

**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: September 26, 2018

**FLORIDA POWER & LIGHT COMPANY'S  
PREHEARING STATEMENT**

Florida Power & Light Company ("FPL" or the "Company"), pursuant to Order Nos. PSC-2018-0370-PCO-EU and PSC-2018-0445-PCO-EU, files with the Florida Public Service Commission (the "Commission"), its Prehearing Statement, and states:

**1) FPL WITNESSES**

**Direct & Supplemental Direct**

**WITNESS**

**SUBJECT MATTER**

**ISSUE #**

Sam Forrest

Provides an overview of FPL's acquisition of the City of Vero Beach ("COVB" or the "City") electric utility ("COVB Transaction") and details the various components of the Asset Purchase and Sale Agreement ("PSA") executed between FPL and COVB on October 24, 2017. Describes the history of FPL's relationship with COVB and the process of negotiating the PSA. Details the purpose of the Power Purchase Agreement ("PPA") with Orlando Utilities Commission ("OUC") and how it interrelates with the acquisition. Discusses the benefits of the COVB Transaction to both existing FPL customers and COVB customers.

5, 6, 7, 8, 9, 15, 16

Scott Bores	Demonstrates that FPL’s purchase of the COVB electric system is projected to result in approximately \$135 million of cumulative present value of revenue requirements (“CPVRR”) benefit to existing FPL customers, attributable to the fact that the projected incremental revenues received from COVB customers are higher than projected incremental costs to serve those customers.	7, 16
Keith Ferguson	Presents the appropriate accounting under both GAAP and the Federal Energy Regulatory Commission (“FERC”) Uniform System of Accounts (“USOA”) requirements that have been adopted by the Commission. Describes the regulatory reporting and ratemaking associated with the COVB Transaction. Addresses specifically the: (i) purchase accounting for the COVB Transaction; and (ii) regulatory reporting and ratemaking treatment associated with the COVB Transaction and the PPA that FPL has negotiated with the OUC as part of the acquisition.	10, 11, 12, 15
Tiffany C. Cohen	Provides FPL’s estimate of the potential bill savings the current customers of COVB will realize once they become FPL customers.	5, 7, 16
Terry Deason	Addresses the regulatory policy considerations for acquisition adjustments in general and how those policy considerations should be applied to FPL’s proposed acquisition of the COVB electric system. Recommends that the Commission approve the acquisition adjustment that FPL is requesting in this proceeding based upon these regulatory policy considerations, the presence of extraordinary circumstances, and the clear benefits the COVB Transaction has for COVB and FPL customers.	1, 6, 7, 8, 9, 13, 16
David Herr	Analyzes and addresses the Fair Value of the plant, property, and equipment of COVB and the Fair Value of intangible assets in connection with the acquisition of COVB.	11

## Rebuttal

<u>WITNESS</u>	<u>SUBJECT MATTER</u>	<u>ISSUE #</u>
Sam Forrest	Responds to the contention of Office of Public Counsel (“OPC”) witness Kollen that the COVB Transaction could have been structured as a parent-level acquisition, avoiding the need for recovery of an acquisition adjustment. Responds to the claim from Civic Association of Indian River County (“CAIRC”) witness Kramer that there have never been any actual negotiations between FPL and COVB.	5, 6, 8, 16
Scott Bores	Explains why the Commission should reject OPC witness Kollen’s claims with respect to FPL’s CPVRR analysis presented in Exhibit SRB-2.	7, 16
Keith Ferguson	Rebuts the accounting and ratemaking claims made by OPC witness Kollen. Shows that witness Kollen’s proposed accounting treatment is inconsistent with prior orders from both the Commission and FERC and should be rejected.	10, 11, 12
Terry Deason	Rebuts assertions and conclusions drawn by OPC witness Kollen as being inconsistent with Commission policy, practice, and precedent. Responds to witnesses sponsored by CAIRC who attempt to minimize the existence of extraordinary circumstances.	6, 16

