have any wholesale contracts for that excess capacity,  
20 nor can it speculate what the market demand will be for capacity in the 2022-  
21 2032 timeframe. It has consistently been FPL’s practice not to include any  
22 forecasts of revenues for which an accurate estimate cannot be determined.

1 V. DISCOUNT RATE

2

3 **Q. Is OPC witness Kollen correct that FPL should use the grossed-up**  
4 **weighted average cost of capital to discount the revenue requirements?**

5 A. No, witness Kollen’s approach is incorrect. The appropriate discount rate to  
6 use in discounting revenue requirements in the CPVRR calculation is the  
7 after-tax weighted average cost of capital. In proper ratemaking, revenue  
8 requirements are calculated to allow FPL the opportunity to recover all  
9 financing costs on an after-tax basis, such that the after-tax net present value  
10 to investors is equal to zero. Accordingly, FPL must pass the cost of income  
11 taxes through to customers by including in revenue requirements a tax gross-  
12 up of the equity return. When discounting and summarizing revenue  
13 requirements across numerous years, the after-tax WACC must be used to  
14 properly capture the effect on after-tax cash flows to investors, because every  
15 dollar of income tax gross up is offset by a dollar of income tax expense.

16 **Q. OPC witness Kollen offers a simple example whereby he demonstrates**  
17 **that the present value of a \$1 million investment equals the same amount**  
18 **when grossed-up and discounted at the same WACC. Please comment.**

19 A. Witness Kollen’s example is misleading. He demonstrates that when a \$1  
20 million investment is grossed up to the pre-tax revenue requirement amount,  
21 and then discounted to the present value utilizing the pre-tax WACC, it  
22 equates to that same \$1 million investment. However, the purpose of a  
23 CPVRR calculation is to compare and summarize revenue requirements

1 across various time periods, not to solve for the initial investment. Calculated  
2 properly, CPVRR represents the amount of revenue that the utility would need  
3 to collect upfront in order to cover its estimated costs. As demonstrated on  
4 Exhibit SRB-4, by incorrectly using the pre-tax WACC to calculate CPVRR,  
5 witness Kollen excludes the present value of income tax. If the hypothetical  
6 utility were to collect only \$1,000,000 in revenue upfront, it would be  
7 insufficient to cover the both the investment and the present value of the  
8 income tax effects. In particular, it would fail to capture the present value of  
9 the depreciation tax shield, which in witness Kollen's example occurs one  
10 year after the investment. Using the after-tax WACC as a discount rate, on the  
11 other hand, calculates the amount of upfront revenue needed to cover costs of  
12 debt, equity, and income tax.

13 **Q. Is the methodology employed by FPL in the CPVRR analysis for the**  
14 **COVB transaction consistent with prior CPVRR analyses presented**  
15 **before the Commission?**

16 A. Yes, FPL has consistently discounted the revenue requirements at the after-tax  
17 WACC when presenting the CPVRR.



1 additional firm transportation to serve COVB; therefore, COVB customers  
2 will be paying a portion of the firm transportation costs currently being borne  
3 by existing FPL customers.

4 **Q. Please explain why FPL did not adjust base rates between the base case  
5 and the Vero Beach case.**

6 A. FPL prepared the analysis utilizing an incremental approach, which layered in  
7 the incremental revenues as well as the incremental costs to serve to determine  
8 an overall combined revenue requirement. This allows the analysis to isolate  
9 the CPVRR difference between the base case and the Vero Beach case which  
10 results in identification of the \$98.6 million CPVRR benefit to FPL's existing  
11 customers as a result of the COVB transaction. If FPL were to adjust base  
12 rates in the CPVRR analysis to account for the benefit of adding COVB  
13 customers, this would invalidate the premise of the CPVRR analysis, which is  
14 to identify the difference for customers between the two cases.

15 **Q. Did FPL treat the capacity, environmental and conservation clauses in a  
16 similar manner?**

17 A. Yes, FPL treated the clause rates in the same manner as it did the base rates  
18 such that the benefit of adding COVB customers would be visible in the  
19 CPVRR analysis. However, FPL did include the incremental capacity costs  
20 associated with PPAs needed for generation as result of the addition of COVB  
21 customers.

1 **Q. OPC witness Kollen states that FPL’s assumption regarding the timing of**  
2 **capital expenditures and operating expenses necessary to upgrade COVB**  
3 **is flawed. Do you agree?**

4 A. No. Once again witness Kollen makes a broad statement without offering any  
5 support for his claim and his assertion should be rejected. FPL appropriately  
6 developed a robust forecast of the incremental capital and operating expenses  
7 needed to operate and upgrade COVB’s system up to the condition and  
8 standards of FPL’s system. This includes the deployment of smart meters as  
9 soon as the transaction closes to allow for more efficient meter reading and  
10 billing. In addition, FPL projects it will commence its hardening program for  
11 COVB in 2023, which aligns with FPL’s current feeder hardening schedule  
12 for its existing system in the area neighboring Vero Beach.

