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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:
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

_____/

JOINT PETITION TO TERMINATE TERRITORIAL
AGREEMENT, BY FLORIDA POWER & LIGHT AND THE CITY
OF VERO BEACH.

_____/

DOCKET NO. 20170236-EU

VOLUME 1
PAGES 1 through 235

PROCEEDINGS: HEARING

COMMISSIONERS PARTICIPATING: CHAIRMAN ART GRAHAM
COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW GILES FAY

DATE: Thursday, October 18, 2018

TIME: Commenced: 9:00 A.M.
Concluded: 1:00 P.M.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: DEBRA R. KRICK
Court Reporter and
Notary Public in and for
the State of Florida at Large

1 APPEARANCES:

2 BRYAN S. ANDERSON, WADE LITCHFIELD, and KENNETH
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4 Universe Boulevard, Juno Beach, Florida 33408-0420.

5 J. MICHAEL WALLS, ESQUIRE, Carlton Fields Law
6 Firm, 4221 W. Boy Scout Boulevard, Tampa, Florida
7 33607-5780, appearing on behalf of the City of Vero
8 Beach.

9 BRUCE D. MAY, ESQUIRE, Holland & Knight Law
10 Firm, 315 S. Calhoun Street, Suite 600, Tallahassee,
11 Florida, 32301, appearing on behalf of Town of Indian
12 River Shores.

13 DYLAN REINGOLD, COUNTY ATTORNEY, Indian River
14 County Board of County Commissioners, 1801 27th Street,
15 Building A, Vero Beach, Florida 32960.

16 J.R. KELLY, PUBLIC COUNSEL; STEPHANIE A. MORSE
17 and TAD DAVID, ESQUIRES, Office of Public Counsel, c/o
18 the Florida Legislature, 111 W. Madison Street, Room
19 812, Tallahassee, Florida 32399-1400, appearing on
20 behalf of the Citizens of the State of Florida.

21 LYNNE A. LARKIN, ESQUIRE, Civic Association of
22 Indian River County, Inc., 5690 Highway, A1A #101, Vero
23 Beach, Florida 32963.

24

25

1 APPEARANCES (CONTINUED):

2 CHARLES MURPHY and SUZANNE BROWNLESS,
3 ESQUIRES, FPSC General Counsel's Office, 2540 Shumard
4 Oak Boulevard, Tallahassee, Florida 32399-0850,
5 appearing on behalf of the Florida Public Service
6 Commission Staff.

7 KEITH HETRICK, GENERAL COUNSEL; MARY ANNE
8 HELTON, DEPUTY GENERAL COUNSEL; Florida Public Service
9 Commission, 2540 Shumard Oak Boulevard, Tallahassee,
10 Florida 32399-0850, Advisor to the Florida Public
11 Service Commission.

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1	1	Comprehensive Exhibit List		13
2	2-58	As identified in the Comprehensive Exhibit List		13
3	59	Four Franchise and Interlocal Agreements Referenced or Related to FMAA response to FPSC Staff Data Request	14	15
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1 P R O C E E D I N G S

2 CHAIRMAN GRAHAM: For those of you that are
3 new here to this room, our building, one of the
4 things you will know that I like to start on time,
5 so I apologize for being two minutes late.

6 A brief PSA before we get started. I see
7 there is a couple of pink ties and pink shirts out
8 there. I want to let you know that I do definitely
9 appreciate it. It's one of those things that I did
10 my first year as Chairman, and I am sure we are
11 going to do it again in our Agenda that we have in
12 October, which I believe is the last Tuesday in
13 October. So if you guys have a pink shirt, or pink
14 tie, or pink bow tie, Commissioner Fay.

15 I think it send a great message. As I am sure
16 some of you heard before, my mom, and basically her
17 entire side of the family has been riddled with
18 cancer. She's a 37-year survivor of breast cancer,
19 which is fantastic. My brother actually was just
20 diagnosed with prostate cancer this year. They
21 think they got it all.

22 So if you are a person of color -- actually
23 all male, but if you are a person of color, I
24 suggest you get it done at least by the age of 50,
25 and maybe every year, every other year after that,

1 because it is very important. And it's one of
2 those things that's out there, and every single one
3 of you out there has been touched by it one way or
4 another, if not personally, then there is a member
5 of your family, or your next door neighbor or a
6 member of his family. So it's one of those things,
7 and I am going to make us another minute late just
8 talking about it because I think it's that
9 important.

10 With that all being said, I am glad you guys
11 are all here, and I pray that you guys are all
12 healthy, and we will start this hearing.

13 It's Docket Number 20170235-EI and
14 201700236-EU. Let the record show, it is Thursday,
15 October 18th, it's 9:00 a.m. -- I am sorry, it's
16 9:05. We will call this meeting to order.

17 Staff, if I can get you to read the notice.

18 MR. MURPHY: By notices issued September 14th
19 and 17th, 2018, and as continued by notices issued
20 on October 8th and 9th, 2018, this time and place
21 has been set for a hearing in Docket Nos.

22 20170235-EI and 20170236-EU. The purpose of the
23 hearing is set forth in the notices.

24 CHAIRMAN GRAHAM: I just want to let those in
25 the audience that are going to testify today, the

1 public testimony IS going to be at two o'clock.
2 The reason why I did that is I didn't want to have
3 everybody have to sit through the entire meeting.
4 I want to do a fixed time so people that are coming
5 over from Vero, or people just affected just want
6 to come and speak and then leave, it makes it
7 convenient that way.

8 Not knowing for sure how many people we are
9 going to have, we are going to limit each to two
10 minutes. So if I can get you basically just to hit
11 the peaks. If there is more that you want to add,
12 feel free to send an email or a letter that we can
13 add to the docket file. And I will get into more
14 details later on, but I wanted to let you know two
15 o'clock. So if you are here and there is something
16 else you would rather do for the next five hours,
17 feel free do it.

18 My goal right now is to break for lunch around
19 one o'clock, and so that way we will go to lunch
20 and come back and start the public testimony.

21 That all being said, let's take appearances.

22 MR. ANDERSON: Good morning, Chairman Graham
23 Bryan Anderson, Ken Rubin and Wade Litchfield,
24 appearing for Florida Public & light Company --
25 Florida Power & Light Company.

1 MR. WALLS: Good morning, Commissioners. Mike
2 Walls with the law firm of Carlton Fields on behalf
3 of the City of Vero Beach.

4 MR. MAY: Good morning, Mr. Chairman,
5 Commissioners. I am Bruce May with the law firm of
6 Holland & Knight. We represent the Town of Indian
7 River Shores.

8 MR. REINGOLD: Good morning, Chairman Graham
9 and the members of this commission. Dylan
10 Reingold, County Attorney for Indian River County.

11 MS. LARKIN: Good morning, Commissioners.
12 Lynn Larkin for the Civic Association of Indian
13 River County.

14 MS. MORSE: Good morning Commissioners,
15 Stephanie Morse and Charles Rehwinkel with J.R.
16 Kelly, the Public Counsel.

17 MR. MURPHY: Charlie Murphy and Suzanne
18 Brownless for Commission staff.

19 MS. HELTON: Mary Anne Helton here as your
20 advisor, along with Keith Hetrick, your General
21 Counsel.

22 CHAIRMAN GRAHAM: Welcome all.

23 Are there any other attorneys that are part of
24 this case that I haven't heard from?

25 Okay. Preliminary matters. Mr. Murphy, is

1 there any preliminary matters?

2 MR. MURPHY: Chairman Graham, yes, there are a
3 couple.

4 There is a pending motion by the Civic
5 Association for reconsideration of the Prehearing
6 Officers' protective order that was granted to the
7 City of Vero Beach. Staff recommends you take this
8 matter up after we work through the possible
9 stipulations in the case.