## 2) EXHIBITS

<b>Witness</b>	<b>Proffered By</b>	<b>Exhibit #</b>	<b>Description</b>
Sam Forrest	FPL	SAF-1	Asset Purchase and Sale Agreement
Sam Forrest	FPL	SAF-2	Power Purchase Agreement with OUC
Scott Bores	FPL	SRB-1	Summary of CPVRR Impact for the City of Vero Beach
Scott Bores	FPL	SRB-2 (Corrected)	Updated Summary of CPVRR Impact for the City of Vero Beach Transaction
Scott Bores	FPL	SRB-3 (Corrected)	Comparison of CPVRR Benefits
Scott Bores	FPL	SRB-4	Example of Discounting at after-tax Weighted Average Cost of Capital

Keith Ferguson	FPL	KF-1	COVB Preliminary Acquisition Journal Entries
Tiffany C. Cohen	FPL	TCC-1	Typical Bill Comparisons — FPL vs. COVB
Tiffany C. Cohen	FPL	TCC-2	Historical Typical Residential Bill Comparison
Tiffany C. Cohen	FPL	TCC-3	Typical Bill Comparisons – FPL vs. COVB
Tiffany C. Cohen	FPL	TCC-4	Historical Typical Residential Bill Comparison
Tiffany C. Cohen	FPL	TCC-5	Industrial Bill Comparisons
Terry Deason	FPL	TD-1	Biographical Information for Terry Deason
David Herr	FPL	DH-1	David Herr Curriculum Vitae
David Herr	FPL	DH-2	Summary Report entitled “Valuation of COVB”
David Herr	FPL	DH-3 (confidential)	Detailed “Valuation of COVB” Report

In addition to the above pre-filed exhibits, FPL reserves the right to utilize any exhibit introduced by any party. FPL additionally reserves the right to introduce any additional exhibit necessary for rebuttal, cross-examination, or impeachment at the final hearing.

### **3) STATEMENT OF BASIC POSITION**

The approvals FPL and COVB are seeking from the Commission in this proceeding are essential to closing the COVB Transaction, a transaction nearly a decade in the making and which is solidly in the public interest. The COVB Transaction, in addition to resolving a years-long struggle of COVB customers, businesses, and elected officials to receive FPL’s lower rates, benefits FPL’s existing customer base by creating approximately \$135 million in CPVRR savings.

The 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. Achieving these goals was not as simple as finding an agreeable purchase price. The COVB Transaction required the parties to address unique challenges and develop sophisticated solutions. In connection with the COVB Transaction, FPL and COVB needed to address power contracts to which COVB is a party, including (i) a 20-year wholesale services agreement with 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. Through collaboration, COVB, FMPA, and FPL established a path forward to terminate COVB’s power purchase obligations contemporaneous with the closing of the PSA. As part of the overall proposal and to enable COVB to terminate its obligations with OUC, FPL negotiated a short-term PPA with OUC for capacity and energy, commencing at the close of the COVB Transaction and extending through 2020. After all of the give-and-takes of this complex multi-year and multi-party negotiation, a completed transaction was finally derived that could effectively transition COVB’s customers to FPL’s rates and, yet, save FPL’s customers \$135 million. These jointly developed solutions can only be effectuated by attaining the approvals that are before the Commission in this proceeding.

The events and circumstances that led to the COVB Transaction are extraordinary. Currently, over 60 percent of COVB's utility customers reside outside the City's municipal borders including customers residing in portions of unincorporated Indian River County, and portions of the Town of Indian River Shores. This means that most of COVB's customers do not vote for members of the COVB City Council, which sets rates for the COVB utility. COVB customers who live outside the City have complained in the past that they have no voice concerning the operation or management of the City's electric utility and no redress to any governmental authority. For many years, there has been controversy and litigation because COVB customers wanted to be served by FPL because it charges lower rates than COVB. Presently, transitioning COVB customers to FPL rates will save the typical COVB residential customer 22% on their electric bill, or \$330 per year. The COVB Transaction will put an end to the disenfranchisement issue by bringing all COVB rate setting and other regulatory issues affecting all COVB customers under the jurisdiction of this Commission. COVB customers will also gain representation by OPC. The COVB Transaction will also allow COVB customers to enjoy FPL's award-winning reliability and customer service, including among other benefits, access to FPL's Demand Side Management Conservation programs, 24-hour customer service to resolve customer needs, and a dedicated customer advocacy team. Former COVB customers will also gain access to FPL's highly experienced management in transmission, distribution, power generation, financial, technical and customer service.