13 **Q. Why will FPL not incur any incremental costs for customer service**  
14 **planning and performance, DSM, marketing, communications or**  
15 **information technology?**

16 A. While there are some initial upfront costs included in the CPVRR analysis for  
17 marketing and information technology work, in the long run FPL does not  
18 project to incur incremental costs for these areas. This is primarily because  
19 FPL will be able to provide the same level of service to COVB as it does  
20 existing FPL customers using the infrastructure and staffing already in place.  
21 This is true for many of the support functions at FPL given economies of  
22 scale, and this represents one of the many benefits to existing customers.

1 **Q. Did FPL incorrectly include zero cost accumulated deferred income taxes**  
2 **(“ADIT”) in its calculation of the grossed-up WACC as claimed by OPC**  
3 **witness Kollen?**

4 A. No. The WACC used to calculate revenue requirements (which are grossed-  
5 up for income tax) and used to discount CPVRR represents the incremental  
6 investor-only capital structure and excludes then-existing ADIT. In this  
7 analysis, FPL properly accounts for incremental ADIT created from  
8 incremental capital investment related to the COVB transaction by subtracting  
9 it from the rate base before calculating the required return on capital. This  
10 methodology is consistent with how FPL presents and accounts for ADIT in  
11 all of its CPVRR analysis and ensures that only ADIT incremental to the  
12 COVB transaction is attributed to the project.

13 **Q. Does this conclude your rebuttal testimony?**

14 A. Yes.

Docket Nos. 20170235-EI 20170236-EU  
 Example of Discounting at after-tax Weighted Average Cost of Capital (“WACC”)  
 Exhibit SRB-4, Page 1 of 1

After-Tax Return per OPC witness Kollen	10.00%
Pre-tax Return per OPC witness Kollen	12.00%
Implied Effective Tax Rate	16.67%
Investment	1,000,000
Pre-Tax Return on Capital	120,000
Depreciation of Capital	1,000,000
Future Value Revenue Requirement	1,120,000
CPVRR at 10% After-Tax Rate	1,018,182 (FPL method)
CPVRR at 12% Pre-Tax Rate	1,000,000 (Kollen's method)

**Revenue Tomorrow**

Year	<u>0</u>	1
Revenue	-	<b>1,120,000</b>
Depreciation	-	(1,000,000)
Pre-Tax Income	-	120,000
Income Tax	-	(20,000)
Net Income	-	100,000
Add back depreciation		1,000,000
Capital Expenditure	(1,000,000)	
After-Tax Cash Flow	(1,000,000)	1,100,000
After-Tax Net Present Value	-	

Assuming perfect Rate-Making, with Revenue occurring in one year, after-tax NPV to investors is zero

**Revenue Collected Upfront Using CPVRR calculated at Pre-Tax WACC**

Year	<u>0</u>	1
Revenue	<b>1,000,000</b>	-
Depreciation	-	(1,000,000)
Pre-Tax Income	1,000,000	(1,000,000)
Income Tax	(166,667)	166,667
Net Income	833,333	(833,333)
Add back depreciation		1,000,000
Capital Expenditure	(1,000,000)	
After-Tax Cash Flow	(166,667)	166,667
NPV to Investors at 10.0% After-Tax WACC	(15,152)	

If Present Value of Revenue using a pre-tax WACC, as suggested by Mr. Kollen, then the NPV to investors is not equal to zero

**Revenue Collected Upfront Using CPVRR calculated at After-Tax WACC**

Year	<u>0</u>	1
Revenue	<b>1,018,182</b>	-
Depreciation	-	(1,000,000)
Pre-Tax Income	1,018,182	(1,000,000)
Income Tax	(169,697)	166,667
Net Income	848,485	(833,333)
Add back depreciation		1,000,000
Capital Expenditure	(1,000,000)	
After-Tax Cash Flow	(151,515)	166,667
NPV to Investors at 10.0% After-Tax WACC	-	

Only when Present Value of Revenue is calculated with an after-tax WACC does the NPV to investors remain at zero, and equal to the perfect rate making case.