10 There is also a pending motion by the Office
11 of Public Counsel to accept supplemental direct
12 testimony of its witness. I believe that this may
13 be resolved by stipulations in the case. Staff
14 recommends that you wait to address this one also.

15 CHAIRMAN GRAHAM: So, staff, if I can get you
16 to remind me at the proper time to address these
17 two?

18 MR. MURPHY: Yes, sir.

19 CHAIRMAN GRAHAM: Okay. Does any of the
20 parties have any preliminary matters?

21 MR. ANDERSON: Mr. Chairman, we have a group
22 exhibit that's been distributed to the parties. It
23 reflects some procedural and evidentiary
24 stipulations with Public Counsel. And we would ask
25 that that be marked, and I believe that that can

1 simply be entered into the record.

2 CHAIRMAN GRAHAM: Is that group Exhibit 1
3 these things in front of me?

4 MR. MURPHY: If we could, let's do the staff
5 comprehensive exhibit list, and I think that we are
6 kind of teed up do the comprehensive exhibit list
7 as part of moving the witnesses in. So if we could
8 wait until we are there, I think it will flow more
9 naturally, because it's related to including the
10 testimony of a witness.

11 MR. ANDERSON: That's fine, of course.

12 CHAIRMAN GRAHAM: Are there any other
13 preliminary matters?

14 MR. RUBIN: Yes, Chairman Graham.

15 FPL -- on the comprehensive exhibit list, FPL
16 noticed last night that the sponsors for five of
17 the discovery responses were incorrect. We didn't
18 catch it until last night. I have covered that
19 with Civic Association and with staff. We just
20 would like to file with the court reporter the
21 revised comprehensive exhibit list with those
22 corrections.

23 CHAIRMAN GRAHAM: Okay.

24 MR. MURPHY: That would be great. Yes, sir.

25 MR. MAY: Mr. Chairman, I don't know if this

1 is the appropriate time, but there is a stipulated
2 composite exhibit consisting of four --

3 MR. MURPHY: Can we wait? I'm sorry. My hope
4 would be that we wait on that as well.

5 MR. MAY: Okay. Very good.

6 CHAIRMAN GRAHAM: Dylan, you have nothing?

7 MR. REINGOLD: I got nothing to offer here,
8 sir.

9 CHAIRMAN GRAHAM: Just to let you know, Dylan
10 Reingold and myself used to work for the City of
11 Jacksonville together back way back when.

12 Okay. Staff, are there any stipulated
13 exhibits?

14 MR. MURPHY: Yes. Staff has compiled a
15 stipulated comprehensive exhibit list which
16 includes the prefiled exhibits attached to the
17 witness' testimony and a number of staff exhibits.
18 The list has been provided to the parties, the
19 Commissioners and the court reporter. This list is
20 marked as the first hearing exhibit, and the other
21 exhibits should be marked as set forth in the
22 chart, and I guess it would be as modified by FPL.

23 Staff exhibits and prefiled exhibits have been
24 stipulated. Staff would like to move these into
25 the record. Staff asks that the comprehensive

1 exhibit list marked as Exhibit 1 be entered into
2 the record.

3 CHAIRMAN GRAHAM: So we will move the
4 comprehensive exhibit list marked Exhibit 1 into
5 the record.

6 (Whereupon, Exhibit No. 1 was received into
7 evidence.)

8 MR. MURPHY: Exhibits 2 through 58 have been
9 stipulated by the parties. Staff asks that
10 Exhibits 2 through 58 be included in the record.

11 CHAIRMAN GRAHAM: If there is no objections,
12 we will include 2 through 58 into the record.

13 (Whereupon, Exhibit Nos. 2 - 58 were received
14 into evidence.)

15 CHAIRMAN GRAHAM: Okay. Have all the parties
16 had the opportunity to review the exhibit list?
17 Are there any objections or entries to the exhibits
18 into the record? None. None. None, okay.

19 Stipulations, staff.

20 MR. MURPHY: There are several matters related
21 to stipulations.

22 First, the parties have stipulated to a
23 composite exhibit by the Town of Indian River
24 Shores that Mr. May can describe.

25 CHAIRMAN GRAHAM: Mr. May.

1 MR. MAY: Thank you, Mr. Chairman.

2 The Town of Indian River Shores would like to
3 offer a stipulated composite exhibit consisting of
4 three franchise type agreements and one interlocal
5 agreement that are either directly or indirectly
6 referenced in Exhibit No. 58. All of the parties
7 have stipulated to the composite exhibit, and it
8 can be entered into the record.

9 I would ask that it be assigned Exhibit No. 59
10 and would move that it be entered into the record
11 at this time.

12 CHAIRMAN GRAHAM: Staff, is this one of the
13 things that are in front of us on top here?

14 MR. MURPHY: It is.

15 CHAIRMAN GRAHAM: Which one is it?

16 MR. MURPHY: How have you got it titled?

17 MR. MAY: It's been distributed. It's titled:
18 Four Franchise and Interlocal Agreements Referenced
19 or Related to FMAA response to FPSC Staff Data
20 Request.

21 CHAIRMAN GRAHAM: Got it. It's the one with
22 the big gym clip on it.

23 Okay, we will number that Exhibit 59.

24 (Whereupon, Exhibit No. 59 was marked for
25 identification.)

1 MR. MAY: Thank you, Mr. Chairman.

2 CHAIRMAN GRAHAM: And if there is no
3 objection, we will enter 59 into the record.

4 MS. LARKIN: Mr. Chairman?

5 CHAIRMAN GRAHAM: Yes.

6 MS. LARKIN: We have some exhibits that we
7 would like to stipulate into the record as well.

8 CHAIRMAN GRAHAM: Okay. Just let me finish
9 with this one first.

10 MS. LARKIN: Okay. Sorry.

11 CHAIRMAN GRAHAM: Okay. If there is no
12 objections, we will enter 59 into the record.

13 (Whereupon Exhibit No. 59 was received into
14 evidence.)

15 CHAIRMAN GRAHAM: Okay. Yes, ma'am, what
16 exhibits?

17 MS. LARKIN: Yeah. These are government
18 records of Commission -- City Council meeting
19 minutes and Utility Commission meeting minutes that
20 are pertinent to our arguments on the issues. They
21 have been distributed by staff, and so everyone has
22 them in front of them.

23 And I can go through each one as to relevance,
24 but since they are government records, we were
25 hoping to just stipulate them into the record.

1 CHAIRMAN GRAHAM: Staff.

2 MR. MURPHY: The Civic Association, these are
3 comprised of 2016, '17 and '18 City Council
4 meetings. The parties have agreed to stipulate to
5 the authenticity but not to the relevance.

6 Would you like staff's position on this?

7 CHAIRMAN GRAHAM: Sure.

8 MR. MURPHY: The concept of extraordinary
9 circumstances is before the Commission in this
10 hearing, and the events that we are looking for,
11 some of them are historic. And to the extent that
12 these relate to extraordinary circumstances, or may
13 relate to them, we believe that they could be
14 relevant, and we would recommend that they would
15 come into the record, given the weight that they
16 are due, not knowing how they would be used by her
17 in her brief or how they would be intended.

18 CHAIRMAN GRAHAM: Other parties?

19 MR. ANDERSON: We would hope to see how they
20 are relevant prior to them entering into the
21 record.

22 MR. WALLS: We join FPL's position.

23 MR. MAY: The Town joins FPL in that position.

24 MR. REINGOLD: As does the County?

25 CHAIRMAN GRAHAM: Let's hold off. Let's give

1 this a number of -- let's hold off in even giving
2 it the number. Let's deal with this towards the
3 end of the hearing. Ms. Larkin --

4 MS. LARKIN: Sure.

5 CHAIRMAN GRAHAM: -- let's deal with this at
6 the end of the hearing, so if it hasn't come up in
7 some of the cross-examination, you can explain what
8 the relevance are, and we can make the
9 determination at that point if we are going to
10 enter it in or not, and we may have to do it
11 individually.

