

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition by Florida Power & Light Company (FPL) 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.

Docket No: 20170235-EI

In re: Joint petition to terminate territorial agreement, by Florida Power & Light and the City of Vero Beach.

Docket No. 20170236-EU

Date: October 29, 2018

**POST-HEARING BRIEF OF  
FLORIDA POWER & LIGHT COMPANY**

Florida Power & Light Company (“FPL” or the “Company”) hereby files with the Florida Public Service Commission (the “FPSC” or “Commission”) its Post-Hearing Brief in the above-captioned dockets, pursuant to Order Nos. PSC-2018-0494-PHO-EU and PSC-2018-0496-PCO-EU, and in accordance with the scheduling ruling made at the October 18, 2018 hearing, and states as follows:

**I. SUMMARY OF ARGUMENT**

More than ten years ago, the City of Vero Beach (“COVB”) decided to investigate exiting the electric utility business and approached FPL concerning a possible sale of its electric utility. From its initial stages, the transaction to migrate COVB customers to FPL (“COVB Transaction”) was structured to ensure that both FPL and COVB’s primary goals were achieved; specifically, that: (1) FPL’s customers not be harmed by the transaction, and (2) COVB customers receive FPL’s lower electric rates. Completing a transaction that accomplished these goals required many parties to address unique challenges and develop sophisticated solutions.

As the Commission recognized in Order No. PSC-2018-0336-PAA-EU (“PAA Order”), the circumstances surrounding the COVB Transaction are extraordinary. To complete the

COVB Transaction, FPL and COVB needed to address existing power contracts to which COVB is a party, including (i) a 20-year wholesale services agreement with Orlando Utilities Commission (“OUC”) to provide supplementary power to COVB, due to expire in 2023; and (ii) a series of three contracts for the City’s share of the Florida Municipal Power Agency (“FMPA”) generation entitlements from certain power plants.

After all of the gives-and-takes of this complex multi-year and multi-party negotiation, a transaction was finally derived that will serve COVB’s 35,000 customers with FPL’s much lower electric rates, while at the same time saving FPL’s customers \$135 million on a cumulative present value revenue requirements (“CPVRR”) basis. These FPL customer savings are the net benefits to FPL customers for the transaction, which fully take into account all of the costs of the transaction, including recovery of the approximate \$114 million positive acquisition adjustment and costs concerning the existing COVB power purchase obligations.

The savings figure of \$135 million has been reasonably calculated and was derived from a savings analysis methodology that the Commission has been presented with and accepted on prior occasions. FPL updated this figure in pre-filed testimony and errata as the proceeding progressed. Arguments raised by the Office of Public Counsel (“OPC”) that the forecasts and assumptions used by FPL are unreasonable do not withstand scrutiny. FPL has demonstrated that even with the most conservative assumptions, the COVB Transaction will still bring tens of millions of dollars in savings to FPL’s customers.

Immediately upon conclusion of the transaction, the typical COVB residential customer will begin saving 22% on their electric bill, or \$330 per year. In addition, the COVB Transaction will put an end to tensions arising from COVB customers who live outside the city who cannot vote for the COVB officials who set electric rates. The COVB Transaction ends this

disenfranchisement by placing all COVB rate setting and other regulatory issues affecting those customers under the jurisdiction of the Commission. COVB customers will also gain representation by OPC in rate and service matters before the Commission.

The COVB Transaction will additionally allow COVB customers to enjoy FPL's award-winning reliability and customer service, including access to FPL's Demand Side Management Conservation programs, 24-hour customer service, and a dedicated customer advocacy team. Former COVB customers will also receive electric service supported by FPL's highly experienced management in transmission, distribution, power generation, financial, technical and customer service.

In order to complete the COVB Transaction, FPL must make a substantial investment. FPL's investment is represented in the Asset Purchase and Sale Agreement ("PSA") as the final, negotiated purchase price for the COVB electric assets of approximately \$185 million. This figure includes the amounts sufficient to satisfy COVB's existing obligations and close the COVB Transaction. The \$185 million figure is reasonable as confirmed by the valuation study conducted by FPL witness David Herr, and includes the approximate \$114 million acquisition adjustment that FPL is requesting, which is justified by extraordinary circumstances. FPL asks that the Commission grant the requested approvals in this proceeding, and thereby enable the \$135 million in CPVRR savings for FPL's existing customers and the provision of electric service to COVB customers at FPL's significantly lower rates.