In order to effectuate the COVB Transaction and provide the benefits described, FPL needs to make a substantial investment. FPL's required investment is represented in the PSA as the final, negotiated purchase price for the COVB electric assets of about \$185 million. FPL has provided testimony demonstrating that it has properly accounted for the costs to effectuate the COVB Transaction, including an approximate \$114 million acquisition adjustment, which is part of the costs which will be actually incurred by FPL to complete the COVB Transaction. The Commission, consistent with its policy and precedent, should authorize the requested approvals in this proceeding, enabling \$135 million in CPVRR savings for FPL's existing customers and providing electric service at FPL's significantly lower rates to be provided to COVB customers.

#### **4) STATEMENT OF ISSUES AND POSITIONS**

FPL continues to object to Issues 2, 3, 4, 10, and 14 (noted below) as unnecessary and irrelevant to this docket, which is a proceeding to determine whether the Commission should approve the termination of FPL and COVB's territorial agreement and FPL's proposed accounting treatment for the COVB Transaction. The issues to which FPL objects are either: (i) improper or otherwise irrelevant to the Commission's inquiries in this proceeding; (ii) proposed by a protesting party that is no longer a participant in the docket; or (iii) have not been addressed by any protestor, party, or intervenor in this proceeding.

**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 is well within its authority to approve the acquisition adjustment requested in this case. 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. Not only does statutory authority exist to support the Commission's approval of an acquisition adjustment, 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. (Deason)

**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. Authorizing FPL to charge COVB customers FPL rates advances the public interest by allowing COVB customers to enjoy significantly lower electric bills, which is an indispensable component of the COVB Transaction. The bill changes between FPL and COVB can be summarized as follows: (i) typical residential customer will save 22% or \$330 per year under FPL rates; (ii) 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 (iv) a typical large retailer, such as a grocery store, "big box" store or hospital will save 27% or nearly \$80,000 per year. Without this approval, the COVB Transaction will not close. (Forrest, Cohen)

**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, which allows COVB electric customers to be transferred to FPL's lower rates. Both FPL and COVB have petitioned this Commission for the termination of the existing territorial agreement. Approval of the agreement's termination is in the public interest, as it enables approximately \$135 million in CPVRR savings for FPL's customers. (Forrest, Deason)

**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 circumstances surrounding the COVB Transaction support that it is in the public interest, and there are numerous factors that indicate the presence of extraordinary circumstances. The following factors overwhelmingly support the Commission's determination of extraordinary circumstances:

1. Lower rates for both COVB and FPL customers;
2. Improved quality of service, reliability and storm restoration;
3. Improvements and modernization of the grid in the former COVB territory;
4. Greater access to capital;
5. More experienced operations and management;
6. An end to years of litigation before this Commission, Indian River County circuit courts and The Florida Supreme Court;
7. An end to the disenfranchisement of approximately 60% of the COVB customers who reside outside the city limits;

8. The availability of the Office of Public Counsel to provide representation of these citizens on electric utility matters before this Commission; and
9. The unique, pervasive nature of the beneficiaries of this transaction: specifically, citizens and electric customers of the COVB, FPL, Orlando Utilities Commission and the nineteen municipalities who receive power from Florida Municipal Power Agency each of whom approved this transaction.

(Forrest, Bores, Cohen, Deason)

**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 proposal before the Commission was derived over years of negotiation between FPL and COVB. To alter the proposal or deny the acquisition adjustment would have the effect of nullifying the COVB Transaction and washing away the nearly decade-long effort of FPL and COVB to have FPL acquire COVB's electric utility system assets and serve its customers. (Forrest, Deason)