Present value of Income Tax (18,182)

Note: The extra \$18,182 in the CPVRR calculation is equal to the present value of income tax.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**FLORIDA POWER & LIGHT COMPANY**  
**REBUTTAL TESTIMONY OF KEITH FERGUSON**  
**DOCKET NOS. 20170235-EI & 20170236-EU**  
**SEPTEMBER 24, 2018**

**TABLE OF CONTENTS**

1

2 **I. INTRODUCTION..... 3**

3 **II. ACQUISITION ADJUSTMENT ACCOUNTING..... 4**

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

1 **I. INTRODUCTION**

2

3 **Q. Please state your name and business address.**

4 A. My name is Keith Ferguson, and my business address is Florida Power &  
5 Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

6 **Q. By whom are you employed and what is your position?**

7 A. I am employed by Florida Power & Light Company (“FPL” or the  
8 “Company”) as Vice President of Accounting and Controller.

9 **Q. Did you previously file testimony in this case?**

10 A. Yes, I filed direct testimony on November 3, 2017, as part of FPL’s original  
11 filing. I provided the required journal entries which FPL intends to record as a  
12 result of the COVB Transaction in order to comply with GAAP and the FERC  
13 USOA. In addition, I described the regulatory reporting and ratemaking for  
14 all costs associated with the COVB Transaction and the PPA that FPL has  
15 negotiated with the OUC as part of the acquisition.

16 **Q. Are you sponsoring any rebuttal exhibits in this case?**

17 A. No.

18 **Q. What is the purpose of your rebuttal testimony?**

19 A. The purpose of my rebuttal testimony is to address the accounting and  
20 ratemaking claims made by Office of Public Counsel (“OPC”) witness Kollen  
21 with respect to the City of Vero Beach (“COVB”) acquisition. Witness  
22 Kollen’s proposed accounting treatment is inconsistent with prior orders from  
23 both the Florida Public Service Commission (the “Commission” or “FPSC”)

1 and the Federal Energy Regulatory Commission (“FERC”), and should be  
2 rejected.

3 **Q. Please summarize your rebuttal testimony.**

4 A. My rebuttal testimony demonstrates that, contrary to witness Kollen’s  
5 assertions, the Company’s proposed accounting and ratemaking treatment  
6 related to the acquisition adjustment is in accordance with both FPSC and  
7 FERC precedent. In addition, I demonstrate that the FPSC has relied on fair  
8 value studies on several occasions to support the reasonableness of acquisition  
9 adjustments.

10

11 **II. ACQUISITION ADJUSTMENT ACCOUNTING**

12

13 **Q. On page 7, lines 21 through 23 of OPC witness Kollen’s testimony, he**  
14 **claims that FPL’s proposal to recover the acquisition adjustment would**  
15 **change the historic depreciated original cost of plant ratemaking**  
16 **paradigm to a fair value rate making paradigm. Is this assertion valid?**

17 A. No. As stated in my direct testimony, FPL is proposing to account for the  
18 acquired utility electric plant assets at historic depreciated original cost (net  
19 book value) for both Generally Accepted Accounting Principles (“GAAP”)  
20 and regulatory accounting purposes in accordance with the FPSC’s consistent  
21 practice. However, the FPSC has recognized that when extraordinary  
22 circumstances exist, by applying a set of factors enumerated in FPL witness  
23 Deason’s direct testimony, recovery of an acquisition adjustment equal to the

1 amount paid for the fair value of the acquired assets above net book value is  
2 appropriate. To support the recovery of amounts paid above net book value,  
3 utilities typically engage an independent valuation expert to perform a fair  
4 value study. This is precisely the approach FPL took in the COVB  
5 acquisition.

6 **Q. Has the FPSC relied on fair value studies similar to the study filed by**  
7 **FPL witness Herr to support the reasonableness of an acquisition**  
8 **adjustment?**

9 A. Yes. The FPSC has accepted fair value studies to support the reasonableness  
10 of an acquisition adjustment on multiple occasions, including recently in  
11 Chesapeake Utility Corporation's acquisition of Florida Public Utilities  
12 Company ("FPUC") (Order No. PSC-12-0010-PAA-GU) and FPUC's  
13 acquisition of Indiantown Natural Gas (Order No. PSC-14-0015-PAA-GU).  
14 In both of these acquisitions, an independent valuation expert performed a fair  
15 value analysis that was relied upon by the Commission in supporting its  
16 approval for recovery of the proposed acquisition adjustments.