It is important to take note of what is *not* before the Commission. The PSA is not before the Commission for approval. COVB's decisions and the referenda concerning the sale of the electric utility are not relevant to the Commission's determinations. Complaints having to do with the administration of public referenda and various actions of COVB municipal institutions

are local political matters not within the jurisdiction of the Commission. Claims regarding these subjects should be disregarded.

## II. ISSUES AND POSITIONS<sup>1</sup>

**ISSUE 1: What statutory provisions or other legal authority, if any, grant the Commission the authority and jurisdiction to approve the acquisition adjustment requested by FPL in this case?**

**FPL:** The Commission has ample rate-setting and public interest authority pursuant to Sections 366.01, 366.04, 366.041, and 366.05, 366.06, Florida Statutes. There is also long-held precedent that supports such an approval, including the Commission's decisions in Docket Nos. 920949-EU, 120311-GU, 110133-GU, 060657-GU.

**ISSUE 5: Should the Commission grant FPL the authority to charge FPL's rates and charges to City of Vero Beach's ("COVB") customers upon the closing date of the Asset Purchase and Sale Agreement ("PSA")?**

**FPL:** Yes. Approval will generate the following savings for COVB customers: (i) a typical residential customer will save \$330 annually; (ii) a typical small store front will save \$410 annually; a typical office building or school will save \$7,600 annually; and (iv) a typical large retailer or hospital will save nearly \$80,000 annually.

**ISSUE 6: Should the Commission approve the joint petitioners' request to terminate the existing territorial agreement between FPL and COVB upon the closing date of the PSA?**

**FPL:** Yes. Termination of the territorial agreement is an essential component of the COVB Transaction. Approval of the agreement's termination is in the public interest, as it enables approximately \$135 million in CPVRR savings for FPL's customers and significant immediate savings for COVB customers.

Order No. PSC-2018-0494-PHO-EU (the "Prehearing Order") indicates that Issues 1, 5, and 6 are not contested, and as such they need not be briefed. Prehearing Order at 10-12.

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<sup>1</sup> Issues 2, 3, 4, 10, 14, 18 and 19 were not accepted by the Commission as issues in this proceeding. The remaining issues have not been re-numbered. Prehearing Order at 10.

**ISSUE 7: What extraordinary circumstances, if any, exist to support the Commission's consideration of authorizing a positive acquisition adjustment in this case?**

**FPL:** The following extraordinary circumstances exist:

1. Lower rates for COVB customers
2. Reduced revenue requirements for existing FPL customers
3. Resolution to years of litigation
4. End of disenfranchisement
5. Improved service quality
6. Improvements and modernization for COVB's grid
7. Greater access to capital
8. More experienced management
9. The availability of OPC to provide representation to COVB customers
10. Diverse transaction beneficiaries

The Commission evaluates specific facts and circumstances on a case-by-case basis to determine whether there are extraordinary circumstances supporting approval of a positive acquisition adjustment. PAA Order at 10. The evidence in this case clearly demonstrates the extraordinary circumstances presented by the COVB Transaction.

FPL witness Terry Deason summed up the extraordinary circumstances associated with the COVB Transaction when he described the following:

- Lower rates for COVB and reduced revenue requirements for FPL customers;
- An end to years of litigation before this Commission, Indian River County circuit courts and The Florida Supreme Court;
- An end to the disenfranchisement of more than 60% of the COVB customers who reside outside the city limits;
- Improved quality of service, reliability and storm restoration;
- Improvements and modernization of the grid in the former COVB territory;
- Greater access to capital;
- More experienced operations and management;

- Regulation by the Commission and representation by OPC of these citizens on electric utility matters before this Commission; and
- The unique, pervasive nature of the beneficiaries of this transaction: specifically, citizens and electric customers of the COVB, FPL, OUC and the municipalities who receive power from FMPA each of whom approved this transaction. Hearing Transcripts (“Tr.”) 274 (Deason).