12 MS. LARKIN: Okay. So I can bring them up
13 during the cross exam?

14 CHAIRMAN GRAHAM: Clearly. You can definitely
15 bring it up. And if at that time, if it gets
16 challenged, and we can talk about it at that point.
17 I see no reason to go through it now until it's in
18 front of us.

19 MS. LARKIN: That makes sense. Thank you.

20 CHAIRMAN GRAHAM: Okay. Staff.

21 MR. MURPHY: The parties have agreed to excuse
22 several witnesses with their testimony and exhibits
23 inserted into the record. Staff asked that we go
24 through the witnesses now, having the parties move
25 testimony into the record and excusing witnesses.

1 CHAIRMAN GRAHAM: Okay. Which witnesses are
2 we starting with? We are starting with Florida
3 Power & Light's witnesses?

4 MR. MURPHY: Yes.

5 CHAIRMAN GRAHAM: Okay.

6 MR. ANDERSON: Chairman Graham, Mr. Murphy,
7 would you like us to address the stipulation group
8 exhibit also? Is it time for that? I just want to
9 make sure you are ready for it.

10 MR. MURPHY: I think that that would be
11 before -- since it relates to OPC's witness, I
12 think if we could go through your witnesses and the
13 Association's witnesses; then since OPC's witness
14 is contingent upon your stipulation, it would be
15 great if we could do that then.

16 MR. ANDERSON: Right. What would you like to
17 do? Have us just relate -- the witnesses appearing
18 today for FPL would be Sam Forrest, Keith Ferguson,
19 Terry Deason. FPL witnesses David Herr, Scott
20 Bores and Tiffany Cohen have previously been
21 excused by order of this commission.

22 MR. MURPHY: Did you want to move their
23 testimony into the record?

24 MR. ANDERSON: Yes. We wish to move their
25 testimony, including rebuttal testimony as

1 submitted and reflected in the prehearing order in
2 the exhibit list.

3 CHAIRMAN GRAHAM: Is there any objection by
4 any of the parties to enter their direct and
5 rebuttal or supplemental testimony into the record
6 as though read?

7 MR. ANDERSON: With exhibits.

8 CHAIRMAN GRAHAM: With exhibits.

9 MR. MURPHY: Chairman Graham, could we have
10 him specify which ones are come in?

11 CHAIRMAN GRAHAM: Which exhibits?

12 MR. MURPHY: Which witnesses are coming in at
13 this time. They are not all stipulated.

14 CHAIRMAN GRAHAM: Which ones -- the ones he
15 just named were David Herr, Scott Bores and Tiffany
16 Cohen.

17 MR. ANDERSON: That's correct.

18 MR. MURPHY: Thank you.

19 CHAIRMAN GRAHAM: Okay. We will enter their
20 exhibits and their direct testimony, rebuttal and
21 supplemental testimony, whichever is relevant for
22 those witnesses into the record as though read.

23 (Whereupon, prefiled testimony for the
24 witnesses stated in the record was inserted.)

25

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

2 A. My name is David Herr. My business address is 2000 Market Street, Suite
3 2700, Philadelphia, PA 19103.

4 **Q. By whom are you employed and what position do you hold?**

5 A. I am a Valuation Consultant for Duff & Phelps LLC (“D&P”). I am a
6 Managing Director, the Philadelphia City Leader, and the Energy and Mining
7 Industry Leader for D&P.

8 **Q. Please describe your educational background and professional
9 experience.**

10 A. I am in my twenty-second year in the Valuation Advisory Services (or
11 “VAS”) group of D&P including its predecessors, Standard & Phelps
12 Corporate Value Consulting, PricewaterhouseCoopers LLP, and Coopers &
13 Lybrand LLP. In my role within the VAS group, I have been focused on
14 power and utility valuation for over fifteen years, during which time I have led
15 more than 250 valuations of power and utility related assets and businesses. I
16 have been the D&P Energy and Mining Industry Leader since 2008. I hold a
17 Bachelor of Science Degree in Finance from Villanova University where I
18 graduated with a 4.0 GPA. I am a Chartered Financial Analyst charterholder
19 and am Series 63 and Series 79 Certified, certifications needed to provide
20 Investment Banking Mergers & Acquisitions services administered by the
21 Financial Industry Regulatory Authority (“FINRA”).

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

23 A. I am appearing as a witness for Florida Power & Light Company (“FPL”).

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

2 A. The purpose of my testimony is to describe the analysis of the Fair Value (as
3 defined below) pursuant to US Generally Accepted Accounting Principles
4 (“GAAP”) of the assets to be acquired and certain liabilities to be assumed by
5 FPL in connection with its proposed acquisition of the City of Vero Beach
6 Electric Utility (“COVB” or the “Subject Company”) prepared by D&P to
7 assist FPL management (“Management”) with its accounting for the proposed
8 transaction.

9 **Q. Are you sponsoring any exhibits?**

10 A. Yes. I am sponsoring the following exhibits:

- 11 • Exhibit DH-1, which is my curriculum vitae
- 12 • Exhibit DH-2, which is a Summary Report prepared by Duff & Phelps
13 entitled “Valuation of COVB” (the “Report”)
- 14 • Exhibit DH-3 (Confidential), which is a more detailed form of the Report
15 providing supplemental, proprietary information about the manner in
16 which D&P performed its valuation.

17 **Q. Please summarize your testimony.**

18 A. FPL engaged D&P to assist with its determination of the Fair Value as of
19 October 1, 2018 (the “Valuation Date”) pursuant to US GAAP of the Business
20 Enterprise Value (“BEV”) of the Subject Company. Our analysis also
21 addresses the Fair Value of the plant, property & equipment (“PP&E”) of
22 COVB and the fact that intangible assets should be assigned a Fair Value of
23 \$0 in connection with the acquisition of COVB.

1 **Q. Please summarize the relevant US GAAP standards pursuant to which**
2 **your analysis was prepared.**

3 A. There are several standards that are relevant to our analysis. Accounting
4 Standards Codification (“ASC”) 805, *Business Combinations*, provides
5 guidance on the requirements related to accounting for a purchase such as
6 FPL’s acquisition of COVB and ASC 820, *Fair Value Measurements and*
7 *Disclosures* provides the relevant definition of Fair Value. In addition, ASC
8 980, *Regulated Operations* provides the basis for the conclusions that no Fair
9 Value adjustment should be made to the net book value of PP&E and that
10 intangible assets have a \$0 Fair Value (as no intangible assets exist within
11 COVB which receive regulatory recovery).

12
13 ASC 820 defines Fair Value as “the price that would be received to sell an
14 asset or paid to transfer a liability in an orderly transaction between market
15 participants at the measurement date” (“Fair Value”). ASC 820 states that a
16 Fair Value measurement assumes the highest and best use of the asset by
17 market participants, which is defined as the most likely group or categories of
18 buyers that would establish a sale (or “exit”) price to FPL in a sale of COVB
19 as of the Valuation Date.

20 **Q. Please summarize how these standards were considered and applied to**
21 **this specific proposed transaction.**

22 A. As the Subject Company operates as a municipal utility which would likely be
23 acquired by an investor owned utility (“IOU”) who would seek recovery of

1 the net book value of PP&E (regulatory net book value or “NBV”), it is
2 reasonable to ascribe a FV equal to NBV for substantially all of the tangible
3 and other assets acquired (the “Subject Assets”) based primarily on guidance
4 in ASC 980, *Regulated Operations*. We worked with Management to identify
5 any assets or liabilities that needed to be estimated and recorded with a
6 regulatory asset / liability offset (as applicable), and no other assets or
7 liabilities were identified.