**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. (Forrest, Deason)

**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:** As reflected on Exhibit KF-1, FPL estimates an acquisition adjustment of approximately \$114 million, which reflects the amount FPL paid to COVB over the net value of the amount purchased (with assets at net book value). FPL witness Herr conducted a fair value evaluation of the COVB electric utility. FPL used this evaluation to confirm that the purchase price of the COVB Transaction was reasonable. This valuation also provides evidence that the amount paid by FPL to acquire the COVB system is higher than the net book value of the system, thereby establishing the basis, from a regulatory perspective, for proper recovery of the acquisition adjustment from customers. (Ferguson, 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. In addition, it is appropriate to record the amortization expense in FERC Account 406 – Amortization of Electric Plant Acquisition Adjustments over a 30 year period, which is 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. These entries would be made only if the PSA closes. (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. Determining the regulatory accounting and rate recovery for an investment based on reasonable projections and assumptions is appropriate and consistent with Commission practice, and such a decision should not be subject to hindsight review as a matter of regulatory policy. (Deason)

**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 Fuel and Purchased Power Cost Recovery (“FCR”) Clause and the capacity component through the Capacity Cost Recovery (“CCR”) Clause. Thus, FPL’s requested method of recovery is like that of other power purchase agreements. Approval of this recovery is essential to the close of the COVB Transaction. (Forrest, Ferguson)

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

**FPL:** Yes. Approval of a transaction that allows COVB customers to receive FPL’s lower rates while simultaneously providing approximately \$135 million CPVRR savings to FPL’s existing customers is clearly within the public interest. The public interest is also served by the resolution and conclusion of a nearly decade-long struggle of COVB customers, businesses, and elected officials to receive FPL’s lower rates. The fact that the typical COVB residential customers stands to save approximately \$330 a year by transitioning to FPL’s rates also supports the conclusion that the transaction is within the public interest. These factors, along with the extraordinary circumstances present, clearly support a finding that the proposed COVB Transaction is in the public interest. (Forrest, Bores, Cohen, Deason)

**ISSUE 17: Does the Civic Association of Indian River County, Inc. have standing to protest the Commission’s proposed agency action granting FPL’s petition for authority to charge FPL rates to former COVB customers and for approval**

**of accounting treatment for the COVB transaction, and granting the joint petition of FPL and COVB to terminate the territorial agreement (Order No. PSC-2018-0336-PAAEU)?**

**FPL:** No. To the extent CAIRC has shown any harm at all, it is only speculative harm based on matters that are outside the scope of the Commission's proposed agency action or beyond the Commission's jurisdiction. CAIRC is simply dissatisfied with the political process that led to the COVB City Council's approval of the agreement to sell the COVB electric utility to FPL, and is participating in this proceeding in an attempt to use the administrative process to challenge the sale, despite the fact that the typical COVB residential customer using 1000 kWh per month stands to save approximately \$330 a year by transitioning to FPL's rates.

**ISSUE 18:** **Does Michael Moran have standing to protest the Commission's proposed agency action granting FPL's petition for authority to charge FPL rates to former COVB customers and for approval of accounting treatment for the COVB transaction, and granting the joint petition of FPL and COVB to terminate the territorial agreement (Order No. PSC-2018-0336-PAA-EU)?**

**FPL:** No. Mr. Moran has failed to show or even allege the requirements necessary to obtain standing to challenge the Commission's proposed agency action. Mr. Moran's participation in this docket has only evidenced his dissatisfaction with the political process that led to the execution of the PSA for the sale of the COVB electric utility to FPL. To the extent that Mr. Moran has shown any injury within the Commission's jurisdiction that injury is speculative and is based on matters of local politics that are outside the scope of the Commission's proposed agency action.

**ISSUE 19:** **Does Brian Heady have standing to protest the Commission's proposed agency action granting FPL's petition for authority to charge FPL rates to former COVB customers and for approval of accounting treatment for the COVB transaction, and granting the joint petition of FPL and COVB to terminate the territorial agreement (Order No. PSC-2018-0336-PAA-EU)?**

**FPL:** No. Mr. Heady has failed to show or even allege the requirements necessary to obtain standing to challenge the Commission's proposed agency action. Mr. Heady's participation in this docket has only evidenced his dissatisfaction with the political process that led to the execution of the PSA for the sale of the COVB electric utility to FPL. To the extent that Mr. Heady has shown any injury within the Commission's jurisdiction that injury is speculative and is based on matters of local politics that are outside the scope of the Commission's proposed agency action.