Those extraordinary circumstances are detailed in the subsections that follow.

i. *Extraordinary Circumstance: Lower Rates for both COVB and FPL Customers*

The most prominent indicator of extraordinary circumstances is the significant savings benefits for both COVB and FPL customers with no detriment to either group. The savings generated by the COVB Transaction for both COVB and FPL represents an accomplishment that FPL witness Terry Deason described as a “truly extraordinary circumstance.” Tr. 343 (Deason).

The \$135 million savings for existing FPL customers is a reasonable projection, validated in the testimony and exhibits of FPL witness Scott Bores. Mr. Bores’ testimony demonstrates that the \$135 million in savings is driven by the projected incremental revenues received from COVB customers being higher than projected incremental costs to serve those customers. Tr. 29 (Bores).

As FPL witness Terry Deason testified at hearing in response to questioning from Commissioner Polmann, the \$135 million savings figure is net of all the costs associated with the COVB Transaction, including FPL’s requested acquisition adjustment. Tr. 348-49 (Deason). In other words, FPL’s existing customers will realize the \$135 million savings after accounting for all the costs of the transaction.

FPL’s rates have been lower than those of COVB “throughout the entire period” of nine

plus years in which the negotiations have taken place. Tr. 182 (Forrest); Ex. 12. The substantial savings to COVB customers is demonstrated in the un rebutted testimony of FPL witness Tiffany Cohen. Witness Cohen, in her analysis of FPL and COVB rates, testifies that the bill savings for COVB customers transitioned to FPL rates may be summarized as follows:

- A typical residential customer will save 22% or \$330 per year under FPL rates;
- A typical small store front will save 22% or \$410 per year;
- A typical office building or school will save 30% or \$7,600 per year; and
- A typical large retailer, such as a grocery store, “big box” store or hospital will save 27% or nearly \$80,000 per year. Tr. 60 (Cohen); Exhibit 11.

Savings for both existing FPL customers and COVB customers represent a material and immediate benefit that can only occur if the COVB Transaction is completed. As explained by FPL witness Terry Deason, where an acquisition results in lower rates for all customers, it would be extraordinary and worthy of the Commission’s consideration for approval. Tr. 273 (Deason).

***Assumptions supporting the savings***

The underlying assumptions and the forecast methodology used by FPL to support the COVB Transaction are reasonable and consistent with how FPL has conducted forecasts for prior projects that have been approved by the Commission. Tr. 43 (Bores).

OPC witness Kollen’s assertions that FPL should have used different forecasts and assumptions are incorrect. FPL appropriately assumed base rate increases both in 2022 and 2023 commensurate with its current forecast and capital investment plan and assumed annual base rate increases of approximately 1%, less than the estimated cost of inflation, for the remaining 25 years of the analysis. Tr. 44 (Bores). By adding the Dania Beach Energy Center in mid-2022 and additional cost-effective solar in the 2019-2027 time period, the Company reasonably assumes it

will have sufficient capacity that it can utilize to serve the COVB customers. Tr. 46 (Bores). The appropriate discount rate to use in discounting revenue requirements in the CPVRR calculation is the after-tax weighted average cost of capital. Tr. 47 (Bores). FPL's CPVRR analysis does not reflect speculative displaced economy sales to third parties because it has consistently been FPL's practice not to include forecasts of revenues for which an accurate estimate cannot be determined. Tr. 49 (Bores).

Even under extremely unlikely sensitivities, FPL customers will realize significant savings. FPL performed a sensitivity assuming no base rate increases other than in 2022 and 2023. Tr. 45 (Bores). Even under this extreme and unrealistic sensitivity, the CPVRR analysis demonstrated an estimated \$96 million benefit to FPL's existing customers from the COVB Transaction. Tr. 40, 45 (Bores). FPL performed an even more extreme sensitivity that assumed no future base rate increases at all. That analysis demonstrated a CPVRR benefit of \$31 million over the 30-year period. Tr. 40, 45 (Bores).

ii. *Extraordinary Circumstance: An End to Years of Litigation before this Commission, Indian River County Circuit Courts and The Florida Supreme Court*

Completing the COVB Transaction will end years of litigation before this Commission, Indian River County circuit courts, and The Florida Supreme Court. The extent of this litigation is broad and is summarized in Exhibit 53 of the proceeding's record. Ex. 53 (Staff Hearing Exhibits 00130). Consummation of the COVB Transaction will favorably resolve the underlying utility service situation that has led to all of this litigation, and will render moot Docket No. 20160049-EU which remains pending at the Commission. The COVB Transaction will enhance fairness by enabling all customers in Indian River County and the Town of Indian River Shores

to receive FPL's lower rates, whereas now portions of the County and Town are served by COVB. Ex. 53 (Staff Hearing Exhibits 00130).