17 **Q. Does FERC also rely on fair value studies in evaluating the**  
18 **reasonableness of acquisition adjustments?**

19 A. Yes. FERC has also acknowledged the importance of fair value studies in  
20 supporting the reasonableness of acquisition adjustments. In fact, FERC's  
21 accounting policy distinguishes amounts paid in excess of historical  
22 depreciated cost between an acquisition adjustment and goodwill based on a  
23 fair value premise. FERC's accounting policy was stated in an order related

1 to Black Hills Corporation's acquisition of certain assets from Aquila, Inc.  
2 *Great Plains Energy, Inc et al.*, 122 FERC 61,177 (2008):

3 The Commission has generally supported the purchase method  
4 of accounting for business combinations in section 203  
5 proceedings and elsewhere. To use this accounting method  
6 under the Commission's Uniform System of Accounts, the  
7 acquiring corporation should first allocate the cost of the  
8 acquired company to all identifiable assets acquired and  
9 liabilities assumed based on their fair value on the date of  
10 acquisition. The amounts allocated to utility plant in excess of  
11 depreciated original cost at the date of acquisition should be  
12 recorded as an acquisition adjustment in Account 114. Second,  
13 the excess of the cost of the acquired company over the sum of  
14 the amounts assigned to identifiable assets acquired and  
15 liabilities assumed should be recorded as goodwill in Account  
16 186. An acquisition adjustment in this context consists of all  
17 amounts above original cost up to fair value. Goodwill, on the  
18 other hand, is excess costs of the acquired company over the  
19 fair value of the identifiable assets acquired and liabilities  
20 assumed.

1 **Q. Does FPL's proposed accounting treatment conform with FERC's**  
2 **accounting policy with respect to acquisition adjustments?**

3 A. Yes. FPL is proposing to record the acquisition adjustment in Account 114 -  
4 Electric Plant Acquisition Adjustments (18 C.F.R. 101). The proposed COVB  
5 acquisition adjustment represents the difference in the fair value of the  
6 acquired assets (as supported by the Duff & Phelps fair value study presented  
7 by FPL witness Herr in Exhibit DH-3) in excess of net book value.

8 **Q. Should FPL be allowed to recover amortization expense of the acquisition**  
9 **adjustment and a return on the unamortized acquisition adjustment in**  
10 **base rates?**

11 A. Yes. As previously discussed, the acquisition adjustment for the COVB  
12 transaction represents the difference between the fair value of the assets  
13 acquired and the historic depreciated original cost at the time of the  
14 acquisition. The existence of extraordinary circumstances in this case, as  
15 witness Deason's testimony demonstrates, makes recovery of the acquisition  
16 adjustment including a return on the unamortized balance through base rates  
17 appropriate. FPL is proposing to record the amortization expense to Account  
18 406 – Amortization of Electric Plant Acquisition Adjustments, in accordance  
19 with the FERC Uniform System of Accounts (18 C.F.R. 101), over a thirty  
20 year period which is approximately equivalent to the average remaining  
21 estimated useful life of the acquired distribution assets since the primary  
22 purpose of the transaction is to serve COVB's retail customers.

1 Q. Does this conclude your rebuttal testimony?

2 A. Yes.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**  
**FLORIDA POWER & LIGHT COMPANY**  
**REBUTTAL TESTIMONY OF TERRY DEASON**  
**DOCKET NOS. 20170235-EI & 20170236-EU**  
**SEPTEMBER 24, 2018**

**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**I. INTRODUCTION.....3**  
**II. REBUTTAL TO OPC WITNESS KOLLEN.....4**  
**III. REBUTTAL TO CAIRC WITNESSES.....16**  
**IV. CONCLUSION.....18**

1 **I. INTRODUCTION**

2

3 **Q. Please state your name and business address.**

4 A. My name is Terry Deason. My business address is 301 S. Bronough Street,  
5 Suite 200, Tallahassee, Florida 32301.

6 **Q. By whom are you employed and in what capacity?**

7 A. I am employed by Radey Law Firm as a Special Consultant specializing in the  
8 fields of energy, telecommunications, water and wastewater, and public  
9 utilities generally.

10 **Q. For whom are you appearing as a witness?**

11 A. I am appearing as a witness for Florida Power & Light Company (“FPL” or  
12 “the Company”).

13 **Q. Did you previously file testimony in this case?**

14 A. Yes, I filed direct testimony on November 3, 2017, as part of FPL’s original  
15 filing. In that testimony I address the regulatory policy considerations for  
16 acquisition adjustments in general and how those policy considerations should  
17 be applied to FPL’s proposed acquisition of the City of Vero Beach  
18 (“COVB”) electric system. I also filed supplemental direct testimony on  
19 August 6, 2018. In that testimony I provide further context on appropriate  
20 acquisition adjustment policy and associated issues in light of the current  
21 status of the case.

22 **Q. Are you sponsoring any exhibits with your rebuttal testimony?**

23 A. No.

1 **Q. What is the purpose of your rebuttal testimony?**

2 A. The purpose of my rebuttal testimony is to respond to certain assertions and  
3 conclusions drawn by OPC witness Kollen and various witnesses sponsored  
4 by the Civic Association of Indian River County (“CAIRC”).