8
9 In assessing the Fair Value of COVB, it is necessary to establish the likely
10 market participant buyers that would maximize the value of COVB (pay the
11 highest price) and the structure or constraints common in such transactions.
12 Through discussions with Management and based on research of prior
13 acquisitions of municipal-managed utility services, it was determined that the
14 most likely pool of market participants includes IOUs and infrastructure
15 funds. Due to the scale of COVB’s operations, highest and best use would
16 likely be realized through continued operation of COVB as part of a going
17 concern utility by a larger IOU operating with contiguous or nearby service
18 territories (such as FPL) which could integrate the operations to achieve some
19 level of financial and operating efficiencies.

20
21 In order to gain regulatory approval, IOUs typically demonstrate to their
22 regulators that the combination of the purchase price, capital investment
23 obligations assumed, and rate commitments do not preferentially benefit the

1 acquired customers or negatively impact its existing customers. In addition,
2 certain rate commitments necessarily would be made by the IOU to the
3 municipal authority that is approving the sale. Accordingly, the Fair Value of
4 COVB assumes an acquisition which properly reflects the purchase price as
5 well as COVB and existing FPL customer considerations.

6 **Q. Please describe your analysis of COVB.**

7 A. To arrive at the Fair Value of COVB, we considered the value indications
8 derived from the Income Approach – Discounted Cash Flow (“DCF”), Market
9 Approach – Guideline Companies Multiples (“GCM”), and Market Approach
10 – Guideline Transactions Multiples (“GTM”).

11

12 This analysis reflects the continuation of FPL’s rates and reflects the
13 standalone revenue requirements of COVB based on the assets acquired and
14 liabilities assumed, generation needs based on COVB peak load and estimate
15 of capital and operations & maintenance expenses as well as the effect of the
16 Power Purchase Agreement (“PPA”) with the Orlando Utilities Commission
17 (“OUC”).

18

19 The DCF analysis indicates value for the Subject Company based on the cash
20 flows that it is expected to generate in the future. Revenues, costs, and capital
21 expenditures leading to after-tax unlevered cash flows were based on
22 Management’s internal forecast with consideration of FPL’s internal rate case
23 model. Beyond the discrete period cash flows, a Terminal Value (“TV”) was

1 estimated based on the Gordon Growth Formula which is calculated as:
2 Terminal Year (“TY”) cash flow / (Discount Rate – Long Term Growth Rate).
3 The TY was estimated based on the expected long-term growth rate, profit
4 margin, and level of capital investment. The discrete period cash flows and
5 the TV were converted to their present value equivalent using a rate of return
6 appropriate for the risk of achieving the projected cash flows known as the
7 weighted average cost of capital (“WACC”). The WACC was estimated based
8 on an analysis of financial data for publicly traded companies engaged in the
9 same or similar business activities as the Subject Company (the “Guideline
10 Companies”).

11

12 In selecting the Guideline Companies, we searched comprehensive lists and
13 directories of public companies in the energy industry that operate as electric
14 utility companies. Our selection criteria considered various factors, including,
15 but not limited to, industry similarity, financial risk, company size, geographic
16 and product diversification, international presence, profitability, adequate
17 financial data, and an actively traded stock price.

18

19 The following criteria were used to narrow the field of potential Guideline
20 Companies for this analysis (see Appendix B for descriptions of the selected
21 Guideline Companies):

22 a) Publicly-traded IOUs operating within the continental United States
23 without material international operations

1 b) IOUs with a regulated utility focus and no unregulated or merchant
2 activity

3 c) IOUs with over 60% of total customer count attributable to regulated
4 electric operations relative to regulated natural gas operations

5 d) IOUs which are not a target in a recently announced merger or acquisition

6 The GCM analysis indicates value by comparing the Subject Company to
7 Guideline Companies noted above. BEV/earnings multiples are computed
8 based on peer group market data and then applied to the parameters of the
9 Subject Company. Forward-looking EBITDA multiples were utilized as these
10 best limit the effects of differing debt levels (interest expense), depreciation
11 methods (depreciation and amortization expense) and special tax situations.
12 As these multiples are based on market data considered to be on a minority
13 basis, an equity control premium (based on recently observed utility
14 transactions) was applied to the minority market BEV/EBITDA multiples to
15 account for the additional value of having controlling ownership interest. The
16 selected BEV/EBITDA multiple was based on lower quartile of the range
17 based on COVB's relative size versus the Guideline Companies, as well as the
18 inability of most Market Participants to realize a similar level of operating
19 synergies to those expected by FPL (due to its proximity to the COVB service
20 territory).

21

22 The GTM analysis indicates value by comparing the Subject Company to the
23 prices for controlling interests in comparable company transactions.

1 BEV/earnings multiples are computed based on the transaction data and then
2 applied to the parameters of the Subject Company. The selected
3 BEV/EBITDA multiple was based on lower quartile of the range.

4 **Q. Please describe your conclusions.**

5 A. To arrive at the Fair Value of the BEV, we considered the value indications
6 derived from the Income Approach – DCF (\$190 million), Market Approach –
7 GCM (\$185 million), and Market Approach – GTM (\$180 million). Greater
8 consideration was given to the Income Approach as it best captures the unique
9 characteristics of the Subject Company and most closely aligns with
10 Management’s long-term expectations.

11

12 The Fair Value indications described above reasonably support FPL’s
13 purchase price of approximately \$185 million, and therefore the purchase
14 price represents a reasonable estimate of the Fair Value of COVB for use in
15 connection with accounting for the acquisition as of the Valuation Date.

16 **Q. Does this conclude your testimony?**

17 A. Yes, it does.

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

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

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

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

7 **Q. Please describe your duties and responsibilities in that position.**

8 A. I am responsible for FPL’s corporate budgeting, financial forecast, analysis of
9 financial results and resource analytics.

10 **Q. Please describe your educational background and professional
11 experience.**

12 A. I graduated from the University of Connecticut in 2003 with a Bachelor of
13 Science degree in Accounting. I received a Master of Business
14 Administration from Emory University in 2011. I joined FPL in 2011 and
15 have held several positions of increasing responsibility, including Manager of
16 Property Accounting, Director of Property Accounting and my current
17 position as Senior Director of Financial Planning and Analysis. Prior to FPL,
18 I held various accounting roles with Mirant Corporation, which was an
19 independent power producer in Atlanta, Georgia, as well as worked for
20 PricewaterhouseCoopers, LLP. I am a Certified Public Accountant (“CPA”)
21 licensed in the State of Georgia and a member of the American Institute of
22 CPAs. I have previously filed testimony before the Florida Public Service

1 Commission (“FPSC” or the “Commission”), most recently in the SJRPP
2 Transaction, Docket No. 20170123-EI.

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

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

- 6 • SRB-1 – Summary of CPVRR Impact for the City of Vero Beach
7 Transaction

8 **Q. What is the purpose of your testimony?**

9 A. The purpose of my testimony is to present the results of the economic analysis
10 which demonstrates that FPL’s purchase of the City of Vero Beach (“COVB”
11 or the “City”) electric system is beneficial to existing FPL customers. My
12 testimony also describes the key assumptions utilized in developing the
13 economic analysis.

14 **Q. Please summarize your testimony.**

15 A. As described in greater detail by FPL witness Forrest, FPL and COVB have
16 entered into an Asset Purchase and Sale Agreement (“PSA”) whereby FPL
17 will acquire the electric system of COVB. My testimony demonstrates that
18 FPL’s purchase of the COVB electric system is projected to result in
19 approximately \$105 million of cumulative present value of revenue
20 requirements (“CPVRR”) benefit to existing FPL customers, as the projected
21 incremental revenues received from COVB customers are higher than
22 projected incremental costs to serve those customers.