*iii. Extraordinary Circumstance: An End to Disenfranchisement*

The COVB Transaction also promotes the public interest by fostering fairness for all customers by ending the disenfranchisement of more than 61% of the COVB customers who reside outside the city limits. Only those customers who live inside the City limits – less than 39% of COVB customers – elect the individuals on the COVB City Council who determine the rates for the COVB electric utility. Customers who reside outside the City cannot vote for COVB councilmembers, nor can they run for elected office in the City. With more than 61% of COVB electric customers living outside the City limits, the vast majority of COVB's customers do not have the right to vote for the individuals who ultimately determine their electric rates. Tr. 365 (O'Connor).

Currently, customers outside the City limits have only an advisory body, the COVB Utilities Commission, which does not have decision-making authority, to represent them. As stated by COVB witness James O'Connor, the COVB Utilities Commission may advise the COVB City Council regarding matters related to the COVB electric utility, but cannot vote on such matters and cannot change the rates and fees for electric service. Tr. 364-65 (O'Connor). Given this, assertions by Civic Association of Indian River County ("CAIRC") witness Kramer that customers outside of the City limits have the same influence in rate-setting matters as those living in the City, Tr. 65 (Kramer), are perplexing, unsupported by the evidence, and should be rejected.

iv. Extraordinary Circumstance: Improved Quality of Service, Reliability and Storm Restoration

Another extraordinary circumstance of the COVB Transaction is that the public interest will be furthered by enabling COVB customers to benefit from improved quality of service, reliability and storm restoration after the closing of the COVB Transaction. These benefits, as described in the testimony of FPL witness Sam Forrest, have not been challenged by any party. The record shows that COVB customers will benefit from excellent quality of service through FPL's award-winning reliability and customer service. Tr. 160 (Forrest). FPL maintains 99.98 percent reliability across its service territory with an increased focus on improving its electric infrastructure through storm hardening, vegetation management and rapid response time. Tr. 160 (Forrest).

v. Extraordinary Circumstance: Improvements and Modernization of the Grid in the Former COVB Territory

The closing of the COVB Transaction will facilitate improvements and modernization of the grid in the former COVB territory, providing another extraordinary public interest benefit. FPL expects to deploy smart meters in COVB shortly after closing the acquisition as part of its transition to advanced metering technology. Tr. 161 (Forrest). COVB customers will enjoy the advantages that smart meters bring in enhancing reliability, predictability and energy management. Tr. 161 (Forrest).

vi. Extraordinary Circumstance: Greater Access to Capital

The COVB Transaction will introduce customers formerly served by COVB to FPL's increased access to capital. This increased access will allow COVB customers to benefit from

FPL's significant financial strength, which will translate into enhanced service, thus making it an extraordinary circumstance as noted by witness Deason. Tr. 274 (Deason).

vii. Extraordinary Circumstance: More Experienced Operations and Management

FPL brings highly experienced management in transmission, distribution, power generation and customer service. Tr. 162 (Forrest). Witness Forrest demonstrates that FPL's management of nearly 5 million customer accounts with 99.98 percent reliability and award winning customer service will provide COVB customers significant professional resources to handle a multitude of issues. Once integrated into the FPL system, COVB will have access to one of the most fuel efficient, low-cost, and cleanest generating fleets in the U.S., which substantially contribute to FPL's low electric rates. Combined, COVB customers will enjoy wider access to experienced, professional expertise in all aspects of the electric industry. Tr. 162 (Forrest).

viii. Extraordinary Circumstance: Commission Regulation and Representation by OPC

Once the COVB Transaction closes, former COVB customers will benefit through the protections afforded by this Commission and through representation by OPC. Given the disenfranchisement that currently plagues the majority of COVB customers, which historically has led to frustration and litigation, customers of COVB stand to greatly benefit by being protected by the Commission's regulation of rates and service, and having the benefits of OPC advocacy on their behalf. Tr. 278 (Deason).