5

6 **II. REBUTTAL TO OPC WITNESS KOLLEN**

7

8 **Q. What does OPC witness Kollen recommend?**

9 A. Witness Kollen states that OPC supports FPL’s acquisition of the COVB  
10 electric utility and he recommends Commission approval of FPL’s request to  
11 charge its rates to the former COVB customers. However, he further  
12 recommends that the Commission reject FPL’s proposed ratemaking and  
13 accounting treatment, including the amortization of and return on the positive  
14 acquisition adjustment. Thus, he recommends that FPL not be allowed to  
15 recover the investment necessary to consummate the acquisition he and OPC  
16 support. The dichotomy of his position is as perplexing as it is unreasonable.  
17 It is also contrary to a basic tenet of ratemaking. In effect, witness Kollen is  
18 advocating rejection of the transaction.

19 **Q. How is witness OPC Kollen’s position contrary to basic ratemaking?**

20 A. A basic tenet of ratemaking is that all investments prudently made to serve  
21 customers are recoverable in rates, through both a return component and a  
22 recovery component. The return component is achieved by applying a  
23 reasonable return to the remaining undepreciated or unamortized balance of

1 the investment. The recovery component is achieved through an annual  
2 allowance for depreciation or amortization of the investment in rates over an  
3 appropriate period of years. This basic tenet is equally applicable to an  
4 investment in tangible assets (such as a generating plant) as it is to an  
5 intangible asset (such as a positive acquisition adjustment resulting from an  
6 acquisition). If the investment is prudently made to serve customers it should  
7 be recoverable in rates. However, witness Kollen simplistically supports the  
8 proposed acquisition while opposing the Commission recognizing and  
9 providing for recovery of FPL's investment in the acquisition. This is both  
10 unfair and unrealistic.

11 **Q. What would be the result of accepting OPC witness Kollen's**  
12 **recommendation?**

13 A. There would two undesirable results, one of an immediate effect and the other  
14 of a longer-term effect. First, the immediate effect would be to kill the COVB  
15 acquisition. This is explained in FPL's petition, in direct testimony  
16 accompanying the petition, and in responses to data requests from  
17 Commission Staff and OPC. Without the proposed accounting treatment, the  
18 Asset Purchase and Sale Agreement ("PSA") between FPL and COVB would  
19 not be consummated and all of its associated benefits would be lost to both  
20 FPL existing customers and the current customers of COVB.

21  
22 The second undesirable result would be the chilling effect on any future  
23 acquisitions. The Commission's policy has been and should continue to be to

1 encourage acquisitions that are in the public interest. However, witness  
2 Kollen's recommendation is contrary to this policy and would cause utilities  
3 to not attempt to seek and consummate future acquisitions where a positive  
4 acquisition adjustment would be necessary to have them consummated.  
5 Regrettably, the Commission would not have the opportunity to consider these  
6 future acquisitions and test them to determine whether they are indeed in the  
7 public interest. This could impose significant costs on Florida' citizens and its  
8 economy in the form of missed opportunity costs.

9 **Q. Does OPC witness Kollen provide reasons for his recommendation?**

10 A. Yes, he identifies and discusses six reasons that purport to support his  
11 recommendation. However, his reasons are inconsistent with Commission  
12 policy and are not supported by the facts of this case.

13 **Q. Do you have any responsive comments to his six reasons?**

14 A. Yes, I will address them in the order as presented in his testimony:

15 1. Witness Kollen concludes that FPL's proposed accounting  
16 treatment will "impose certain and known costs and harm onto  
17 the general body of FPL customers, all else equal." I address  
18 this in my supplemental direct testimony at page 20, line 9  
19 through page 21, line 15. There I point out that rarely are all  
20 other things equal, which the facts in this case clearly support.  
21 The evidence in this case clearly shows that the proposed  
22 acquisition of COVB will not only result in no harm, but in  
23 actual savings to customers;

- 1                   2. Witness Kollen surmises that the acquisition premium is an  
2                   “exit” fee with “minimal or no value to existing FPL  
3                   customers.” In actuality, the acquisition premium is not an exit  
4                   fee. Rather, it is an arithmetic calculation of the difference  
5                   between the arms-length negotiated purchase price of the  
6                   COVB system (which necessarily included the costs to buy out  
7                   COVB’s long term purchase power commitments) and the net  
8                   book value of the acquired COVB assets. In addition to being  
9                   the result of an arms-length negotiation between sophisticated  
10                  entities who knew what additional purchase power obligations  
11                  had to be satisfied in order for this transaction to work, the  
12                  purchase price is also substantiated as being reasonable by the  
13                  Duff & Phelps fair value study presented by FPL witness Herr.  
14                  The resulting acquisition premium is then included in FPL’s  
15                  Cumulative Present Value of Revenue Requirements  
16                  (“CPVRR”) analysis to conclude that the acquisition will create  
17                  benefits for existing FPL customers through lower rates;
- 18                  3. Witness Kollen opines that “FPL’s claim of offsetting savings  
19                  to existing FPL customers is uncertain and unknown.” It is  
20                  true that the magnitude of the savings to FPL’s current  
21                  customers cannot be known with absolute certainty at this time,  
22                  which is the same reality for any such proposal with competing  
23                  alternatives which comes before the Commission for approval.