1 **Q. Please describe the economic analysis performed for this transaction.**

2 A. The economic analysis for this transaction, which assumes an October 1, 2018
3 closing date, compares the projected incremental revenues to be received from
4 COVB customers once they are integrated into the FPL system to the
5 incremental costs to serve the COVB customers.

6 **Q. What are the key inputs used in this economic analysis?**

7 A. The analysis includes the following major elements or inputs:

- 8 • the net book value of the electric system assets being acquired from
9 COVB, including the purchase accounting impact for all the other
10 acquired assets and assumed liabilities, as well as the proposed
11 regulatory accounting treatment for the acquisition adjustment. FPL
12 witness Ferguson describes the proposed acquisition accounting in
13 greater detail in his testimony;
- 14 • FPL's most recent official long-term load forecast, approved in
15 December 2016. This load forecast, including system peaks and net
16 energy for load, was used in FPL's 2017 Ten Year Site Plan
17 ("TYSP"). In addition, FPL utilized COVB's latest publicly filed
18 forecast of load and energy in developing the incremental revenues to
19 be received from COVB customers;
- 20 • FPL's most recent long-term fuel forecast, based on FPL's standard
21 long-term fuel forecasting methodology, approved in November 2016
22 and used in FPL's 2017 TYSP;
- 23 • the 30 year long-term price of electricity forecast for FPL in \$/MWh;

- 1 • the 30 year incremental generation and purchased power plan as
2 developed by FPL's Resource Planning group to serve the incremental
3 load associated with COVB;
- 4 • the energy and underlying accounting impact associated with the
5 Power Purchase Agreement ("PPA") negotiated by FPL and the
6 Orlando Utilities Commission ("OUC"); and
- 7 • the estimate of operations and maintenance expenditures and capital
8 expenditures needed to reliably operate the COVB system for 30 years
9 upon its integration into the FPL system.

10 **Q. Please provide an overview of the analytical process that FPL used to**
11 **determine the cost-effectiveness of the proposed COVB transaction.**

12 A. To determine the cost-effectiveness of the proposed transaction, FPL
13 performed the following steps:

- 14 1. FPL utilized COVB's most recent forecast of load and energy to develop a
15 projection of billed sales for the next 30 years. Utilizing FPL's long-term
16 price of electricity forecast, FPL calculated the projected incremental
17 revenues it will collect from COVB customers once they are integrated
18 into FPL's system.
- 19 2. FPL then estimated the incremental system revenue requirements needed
20 to serve the COVB electric system and its customers over the same 30
21 year period for comparison purposes. The revenue requirement analysis
22 considered FPL's primary cost recovery components, that is, base rates,

1 fuel clause, capacity clause, conservation clause, and environmental cost
2 recovery clause.

3 3. The incremental revenue requirements to serve COVB customers were
4 compared to the projected revenues from COVB customers. The
5 difference represents the impact of the COVB transaction on existing FPL
6 customers which was then discounted at FPL's weighted average cost of
7 capital and accumulated over the 30 year period to determine the CPVRR.

8 **Q. What are the results of the economic analysis?**

9 A. As demonstrated in Exhibit SRB-1, this transaction is projected to provide a
10 \$105 million CPVRR benefit to existing FPL customers over the 30 year
11 period, as the projected incremental revenues received from COVB customers
12 are higher than projected incremental revenue requirements to serve those
13 customers. These savings primarily result from an expanded customer base
14 which would reduce each existing FPL customer's economic share of fixed
15 costs included in projected electric rates.

16 **Q. Will the COVB transaction be beneficial to both FPL's existing customers
17 and former COVB customers?**

18 A. Yes. As I have described above, FPL's existing customers are projected to
19 receive a \$105 million CPVRR benefit over the 30 year period of the analysis.
20 At the same time, as described by FPL witness Cohen, all COVB customer
21 classes would experience bill savings as a result of FPL's proposal to charge
22 them FPL's lower rates.

- 1 **Q. Does this conclude your testimony?**
- 2 **A. Yes.**

ERRATA SHEET

SUPPLEMENTAL DIRECT TESTIMONY AND EXHIBITS

WITNESS: SCOTT R. BORES

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
4	19	Change “99” to “135”
5	1	Change “99” to “135”
5	4	Change “6” to “30”
5	10	Change “reduce” to “increases”
5	10	Change “31” to “7.8”
5	10	Change “is primarily” to “includes”
5	14	Remove “further”
5	15	Change “8.1” to “7.9”
5	18	Change “reductions” to “reduction”
5	18	Change “7.5” to “4.5”
6	2	Change “3.2” to “3.8”

EXHIBIT # CHANGE

Exhibit SRB-2	Replace Exhibit SRB-2 with attached
Exhibit SRB-3	Replace Exhibit SRB-3 with attached

WITNESS: TIFFANY COHEN

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
6	13	Change “99” to “135”

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

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

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

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

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

8 A. Yes, I filed direct testimony on November 3, 2017, as part of FPL’s original
9 petition. In that testimony I presented the results of the economic analysis
10 which demonstrated that FPL’s purchase of the City of Vero Beach
11 (“COVB”) electric system is beneficial to existing FPL customers. My
12 testimony also described the key assumptions utilized in developing the
13 economic analysis.

14 **Q. Are you sponsoring any exhibits in support of your supplemental direct
15 testimony?**

16 A. Yes. I am sponsoring two exhibits which are attached to my supplemental
17 direct testimony:

- 18 • Exhibit SRB-2 – Updated Summary of CPVRR Impact for the City of
19 Vero Beach Transaction;
- 20 • Exhibit SRB-3 – Comparison of CPVRR Benefits

21 **Q. What is the purpose of your supplemental direct testimony?**

22 A. The purpose of my supplemental direct testimony is to update the Cumulative
23 Present Value Revenue Requirements (“CPVRR”) analysis for the latest

1 assumptions, demonstrate and reconfirm that there are substantial benefits for
2 existing FPL customers as a result of the transaction, and compare the change
3 in CPVRR benefit to that presented in my direct testimony.

4 **Q. What assumptions were updated in the latest CPVRR analysis performed**
5 **by FPL?**

6 A. There are several assumptions that were updated in support of the latest
7 CPVRR analysis, including:

- 8 1) Incorporating the effects of the Tax Cuts and Jobs Act of 2017 (“Tax
9 Reform”), including the deferral of new projected base rates until
10 January 1, 2022;
- 11 2) Updating the transaction close date to January 1, 2019 from the
12 previous anticipated close date of October 1, 2018. The postponement
13 of the closing date to January 1, 2019 triggers several adjustments to
14 the CPVRR analysis. First, the amount of the transaction payment will
15 decrease by \$3.3 million as the amount due to the Florida Municipal
16 Power Agency (“FMPA”) is reduced as a result of the passage of time.
17 As a result of the reduction in the FMPA transaction payment, the
18 overall amount of the acquisition adjustment will also decrease by the
19 same amount. Second, FPL is not obligated to begin making payments
20 under the purchase power agreement (“PPA”) with the Orlando
21 Utilities Commission (“OUC”) until such time as the transaction
22 closes, thereby avoiding \$2.5 million of energy payments associated
23 with the PPA for three months. Third, the net book value of COVB

1 assets will further depreciate, which will lead to a slight increase in the
2 acquisition adjustment. Finally, FPL will delay a portion of O&M and
3 capital spend that it had previously projected to spend in 2018 until
4 after the assumed transaction close date of January 1, 2019;

5 3) Incorporating FPL's official 2018 net energy for load forecast,
6 consistent with the net energy for load forecast utilized in FPL's 2018
7 Ten-Year Site Plan ("TYSP");

8 4) Updating FPL's long-term incremental generation and purchased
9 power plan consistent with that presented in the 2018 TYSP. This
10 includes utilizing the long-term fuel and emissions forecast consistent
11 with the 2018 TYSP; and

12 5) Including the most recent 30-year long-term price of electricity
13 forecast for FPL.