ix. Extraordinary Circumstance: Unique, Pervasive Nature of the Beneficiaries

The number of parties who have agreed to the contractual terms needed to enable FPL and COVB to close the COVB Transaction is indicative of the positive public interest outcome. Testimony provided by FPL witness Sam Forrest demonstrates that FPL and COVB's signing of

the PSA in October of 2017 represents an achievement stemming from a decade's worth of negotiations, as well as the commitment and problem-solving efforts of many hardworking individuals on the many sides of the transaction, including OUC, FMPA, and 20 member cities of the FMPA. Tr. 152, 171 (Forrest). The successful negotiation of all the agreements necessary to allow this transaction to close is, in a word, extraordinary.

Assertions by CAIRC that negotiations between FPL and COVB did not occur are groundless and should be rejected. CAIRC witness Jay Kramer testifies that to “[his] knowledge there has never been any actual negotiations between FPL and Vero Beach.” Tr. 66 (Kramer). This position defies logic, sworn testimony and the very facts before the Commission, particularly given the testimony of COVB City Manager James O’Connor, who himself participated in rounds of negotiations with FPL in the lead up to the signing of the PSA. Tr. 369 (O’Connor).

The evidence presented in this case questioning the existence of extraordinary circumstances is baseless and without merit. OPC witness Kollen summarily dismisses the existence of extraordinary circumstances based simply on his assessment that rate disparity and CPVRR savings are not an extraordinary circumstance. Tr. 93 (Kollen). In doing so, he simply ignores all of the other extraordinary public interest circumstances enumerated by FPL witness Deason.

Testimony presented by CAIRC on the issue of extraordinary circumstances is contrary to the actual facts and should carry no weight as the Commission considers the pending Petitions. For example, CAIRC witness Kramer offers the following in explaining why in his opinion extraordinary circumstances do not exist: “Extraordinary circumstances do not exist in Vero Beach, as we are financially stable at this time, and the representation of outside customers is the

same as it is for city customers.” Tr. 64 (Kramer). As to his first point, no party has claimed that the City is financially unstable, nor is such a finding required to establish extraordinary circumstances. As to his second point regarding representation, witness Kramer is simply incorrect. As COVB witness James R. O’Connor demonstrates in his testimony, only customers inside the COVB city limits can vote for the COVB Council, Council members must be residents of the City, and those Council members represent only residents of the City. Tr. 364 (O’Connor).

Witness Kramer also completely ignores the fact that more than 61% of the customers served by the COVB electric utility cannot vote for the members of the COVB City Council, cannot be elected to the COVB City Council, and therefore have no say in selecting the people who have the sole and complete authority over the rates they pay for electricity.

**ISSUE 8: Should the Commission consider alternatives other than what has been proposed by FPL with respect to the acquisition adjustment?**

**FPL:** No. The approvals that are before the Commission are the approvals required for the PSA to close. FPL has evaluated alternatives and methods of accomplishing the transaction, and having done so, has placed before the Commission the proposal that will satisfy the needs of both FPL and COVB.

The Prehearing Order indicates that Issue 8 is not contested, and as such it need not be briefed.

**ISSUE 9: Should the Commission approve a positive acquisition adjustment associated with the purchase of the COVB electric utility system?**

**FPL:** Yes. The public interest is furthered by the COVB Transaction and there are extraordinary circumstances present such that the Commission should properly authorize FPL a positive acquisition adjustment.

The circumstances surrounding the COVB Transaction are extraordinary and support the approval of a positive acquisition adjustment. The Commission's policy with respect to acquisition adjustments has been to evaluate the specific facts and circumstances on a case-by-case basis and to determine whether there are extraordinary circumstances that warrant the approval of a positive acquisition adjustment. *In re: Joint Petition of Florida Power Corporation and Sebring Utilities Commission*, Docket No. 920949-EU, Order No. PSC-92-1468-FOF-EU at 11 (issued December 17, 1992) (*hereinafter* "Sebring Order"). The Commission's precedent indicates, however, that the ultimate guide is whether a transaction presents unique, extraordinary circumstances such that it is in the public interest. *See* Sebring Order at 11; PAA Order at 15.