1                   However, FPL’s CPVRR analysis clearly shows that there will  
2                   be savings to current FPL customers. This is supported by the  
3                   fact that there will be a larger customer base over which to  
4                   spread FPL’s fixed costs which is why, in part, the CPVRR  
5                   analysis shows net savings on a present value basis. The  
6                   CPVRR analysis has been and continues to be a generally  
7                   accepted tool used by the Commission to make determinations  
8                   of customer benefits between competing alternatives. In my  
9                   supplemental direct testimony (page 12, line 14 through page  
10                  14, line 13), I describe the role and purpose of a CPVRR  
11                  analysis as a valuable regulatory tool and identify examples in  
12                  which the Commission has consistently relied upon CPVRR  
13                  analyses to make informed decisions between competing  
14                  alternatives. What is known with absolute certainty is that the  
15                  savings that would be achieved by the acquisition of COVB by  
16                  FPL will not be achieved if witness Kollen’s recommendation  
17                  were accepted and the acquisition adjustment were not  
18                  approved;

19                  4. Witness Kollen states: “The Company’s proposal to recover the  
20                  acquisition premium would change the historic depreciated  
21                  original cost of plant ratemaking paradigm to a fair value  
22                  ratemaking paradigm, at least for the acquired assets.” He also  
23                  states that this would strip away basic ratemaking protections.

1 I will respond to each of these statements. First, there will be  
2 no change in the Commission's long-held approach of  
3 including tangible assets in rate base at their original cost less  
4 accumulated depreciation, or net book value. Please see my  
5 supplemental direct testimony (page 23, line 1, through page  
6 24, line 11) for a more comprehensive discussion of the role of  
7 net book value in ratemaking and its limited use in determining  
8 the prudence of an acquisition. As such, the acquired COVB  
9 assets will be booked in their appropriate FERC accounts at  
10 original cost and will be depreciated according to FPL's  
11 Commission-approved depreciation rates on a going forward  
12 basis. Witness Kollen's hyperbolic warning that Florida would  
13 be changing its basic approach to ratemaking is simply not the  
14 case.

15 Second, there would be no stripping away of ratemaking  
16 protections. To the contrary, the very nature of this proceeding  
17 that was initiated back in November of last year has been to  
18 provide ratemaking protections to FPL's customers. This  
19 docket has attracted protesters and intervenors who have  
20 engaged in discovery and filed testimony. In addition,  
21 Commission Staff has been actively engaged in discovery. The  
22 Commission will have before it an abundant record upon which  
23 to base its decision and provide needed ratemaking protections.

1 This is all consistent with the Commission's long-held policy  
2 of approving positive acquisition adjustments only after a  
3 showing of extraordinary circumstances. However, under  
4 witness Kollen's myopic view, he would have the Commission  
5 disregard its long-held policy and simply reject out-of-hand  
6 any proposed acquisition that requires a positive acquisition  
7 adjustment, because he would have the full investment in the  
8 acquisition not included in rates. His view would simply not  
9 allow the Commission to use its considerable discretion to have  
10 proposed acquisitions brought to it and approve acquisition  
11 adjustments if they are determined to be in the public interest;

12 5. Witness Kollen opines that there are no extraordinary  
13 circumstances in this case. He specifically takes issue with the  
14 customer savings being an extraordinary circumstance and the  
15 resolution of territorial disputes being an extraordinary  
16 circumstance. First, customer savings has been a predominant  
17 consideration (among other considerations) that the  
18 Commission has historically relied upon to approve positive  
19 acquisition adjustments. In my supplemental direct testimony  
20 (page 17, line 3 through page 21, line 6), I discuss in greater  
21 detail why this has been the case historically and identify  
22 numerous cases that provide guidance to the Commission in  
23 this regard. I will not repeat all of that here. As for territorial