14 **Q. Does the CPVRR analysis include the revenue requirements associated**
15 **with the updated acquisition adjustment?**

16 A. Yes, as in the prior CPVRR analysis, the updated CPVRR analysis includes
17 the revised estimated acquisition adjustment of approximately \$114 million.

18 **Q. What are the results of the updated CPVRR analysis?**

19 A. As shown on Exhibit SRB-2, the updated assumptions result in a \$99 million
20 CPVRR benefit for existing FPL customers over the 30-year period. This
21 demonstrates that the transaction provides substantial value to existing FPL
22 customers due to the economies of scale that exist in serving COVB
23 customers.

1 **Q. Please explain the differences between the \$99 million CPVRR**
2 **benefit in the updated analysis as compared to the \$105 million**
3 **CPVRR benefit in your direct testimony.**

4 A. As demonstrated on Exhibit SRB-3, the change of \$6 million in CPVRR
5 benefit is comprised of several items. As described in response to prior
6 discovery, the inclusion of the benefit of tax reform and the assumed one-year
7 delay in establishing new base rates increased the total CPVRR benefit from
8 \$105 million to \$127 million. Incorporating FPL's new net energy for load
9 forecast and long-term generation plan, including revised fuel and emissions
10 pricing, reduce the CPVRR benefit by \$31 million. This is primarily the
11 result of lower forecast fuel consumption and prices, combined with more
12 efficient generation in the FPL system, which reduce the amount of projected
13 revenues to be contributed by COVB customers to offset the overall system
14 fuel cost. The revised long-term price of electricity further reduces the
15 CPVRR benefit by \$8.1 million, mainly the result of a change in assumptions
16 for future rate increases as a result of tax reform. The deferral of the
17 transaction to an assumed closing date of January 1, 2019 helps partially
18 offset the reductions and increases the CPVRR benefit by \$7.5 million. This
19 benefit is being driven by lower payments to FMPPA, a reduction in PPA
20 payments to OUC and a delay in spend by FPL as it relates to integrating
21 COVB customers into the FPL system. Finally, the revised cost of debt,
22 which takes into account FPL's actual debt issuances in 2017 as well as the

1 latest Blue Chip forecast of future interest rates, increases the CPVRR benefit
2 by \$3.2 million.

3 **Q. Does this conclude your testimony?**

4 **A. Yes.**

REBUTTAL TESTIMONY

WITNESS: SAM FORREST

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
5	14	Change "99" to "135"

WITNESS: SCOTT R. BORES

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
7	6	Change "60" to "96"
7	10	Change "cost" to "benefit"
7	10	Remove "less than"
7	10	Change "5" to "31"
7	11	Remove "essentially be held"
7	12	Change "harmless" to "benefit"
12	10	Change "98.6" to "135"

I. INTRODUCTION

1

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.

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II. FORECAST ASSUMPTIONS

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

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

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

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

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III. REVENUES AND PRICE FORECAST

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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.

IV. CAPACITY COST

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

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

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

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

V. DISCOUNT RATE

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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.

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

2 A. My name is Tiffany C. Cohen, and my business address is Florida Power &
3 Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

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

5 A. I am employed by Florida Power & Light Company (“FPL” or the
6 “Company”) as the Senior Manager of Rate Development in the Rates &
7 Tariffs Department.

8 **Q. Please describe your duties and responsibilities in that position.**

9 A. I am responsible for developing the rate design for all electric rates and
10 charges. Additionally, I am responsible for proposing and administering the
11 tariffs needed to implement those rates and charges.

12 **Q. Please describe your educational background and professional
13 experience.**

14 A. I hold a Bachelor of Science Degree in Commerce and Business
15 Administration, with a major in Accounting, from the University of Alabama.
16 I obtained a Master of Business Administration from the University of New
17 Orleans. I am also a Certified Public Accountant. I joined FPL and its
18 Regulatory Affairs Department in 2008. I assumed my current position in
19 June 2013. Prior to joining FPL, I was employed at Duke Energy for five
20 years, where I held a variety of positions in the Rates & Regulatory Division,
21 including managing rate cases, Corporate Risk Management, and Internal
22 Audit departments. Prior to joining Duke Energy, I was employed at KPMG,
23 LLP.

1 **Q. Are you sponsoring any exhibits in this docket?**

2 A. Yes. I am sponsoring the following exhibits, which are attached to my
3 testimony:

- 4 • TCC-1 – Typical Bill Comparisons – FPL vs. COVB
- 5 • TCC-2 – Historical Typical Residential Bill Comparison

6 **Q. What is the purpose of your testimony?**

7 A. The purpose of my testimony is to provide FPL’s estimate of the potential bill
8 savings the current customers of the City of Vero Beach (“COVB”) will
9 realize once they become FPL customers.

10 **Q. Please explain how the COVB customers’ electric bills will be affected
11 once transitioned to receive service from FPL.**

12 A. COVB’s customers will immediately benefit from FPL’s residential and
13 commercial rates which are among the lowest in the state of Florida. To
14 illustrate this, I compared FPL’s projected January 1, 2018 typical bills to
15 COVB’s bills as of September 1, 2017. Based on these comparisons, which
16 are reflected in Exhibit TCC-1, current COVB customers will begin receiving
17 immediate savings on their electric bills once they begin to take service from
18 FPL. The amount of savings realized by specific COVB customers will vary
19 depending on rate class and usage characteristics.

20

21 Exhibit TCC-1 provides typical residential and commercial bill comparisons
22 which are indicative of the monthly savings residential and commercial

1 customers may have once they become FPL customers. The information
2 shown on Exhibit TCC-1 is summarized as follows:

- 3 • A typical residential customer with usage of 1,000 kWh per month
4 would save \$16.34 per month, \$196.08 per year, or 14 percent;
- 5 • a typical non-demand general service customer, such as a small
6 storefront business using 1,200 kWh per month, would save \$21.12
7 per month, \$253.44 per year, or 14 percent;
- 8 • a typical demand customer with billing demand of 50 kW and usage of
9 17,520 kWh per month, such as an office building or school, would
10 save \$455.18 per month, \$5,462.16 per year, or 23 percent; and
- 11 • a typical large demand customer with billing demand of 600 kW and
12 usage of 219,000 kWh per month, such as a large retailer or hospital,
13 would save \$4,369.65 per month, \$52,435.80 per year, or 19 percent.

14 **Q. Historically, how have FPL and COVB typical 1,000 kWh residential bills**
15 **compared?**

16 A. As shown on Exhibit TCC-2, for at least the last 10 years, the FPL typical
17 residential bill has been approximately 17 percent to 28 percent lower than
18 COVB's typical residential bill, with the average savings per year being 22
19 percent. Also, FPL's typical 1,000 kWh residential bill is also 25 percent
20 below the national average.

1 **Q. Will FPL's current customers benefit from COVB customers joining the**
2 **FPL system?**

3 A. Yes. As FPL witness Bores' testimony states, there is a lower 30 year
4 cumulative net present value revenue requirement for FPL customers with the
5 acquisition of COVB. This means that FPL customer rates will not be
6 adversely affected with the addition of the COVB customers. Not only will
7 COVB customers save once receiving electric service on the FPL system, but
8 as FPL witness Bores discusses, existing FPL customers will also benefit.