The record demonstrates that the acquisition adjustment should be authorized for three primary reasons. First and foremost, extraordinary circumstances exist such that the authorization of a positive acquisition adjustment is appropriate. These circumstances are described in detail under Issue #7 of this brief.

Second, the acquisition adjustment is an inseparable part of the COVB Transaction, a transaction that is clearly in the public interest. As explained by FPL witness Sam Forrest, for this transaction to occur, and to resolve all issues including the City's existing obligations to OUC and FMPA, FPL needed to make an investment of \$185 million. Tr. 156 (Forrest). That amount reflects the negotiated cost needed to acquire the City's electrical assets. Like other prudently incurred utility investments that FPL makes to save its customers money, FPL is seeking to recover that investment. The acquisition adjustment represents a portion of the investment that is simply the difference between purchase price and net book value; whereas the total purchase price represents the costs and investment needed to realize the benefits of the

transaction.

Third, denial of the acquisition adjustment would result in a chilling effect on potential future acquisitions that may be in the public interest. Tr. 286-87 (Deason). As FPL witness Deason testified, “The Commission’s policy has been and should continue to be to encourage acquisitions that are in the public interest.” Tr. 286-87 (Deason). To discourage transactions that are in the public interest simply because an acquisition adjustment is requested would dissuade utilities from attempting to seek future acquisitions where a positive acquisition adjustment would be necessary to consummate the transaction. This, as witness Deason testifies, “could impose significant costs on Florida’ citizens and its economy in the form of missed opportunity costs.” Tr. 287 (Deason).

OPC, though in support of the transaction and in favor of charging FPL rates to the City’s customers, nonetheless states that FPL’s proposed acquisition adjustment will cause harm to the general body of FPL’s customers. Tr. 91 (Kollen). This position is self-contradictory. The acquisition adjustment is an indispensable component of the COVB Transaction and without its approval, the COVB Transaction will not close and its benefits will fail to materialize.

**ISSUE 11: What is the appropriate amount, if any, of a positive acquisition adjustment to be recorded on FPL’s books for the purchase of the COVB electric utility system?**

**FPL:** FPL estimates an acquisition adjustment of approximately \$114 million, which reflects the amount FPL paid to COVB over the net value of the assets purchased. FPL witness Herr conducted a fair value evaluation of the COVB electric utility. This evaluation confirms the purchase price of the COVB Transaction was reasonable.

An acquisition adjustment is the difference between the purchase price paid to acquire a utility asset or group of assets, and the depreciated original cost, or net book value, of those assets. *See* Rule 25-30.0371, F.A.C. A positive acquisition adjustment exists when the purchase

price is greater than the net book value. *Id.* The appropriate amount of the acquisition adjustment in this case is calculated to be approximately \$114 million. Tr. 37 (Bores); Ex. 41 (Staff Hearing Exhibits 00066). This amount is appropriate given that the purchase price is reasonable.

For Generally Accepted Accounting Principles (“GAAP”) purposes, a valuation of the acquired electric plant assets along with other acquired assets and assumed liabilities is typically performed in order to support the reasonableness of the overall purchase price. Tr. 211 (Ferguson). To arrive at the Fair Value of COVB, FPL witness David Herr considered the value indications derived from the Income Approach – Discounted Cash Flow, Market Approach – Guideline Companies Multiples, and Market Approach – Guideline Transactions Multiples. Tr. 24 (Herr). These value indications support the purchase price of approximately \$185 million, which is a reasonable estimate of the Fair Value of COVB. Tr. 27 (Herr).

**ISSUE 12: If a positive acquisition adjustment is permitted, what is the appropriate accounting treatment for FPL to utilize for recovery and amortization of the acquisition adjustment?**

**FPL:** The Company should be authorized to record the approximately \$114 million positive acquisition adjustment in FERC Account 114 – Electric Plant Acquisition Adjustments. It is appropriate to record the amortization expense in FERC Account 406 – Amortization of Electric Plant Acquisition Adjustments over a 30 year period.

FPL’s proposed accounting treatment complies with the guiding accounting standards. The Uniform System of Accounts (“USOA”) for Account 114 – Electric Plant Acquisition Adjustments (18 C.F.R. 101), requires a positive acquisition adjustment if the cost of the acquired system is greater than original cost less accumulated depreciation (*i.e.*, net book value). Consistent with Accounting Standard Codification 980, a utility may record amortization expense associated with an acquisition adjustment in Account 406 if the Commission approves

recovery of the expense in rates pursuant to the requirements of both GAAP and the Federal Energy Regulatory Commission (“FERC”) USOA. FPL’s accounting is consistent with the aforementioned guidelines.