1           disputes being an extraordinary circumstance, I would point to  
2           the Sebring acquisition case in which the Commission  
3           specifically identified the resolution of territorial disputes as a  
4           relevant consideration to approve the Sebring acquisition (at  
5           page 9 of Order No. PSC-92-1468-FOF-EU). However, in the  
6           proposed acquisition of COVB, the overall public interest  
7           consideration goes way beyond the mere resolution of a  
8           territorial dispute. The consideration also goes to the fact that  
9           more than 60 percent of COVB's customers reside outside the  
10          City's municipal borders and have felt disenfranchised as a  
11          result. This is aptly described by the Commission in its PAA  
12          order in this docket (page 13 of Order No. PSC-2018-0336-  
13          PAA-EU) as a basis for the Commission's determination that  
14          the sale of the COVB system involves extraordinary  
15          circumstances. The Commission appropriately has great  
16          discretion in determining what is in the public interest and what  
17          constitutes sufficient extraordinary circumstances to approve  
18          an acquisition. In this case, both the prospect of customer  
19          savings and the end of territorial disputes and customer  
20          disenfranchisement are considerations sufficient, either in  
21          isolation or together, to make an ultimate finding that the  
22          proposed COVB acquisition is in the public interest;

1           6. Witness Kollen concludes by stating that “this case may well  
2           be viewed by a future Commission as a precedent for future  
3           and larger acquisitions by FPL and other utilities.” This  
4           statement is quite perplexing for at least two reasons. First and  
5           foremost, if his recommendation were approved, there would  
6           likely be no future acquisitions requiring a positive acquisition  
7           adjustment brought to the Commission. In that situation, this  
8           case would set a very bad precedent and would be contrary to  
9           the Commission’s policy of encouraging acquisitions that are  
10          in the public interest. If witness Kollen’s concern is that a  
11          decision to approve the proposed COVB acquisition  
12          adjustment could set a bad new precedent, he has no reason to  
13          fear. That is because the Commission already has a full set of  
14          cases establishing precedent that each acquisition is a unique  
15          situation that must be evaluated on its unique set of facts and  
16          circumstances. A decision to approve the proposed COVB  
17          acquisition adjustment would be entirely consistent with this  
18          already existing precedent.

19  
20          Second, his statement appears to be a warning to the  
21          Commission that it should be fearful of potential future  
22          acquisitions. If this is his intention, it is totally misplaced. In  
23          contradiction to the notion that the Commission should be

1 fearful of future acquisitions, I believe the Commission should  
2 embrace the prospect. It means that its policies are working  
3 and that future acquisition adjustments can be thoroughly  
4 reviewed and appropriately considered, as is currently  
5 happening with the proposed COVB acquisition. An  
6 opportunity for the Commission to appropriately exercise its  
7 jurisdiction to protect customers and promote the public  
8 interest should not be feared. As I said earlier, it should be  
9 embraced.

10 **Q. Does OPC witness Kollen also discuss the timing of the Commission's**  
11 **consideration of the proposed COVB acquisition?**

12 A. Yes, he suggests that the Commission defer a final decision until FPL's next  
13 base rate proceeding.

14 **Q. Should the Commission defer consideration of the quantification and**  
15 **recovery of any acquisition premium until its next rate case?**

16 A. No, the issues have been fully litigated in this proceeding with a full and  
17 complete record being developed. Thus, it is ripe for a decision. In addition,  
18 there are other reasons that the decision should not be deferred:

19 1. It has been Commission practice to consider some acquisition  
20 adjustments outside of a rate case. Indeed, from time to time,  
21 acquisition adjustments have been considered by the  
22 Commission as part of the initial acquisition and prior to a  
23 post-acquisition rate case. Please see Order No. PSC-2007-

1                   0913-PAA-GU, Order No. PSC-2012-0010-PAA-GU, and  
2                   Order No. PSC-2014-0015-PAA-GU;

3                   2. Positive acquisition adjustments and the accompanying  
4                   benefits that give rise to them must be demonstrated in the  
5                   record to the Commission, whether or not the request is made  
6                   in connection with a general rate proceeding. While FPL  
7                   recognizes that such acquisition adjustments are not routine,  
8                   the Company has presented evidence to support the  
9                   Commission finding in this case that the adjustment is  
10                  warranted to facilitate an otherwise beneficial proposal.  
11                  Furthermore, delaying such a finding until the next general rate  
12                  proceeding would result in prolonged regulatory uncertainty  
13                  and would effectively terminate the transaction. For that  
14                  reason, and particularly for an investment of this magnitude,  
15                  such a delay will preclude the closing of the transaction;

16                  3. Most acquisitions are complex with matters that are time-  
17                  sensitive. To bring these transactions to a successful  
18                  conclusion that brings customer benefits, it is important to have  
19                  them considered expeditiously and to have needed regulatory  
20                  certainty. Otherwise, parties may be reluctant to enter into  
21                  such complex negotiations when unnecessary delays may bring  
22                  more uncertainty. In this case, after many years of negotiations  
23                  and public debate within the COVB, FPL and COVB have