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

10 A. Yes.

ERRATA SHEET

SUPPLEMENTAL DIRECT TESTIMONY AND EXHIBITS

WITNESS: SCOTT R. BORES

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
4	19	Change “99” to “135”
5	1	Change “99” to “135”
5	4	Change “6” to “30”
5	10	Change “reduce” to “increases”
5	10	Change “31” to “7.8”
5	10	Change “is primarily” to “includes”
5	14	Remove “further”
5	15	Change “8.1” to “7.9”
5	18	Change “reductions” to “reduction”
5	18	Change “7.5” to “4.5”
6	2	Change “3.2” to “3.8”

EXHIBIT # CHANGE

Exhibit SRB-2	Replace Exhibit SRB-2 with attached
Exhibit SRB-3	Replace Exhibit SRB-3 with attached

WITNESS: TIFFANY COHEN

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
6	13	Change “99” to “135”

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

2 A. My name is Tiffany C. Cohen, and my business address is Florida Power &
3 Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.

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

5 A. I am employed by Florida Power & Light Company (“FPL” or the
6 “Company”) as Director, Rates & Tariffs.

7 **Q. Please describe your duties and responsibilities in that position.**

8 A. I am responsible for developing the appropriate rate design and for
9 administration of the Company’s electric rates and charges. Additionally, I
10 am responsible for the Company’s cost of service and load research studies.

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

12 A. Yes, I filed direct testimony on November 3, 2017, as part of FPL’s original
13 petition. In that testimony I provided FPL’s estimate of the potential bill
14 savings the current customers of the City of Vero Beach (“COVB”) would
15 realize once they became FPL customers.

16 **Q. Are you sponsoring any exhibits with your supplemental direct
17 testimony?**

18 A. Yes. I am sponsoring two updated exhibits to replace Exhibits TCC-1 and
19 TCC-2 filed with my direct testimony in this docket. The following exhibits
20 are attached to my supplemental direct testimony:

- 21 • TCC-3 – Typical Bill Comparisons – FPL vs. COVB
22 • TCC-4 – Historical Typical Residential Bill Comparison
23 • TCC-5 – Industrial Bill Comparisons

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

2 A. The purpose of my testimony is to provide FPL's updated estimate of the
3 projected bill savings the current customers of COVB, including members of
4 the Florida Industrial Power Users Group ("FIPUG"), will realize once they
5 become FPL customers.

6 **Q. Please explain any changes in the projected bill savings for current**
7 **customers of COVB when they transition to FPL that have developed**
8 **since you filed direct testimony.**

9 A. COVB customers now have even greater projected savings in their bills than
10 what was reflected in my direct testimony and on Exhibit TCC-1. FPL rates
11 decreased and COVB rates increased since the time TCC-1 was filed. See
12 Exhibit TCC-3 for a current rate comparison which shows that savings range
13 from 22% to 30% for typical residential and commercial customers at various
14 usage levels.

15 **Q. Are there significant differences in electric rates around the state?**

16 A. Absolutely. Depending on where customers live or operate a business, there
17 can be a significant difference in the amount customers pay for electric
18 service. For example, FPL is currently the lowest typical residential bill in the
19 state at \$98.87 for a 1,000 kWh residential customer. This is 26% lower than
20 the highest bill in the state, which is \$133.86. FPL's residential rate is 15%
21 below the Florida average and nearly 30% below the national average. FPL's
22 small commercial typical bill (1500 kWh) is currently the lowest in the state at
23 \$144.45. This is more than 20% below the Florida average and nearly 30%

1 below the national average. FPL's low bill for the small commercial rate is
2 40% less than the highest bill in the state, which currently is \$242.61.

3 **Q. What savings will individual customers currently served by COVB**
4 **receive when this transaction closes and they become FPL customers?**

5 A. Exhibit TCC-3 illustrates the savings that typical residential and commercial
6 customers will receive as FPL customers. The bill changes are summarized as
7 follows:

- 8 • A typical residential customer will save 22% or \$330 per year under FPL
9 rates;
- 10 • a typical small store front will save 22% or \$410 per year;
- 11 • a typical office building or school will save 30% or \$7,600 per year; and
- 12 • a typical large retailer, such as a grocery store, "big box" store – inclusive
13 of FIPUG members currently served by COVB's electric utility – or
14 hospital will save 27% or nearly \$80,000 per year.

15 These are significant savings for current COVB customers which help drive
16 economic benefits for the state. Additionally, as discussed by FPL witness
17 Bores, existing FPL customers, including members of FIPUG, will benefit
18 from the transaction.

19 **Q. Will FIPUG customers also see lower rates as a result of the COVB**
20 **transaction?**

21 A. Yes. FIPUG members in both COVB and FPL's service territory will benefit
22 as a result of the transaction.

1 **Q. What rates do FPL customers who are members of FIPUG pay today?**

2 A. The specific bills of customers are considered confidential, and FPL treats
3 them as such. However, the majority of FIPUG member customers that we
4 are aware of take service under the Commercial Industrial Load Control
5 (“CILC-1T”) transmission rate schedule or participate in the Commercial
6 Industrial Demand Rider (“CDR”) program. Both rate schedules are
7 considered interruptible where the customer receives a credit (i.e., a discount)
8 for providing FPL the ability to curtail their load in the event of a system
9 emergency. The CILC-1T rate schedule is closed to new customers and the
10 discount is incorporated in the base bill. CDR is open to new customers and
11 provides a dollar per kilowatt credit for each kilowatt the customer makes
12 available to FPL for curtailment in the event of a system emergency.

13 **Q. What savings do FPL customers who are members of FIPUG typically**
14 **see based upon their ability to take advantage of these Commission-**
15 **approved programs?**

16 A. These options provide great savings to the FIPUG customers - even greater
17 than FPL’s standard rate offerings. The typical CILC-1T customer’s base bill
18 is 45% lower than the standard rate and the total bill is 22% lower than the
19 standard rate. The typical CDR customer’s base bill is 38% lower than the
20 standard rate and the total bill is 19% lower than the standard rate.

21

22 These large commercial and industrial bills benchmarked against Edison
23 Electric Institute (“EEI”) are 42% below the national average. These

1 significant cost savings are *only* available to customers that currently are
2 served by FPL (e.g., FIPUG members contesting this proposal). Our proposal
3 would make interruptible rates and savings available to others (in the current
4 COVB service territory), with no detriment to FIPUG members.

5 **Q. When rates for COVB customers decrease the day after the transaction**
6 **closes, what will happen to the rates for FPL's other customers, including**
7 **FIPUG's members?**

8 A. FPL's other customers, including FIPUG members, will continue to enjoy all
9 of the savings and service reliability that they enjoy today, as reflected on
10 Exhibits TCC-3 through TCC-5. In the long-term, all existing customers will
11 benefit from the economies of scale created by this transaction. Additionally,
12 as discussed by FPL witness Bores, this transaction is projected to provide
13 \$99 million cumulative present value revenue requirements benefit for
14 existing FPL customers, which overall will put downward pressure on future
15 rates. FIPUG members along with all other existing FPL customers will share
16 these additional benefits of the transaction.

17 **Q. Does this conclude your testimony?**

18 A. Yes.

1 CHAIRMAN GRAHAM: Okay. Staff.

2 MR. MURPHY: I guess the next one would be the
3 Association's witnesses.

4 MS. LARKIN: The Civic Association has five
5 witnesses, Mr. Jay Kramer, Jens Tripson, Tom White,
6 Ken Daige and -- I'm forgetting one -- Herbert
7 Whittall, yes. All have been stipulated into the
8 record, so I would move to direct their testimony
9 to be entered into the record.

10 CHAIRMAN GRAHAM: Is there any objections by
11 any of the parties?

12 So we will enter their direct testimony into
13 the record as though read, and any exhibits
14 associated with that direct testimony?

15 MS. LARKIN: Correct.

16 CHAIRMAN GRAHAM: Okay. We will enter that
17 all into the record for Jay Kramer, Herbert
18 Whittall, Thomas White, Jens Tripson and Kenneth
19 Daige.

20 MS. LARKIN: Daige.

21 CHAIRMAN GRAHAM: Daige.

22 (Whereupon, prefiled testimony for the
23 witnesses stated in the record was inserted.)