FPL requests Commission approval to record the acquisition adjustment in FERC Account 114 – Electric Plant Acquisition Adjustments, and to record amortization in FERC Account 406 – Amortization of Electric Plant Acquisition Adjustments over a 30-year period, which is approximately equivalent to the average remaining estimated useful life of the acquired distribution assets since the primary purpose of the transaction is to serve COVB’s retail customers. Tr. 217 (Ferguson).

**ISSUE 13: Should the projected cost savings supporting FPL’s request for a positive acquisition adjustment be subject to review in future FPL rate cases?**

**FPL:** No. The benefits to customers from the COVB Transaction are measured by a CPVRR calculation, which takes a holistic view and is derived by spreading fixed costs over a larger base. The calculation is not predicated on any specific set of future management actions that would need to be monitored.

There is no Commission requirement that FPL demonstrate cost savings will accrue from this transaction. The \$135 million projected savings is supported by a CPVRR calculation, with the savings derived primarily by spreading fixed costs over a larger customer base, Tr. 252 (Deason), not from any specific management actions or synergies. This makes the COVB Transaction distinguishable from previous gas acquisition adjustment cases where savings would only materialize if a utility’s management took particular actions.<sup>2</sup> The CPVRR savings in this

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<sup>2</sup> See, e.g., *In re Petition for approval of positive acquisition adjustment to reflect the acquisition of Indiantown Gas Company by Florida Public Utilities Company*, Docket No. 120311-GU, Order No. PSC-14-0015-PAA-GU at 5, Table 1 (issued January 6, 2014) (transaction savings primarily attributable to personnel operating cost savings); and *In re Petition for approval of acquisition adjustment and recovery of regulatory assets, and request for consolidation of regulatory filings and records of Florida Public Utilities Company and Florida Division of Chesapeake Utilities Corporation*, Docket No. 110133-GU, Order No. PSC-12-0010-PAA-GU at 6 (issued January 3, 2012) (transaction savings primarily attributable to personnel and corporate operating cost savings).

case being based solely on economies of scale and not on any particular management actions such as personnel or corporate reductions means that tracking savings is neither practical nor beneficial, and should not be ordered. To require the tracking of savings would have a chilling effect on the COVB Transaction and other prudent and beneficial transactions.

**ISSUE 15: Should the Commission approve recovery of costs associated with the short-term power purchase agreement with Orlando Utilities Commission?**

**FPL:** Yes. It is appropriate for FPL recover the energy portion related to the OUC PPA through FPL's FCR Clause and the capacity component through the CCR Clause. FPL's requested method of recovery is like that of other power purchase agreements.

The Commission should, consistent with its policy and precedent, approve recovery of the costs associated with the PPA that FPL has entered into with OUC. The Commission has permitted utilities to recover costs associated with PPAs in certain circumstances where there were clear benefits for customers. *See In re: Petition for approval to terminate qualifying facility power purchase agreement with Florida Power Development, LLC, by Duke Energy Florida, LLC*, Docket No. 20170274-EQ, Order No. PSC-2018-0240-PAA-EQ (issued May 8, 2018); *In re: Petition for approval of a purchase and sale agreement between Florida Power & Light Company and Calypso Energy Holdings, LLC*, Docket No. 160154-EI, Order No. PSC-2016-0506-FOF-EI (issued November 2, 2016), *In re: Petition for approval of arrangement to mitigate impact of unfavorable Cedar Bay power purchase obligation, by Florida Power & Light Company*, Docket No. 150075-EI, Order No. PSC-15-0401-AS-EI (issued September 23, 2015).

The OUC PPA is analogous to the cases cited, where investments and recovery of PPAs were approved in order to save customers money. To make the COVB Transaction a reality and unlock the transaction's benefits, FPL needs to make a payment to release the City from an existing wholesale contract with OUC, which is due to expire in 2023. OUC would not grant

COVB a release from the wholesale contract without additional compensation beyond the \$20 million that COVB committed to pay from the proceeds of the sale. Tr. 158 (Forrest). To allow for this release, FPL negotiated a PPA with OUC effective upon the closing of the PSA through December 2020. Tr. 152 (Forrest).