1                   successfully negotiated an agreement for the purchase and sale  
2                   of the COVB electric utility which also involves related  
3                   transactions involving Orlando Utilities Commission and the  
4                   Florida Municipal Power Agency. Requiring parties such as  
5                   those involved in this series of transactions to attempt to  
6                   negotiate on a schedule that corresponds with the possible  
7                   timing of a general rate proceeding would make it virtually  
8                   impossible for an acquisition such as this to take place;

9                   4. The COVB acquisition is of such great public importance that  
10                  it should be expeditiously considered outside of a rate case.  
11                  The COVB electric utility is a municipally-owned electric  
12                  provider to the City, portions of Indian River County and the  
13                  Town of Indian River Shores. Of the approximately 35,000  
14                  customers served, approximately 63 percent are geographically  
15                  located outside of the City limits. These customers feel that  
16                  they do not have adequate recourse to address or challenge  
17                  decisions concerning the operations and rates of the COVB  
18                  utility as currently constituted. They have sought recourse  
19                  through both their local and state-level elected officials as well  
20                  as through the courts and the Commission. These initiatives  
21                  have taken place over a long period of time and have taken

1 various forms.<sup>1</sup> Because FPL's residential rates, which will  
2 become the rates of current COVB customers, are among the  
3 lowest in Florida, the COVB City Council and their electric  
4 customers overwhelmingly support the proposed acquisition  
5 and naturally desire to see the transaction approved as  
6 expeditiously as possible.

7

### 8 III. REBUTTAL TO CAIRC WITNESSES

9

10 **Q. Do you have any comments in response to the CAIRC witnesses?**

11 A. Their positions do not address matters within the jurisdiction of the  
12 Commission and I have no basis to either agree or disagree with their  
13 allegations concerning local issues. I would simply focus on two points. First,  
14 I believe there to be a strong public policy benefit to putting the management  
15 of the Vero Beach utility system in the hands of managers with extensive and  
16 proven utility managerial experience and to hold the resulting managerial  
17 decisions accountable by an independent regulatory authority that has the duty

---

<sup>1</sup> Disputes over the provision of electric service provided by the COVB electric utility have resulted in significant litigation involving a number of parties and amici, including but not limited to the Commission, the City of Vero Beach, the Town of Indian River Shores, Indian River County, FPL, OUC, FECA and FMEA. The litigation includes the following: Docket No. 20140142-EM (Petition for declaratory statement or other relief regarding the expiration of the Vero beach electric service franchise agreement, by the Board of County Commissioners, Indian River County, Florida); Docket No. 20140244-EM (In re: Petition for declaratory statement regarding the effect of the Commission's orders approving territorial agreements in Indian River County, by the City of Vero Beach); Docket No. 20160049-EU (In re: Petition for modification of territorial order based on changed legal circumstances emanating from Article VIII, Section 2(c) of the Florida Constitution, by the Town of Indian River Shores); Town of Indian River Shores et. al. v. City of Vero Beach (Indian River Circuit Court Case No. 2014-CA-000748); and Board of County Commissioners of Indian River County v. Art Graham et. al., 191 So. 3d 890 (Fla. 2016).

1 to protect the interests of all customers, regardless of which political  
2 subdivision they may reside in. The obvious way to achieve this outcome is  
3 to approve FPL's proposal, have all customers protected by the jurisdiction of  
4 the Commission, and have all customers represented by OPC.

5  
6 Second, I do take issue with witness Kramer's statement that no extraordinary  
7 circumstances exist because Vero Beach is financially stable. I do not dispute  
8 that Vero Beach is financially stable. What I disagree with is his implication  
9 that an acquired utility must be facing financial difficulty before a finding of  
10 extraordinary circumstances can be found. That simply is not the case. The  
11 financial distress of the City of Sebring was a contributing factor in the  
12 Sebring acquisition, but was not the single determinative factor in that case.  
13 Likewise, there have been numerous approvals of acquisition adjustments  
14 when the acquired utility was facing no financial distress. Indeed, the  
15 Commission should prefer and welcome instances where a proposed  
16 acquisition that depends on a request for recovery of an acquisition adjustment  
17 does not involve a financially distressed utility.

1 **IV. CONCLUSION**

2

3 **Q. Have any of the positions and arguments made by the various intervenor**  
4 **witnesses changed your conclusions in your direct and supplemental**  
5 **testimonies that the proposed acquisition of the COVB system by FPL**  
6 **should be approved?**

7 A. No. I stand by my previously stated conclusions for all the reasons stated in  
8 my direct and supplemental direct testimonies.

9 **Q. Does this conclude your rebuttal testimony?**

10 A. Yes, it does.