**ISSUE 20: Should this docket be closed?**

**FPL:** Yes. Upon issuance of an Order approving FPL and COVB's petition to terminate their territorial agreement and approving FPL's requested accounting treatment with regard to the COVB Transaction, these dockets should be closed.

**CONTESTED ISSUES**

**ISSUE 2: How should the Commission weigh any unproven factual assertions in FPL's Petition?**

**FPL:** Issue 2 should be excluded because it does not state an issue of law or fact for decision by the Commission in this proceeding.

**ISSUE 3: Does FPL's request of a return of, and a return on, the requested acquisition adjustment violate the terms of FPL's current rate case settlement agreement?**

**FPL:** Issue 3 should be excluded because the FPL rate case settlement agreement is not a subject of this proceeding and the party that raised this issue has withdrawn. Approval of the requested regulatory treatment of the acquisition adjustment facilitates a transaction which benefits FPL's customers and is consistent with is it contrary to FPL's settlement agreement.

**ISSUE 4: What legal authority to increase rates, if any, supports FPL's request for the Commission to consider and approve rate making principles related to acquisition adjustment?**

**FPL:** Issue 4 should be excluded for several reasons. First, the issue should not be accepted because it is misleading -- there is no proposal to increase rates in this case. Second, the proper issue in the case is the Commission's authority to approve an acquisition adjustment, which is set forth in Issue 1, to which no party has objected. Third, the party that offered this issue has withdrawn from the proceeding.

**ISSUE 10: If the Commission should approve a positive acquisition adjustment associated with the purchase of the COVB electric utility system, what is the appropriate economic analysis to determine the amount of the positive acquisition adjustment?**

**FPL:** Issue #10 could properly be considered within Issue # 11 and need not be a separate issue. According to Rule 25-30.0371, F.A.C., Acquisition Adjustments, an acquisition adjustment is defined as the difference between the purchase price of utility system assets to an acquiring utility and the net book value of the utility assets. A positive acquisition adjustment exists when the purchase price is greater than the net book value. (Ferguson)

**ISSUE 14: Are the several contracts [OUC, FMPA] “costs of service” for FPL that are eligible for recovery in customer rates?**

**FPL:** Issue 14 should be excluded because it was offered by a party that has withdrawn from the case. Additionally, the costs of COVB’s power purchase obligations are an inseparable part of the COVB Transaction and will necessarily be incurred to provide utility service. Without provision for recovery of these costs, the transaction will not close and neither FPL’s nor COVB’s customers will receive the transaction’s substantial benefits. Also, FPL’s requested method of recovery is like that of other power purchase agreements.

**5) STIPULATED ISSUES**

**FPL:** None at this time.

**6) PENDING MOTIONS**

1. FPL’s Motion to Dismiss Petition of Mr. Michael Moran [DN 05246-2018], dated August 10, 2018.
2. FPL’s Motion to Dismiss Submission of Mr. Brian Heady [DN 05248-2018], dated August 10, 2018.
3. FPL’s Motion to Dismiss Protest of the Civic Association of Indian River County, Inc. [DN 05109-2018], dated August 6, 2018.

**7) PENDING REQUESTS FOR CONFIDENTIALITY**

1. FPL’s request for confidential classification of information [DN 05710-2018] included in FPL’s response to the Florida Industrial Power Users Group’s First Set of Interrogatories (Nos. 1 and 2) and First Request for Production of Documents (Nos. 1 and 5), dated August 30, 2018.

**8) OBJECTIONS TO WITNESS QUALIFICATIONS AS AN EXPERT**

**FPL:** None at this time.

**9) REQUEST FOR SEQUESTRATION OF WITNESSES**

**FPL:** None at this time.

**10) STATEMENT OF COMPLIANCE WITH ORDER ESTABLISHING PROCEDURE**

There are no requirements of the Order Establishing Procedure with which FPL cannot comply.

Respectfully submitted this 26<sup>th</sup> day of September 2018.

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**CERTIFICATE OF SERVICE**  
**Docket Nos. 20170235-EI and 20170236-EU**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished

by electronic service on this 26<sup>th</sup> of September, 2018 to the following:

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