Costs associated with the OUC PPA are an essential component of the COVB Transaction and will be recovered no differently than the costs of any PPA. The fuel component of the PPA will be recovered through the FCR Clause and the capacity component through the CCR Clause. Tr. 218 (Ferguson). The recovery requested for the OUC PPA therefore is completely consistent with the Commission's existing policy and precedent.

**ISSUE 16: Is granting the relief requested by the applicants in the public interest?**

**FPL:** Yes. A transaction providing COVB customers significant bill savings while simultaneously saving FPL customers approximately \$135 million is within the public interest. The resolution of a nearly decade-long struggle of COVB customers, businesses, and elected officials to receive FPL's lower rates is also in the public interest.

The Commission should find that granting the requested relief is in the public interest. The Florida Supreme Court has explained that the "determination of what is in the public interest rests exclusively with the Commission." *Citizens of State v. Florida Public Service Com'n*, 146 So.3d 1143 at 1173 (Fla. 2014). The Commission has broad discretion in deciding what is in the public interest and may consider a variety of factors in reaching its decision. *See Re The Woodlands of Lake Placid L.P.*, Docket No. 030102-WS, Order No. PSC-04-1162-FOF-WS at p. 7, (FPSC Nov. 22, 2004); *In Re: Petition for approval of plan to bring generating units into compliance with the Clean Air Act by Gulf Power Company*, Docket No. 921155-EI, Order No. PSC-93-1376-FOF-EI, at p. 15 (FPSC Sept. 20, 2003). Further, as recognized in the

Commission's PAA Order, the public interest is the ultimate measuring stick to guide its decision in this case. PAA Order at 11, citing *Gulf Coast Electric Cooperative v. Johnson*, 727 So. 2d 259, 264 (Fla. 1999).

The COVB Transaction powerfully promotes the public interest. This is thoroughly detailed under Issue #7 (extraordinary circumstances) of this brief. Those extraordinary circumstances support in all respects the public interest benefits of the COVB Transaction.

The COVB Transaction is a unique opportunity to advance the public interest. Closing the COVB Transaction will truly be a win-win for existing FPL customers and for COVB customers. As FPL witness Deason testified at hearing, "this is only the second case in 26 years of an electric utility acquir[ing] a municipal utility." Tr. 338 (Deason). After nearly a decade's worth of work resulting in the resolution of a multitude of complicated issues among a number of diverse and sophisticated parties, FPL and COVB stand on the cusp of closing on this unique and extraordinary transaction. Approval by the Commission of the pending petitions will allow that vision to become a reality.

Public testimony demonstrates that the COVB Transaction's bill savings will serve a vital function for schools, hospitals, and businesses in the local community. Senator Debbie Mayfield, of Florida's 17th District, testified that there are COVB "hospitals that are paying more" and "school districts that are paying more" in the form of electric rates. Public Hearing Transcripts at 12. Tracy Zudans, a trustee on the Indian River County Hospital District, testified that COVB-served hospitals treat indigent patients and the Indian River Medical Center pays "\$2.7 million annually just in electric [bills]". Public Hearing Transcripts at 35 (Zudans). Dori Stone, President of the Indian River County Chamber of Commerce, testified that COVB electric rates discouraged new businesses. Public Hearing Transcripts at 32 (Stone). The bill savings

associated with the COVB Transaction are not simply numbers; the record indicates that they will have a positive impact on the entire community.

### III. CONCLUSION

The COVB Transaction presents unique and extraordinary circumstances, represents nearly a decade of coordination and negotiations between multiple parties, and delivers significant public interest benefits. The petitions before this Commission should therefore be approved in order to enable the transition of COVB customers to FPL and receive FPL's lower rates, and allow FPL's customers to enjoy \$135 million in CPVRR savings which will be unlocked by this transaction.

Respectfully submitted this 29th day of October, 2018.

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**CERTIFICATE OF SERVICE**  
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I HEREBY CERTIFY that a true and correct copy of FPL's Post Hearing Brief was electronically served this 29th day of October 2018, to the following:

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