24

25

FPSC DOCKET NO. 2017-0235, 0236**DIRECT TESTIMONY OF JAY KRAMER****ON BEHALF OF****THE CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC.****SEPTEMBER 7, 2018**

1 **Q. Please state your name, residence, and occupation.**

2 A. My name is Jay Kramer. I am a resident of the city of Vero Beach, Florida. I am
3 the operations manager for Colostore.com a data center facility in Indiana. I was first
4 elected to City Council in November of 2010, and served for six years until
5 November of 2016.

6 **Q. Can you briefly summarize your education?**

7 A. I have a Bachelors of Arts in Computer Science from the University of Northern
8 Iowa and a Masters of Business Administration from Florida Gulf Coast University.

9 **Q. What is the purpose of your testimony in this proceeding?**

10 A. On November 3, 2017, FPL filed a petition with this Commission for authority to
11 charge FPL rates to former COVB customers and approval of their accounting
12 treatment for the COVB transaction, and to alter territorial agreements. My testimony
13 is directed to the claims of “extraordinary circumstances” and the actual nature of the
14 public interest invoked in the FPL petition.

15 **Q.Summary of your testimony.**

16 A. Extraordinary circumstances do not exist in Vero Beach, as we are financially
17 stable at this time, and the representation of outside customers is the same as it is for
18 city customers. A higher public interest exists than merely the vague promise of lower
19 rates, that of making an informed opinion based on facts.

1 **Q. What were your duties and responsibilities as a member of the City**
2 **Council?**

3 A. As a member of the Council, a person should articulate policy to the Charter
4 officers of the City through budgets, ordinances, and other legislative actions.
5 Reasoned decisions are made with assistance and input from experts on staff as well
6 as city commissions and committees. Your responsibilities would include listening to
7 public input, making fact-based decisions that are in the best interest of your
8 constituents, and bringing fiduciary oversight to budget questions.

9 **Q. Do you believe the Council, in your experience, is responsive to all**
10 **customers, including those in the county?**

11 A. Yes, they are able to participate just like city customers, which is to say serve on
12 committees, speak at public hearings and participate in elections for City Council
13 through lobbying and funding of campaigns. There has never been any difference in
14 the services, rates, or access to authority among all COVB customers.

15 **Q. In your experience, how much influence do city voters have over rate**
16 **setting?**

17 A. City voters have influence on rate making mainly through the lobbying efforts
18 with the City Council and participation on City boards and commissions. These would
19 be the same types of influence available to outside customers.

20 **Q. Did the Council advertise a Request for Bids to all possible buyers when**
21 **contemplating selling the electric utility?**

22 A. There was no official Request for Proposal offered for the sale of Vero Electric.
23 There was a "letter of interest" that was sent out to a few utility companies, however
24 it was greatly limited on details and not something likely to get any actual proposals.

1 **Q. Did the Council negotiate with FPL through a broker with expertise in**
2 **utilities?**

3 A. No. To my knowledge there has never been any actual negotiations between FPL
4 and Vero Beach. FPL set a price, and the recent council members accepted it.

5 **Q. During your tenure on the Council, how did FPL approach the sale?**

6 A. FPL's involvement with us, from the start, was only as the leader and director of
7 the sale, not as a negotiating partner or adversary. The public was quite swayed by
8 the extensive, and expensive, advertising campaign run continuously these past ten
9 years, so the political pressure to "get on the sale train" was quite strong. FPL
10 activity has been largely political in nature in that they funded political action groups
11 and candidate campaigns who solely promoted complete loyalty to the "sale to FPL."
12 Although the term "the sale" has never truly been defined to the public in any real
13 detail, other than promising undefined "lower rates," the financial backing of
14 candidates that supported "the sale" resulted in FPL gaining a loyal base of
15 representation on City Council and thereby policies promoting "the sale" were soon
16 the number one priority of the Council.

17 **Q. Was there a concerted effort to educate the public on what a sale would**
18 **mean to both city residents and to outside customers of the city?**

19 A. No. The education process to the public has been dominated by FPL's message
20 through the political process, newspaper advertising and other media outlets that sway
21 public opinion. The City has allowed FPL to completely control the information flow.

22 **Q. When Council and FPL state that the public has "spoken" on its desire to**
23 **sell to FPL, do you think that is true?**

24 A. No. There were two supposed "votes" on the sale, but neither was an informed or
25 proper ballot questions. Because originally the sale was thought to entail FPL using

1 the power plant itself, and that land is protected in our City Charter from any lease or
2 sale without voter approval, the first referendum asked only approval on the leasing of
3 power plant land for the purposes of selling the physical plant to FPL. Voters were
4 not being asked their opinion on the sale, nor for that matter even given any details of
5 a proposed “lease.” Most legal experts I consulted did not think the language was up
6 to the standards necessary for an informed vote on the matter. Nonetheless, after it
7 passed, the FPL advocates declared it a statement of clear public support for the sale.
8 The second referendum was almost more misleading. The voters were asked to agree
9 to a sale “substantially similar” to what was being negotiated at that time, however
10 there were no details available for voters, and the term “substantially similar” had, in
11 my opinion, no real meaning. In fact, there was never a finalized deal in either case in
12 which the public could see or read exactly what was going to be the outcome from a
13 sale. I believe a case in point is if the public knew there would be a surcharge to pay
14 for the sale, or that a partial sale would raise their rates, or if a clear budget plan had
15 been presented to voters on how the income would be replaced, or not, neither of the
16 referendums would have passed. The public was rather blissfully unaware of all the
17 approvals, contracts, and negotiations still needed, as well as of what the future
18 impacts would be.

19 **Q. Were you on Council when the customer poll took place?**

20 A. Yes, the City Council members who were supported by FPL thought it was a
21 good idea to poll all utility customers, knowing that the outside customers would feel
22 no impact from the sale in higher taxes or changes to the City itself. It was no
23 surprise what the result was, FPL had been investing quite a bit of money in the area
24 to improve their image and to promote their low rates, thus the poll shows I believe a
25 60 to 40% response favoring a sale. Not coincidentally, that is close to the breakdown

1 between inside and outside customers. This was an informal poll, of course. Many
2 city residents expressed to me their doubts and concerns about any sale.

3 **Q. What has been your experience with the utility and T&D departments?**

4 A. The electrical utility departments have been nothing but outstanding from my
5 point of view. When we asked them to find ways to lower rates, we found ways.
6 When we had hurricanes, we were always the first to have all power restored. In
7 comparing our electrical departments with other systems across the state, in numerous
8 reports I've seen, I believe we have one of the more responsive systems in the state.

9 **Q. What efforts were made during your tenure designed to get electric rates in
10 line with FPL?**

11 A. During those years that I was there, rate reductions were done through
12 re-negotiations with our main power provider, closing the power plant to save on
13 expenses, optimization studies to identify and reduce costs and through refinancing
14 debt to achieve better interest rates. There were more ideas to reduce rates, however
15 the Council's policy changed after the FPL candidates had the majority and rates
16 actually rose again.

17 **Q. Does this conclude your pre-filed testimony?**

18 A. Yes.

19
20
21

1 **FPSC DOCKET NO. 2017-0235, 0236**
2 **DIRECT TESTIMONY OF THOMAS P. WHITE**
3 **ON BEHALF OF**
4 **THE CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC.**
5 **SEPTEMBER 7, 2018**

6

7 **Q. Please state your name, residence, and occupation.**

8 A. My name is Tom White. I am a resident of the city of Vero Beach, Florida,
9 having moved here in 1974. I am the owner operator of TeeJays Awards in Vero
10 Beach.

11 **Q. Can you briefly summarize your City service?**

12 A. I was elected to the Vero Beach City Council in March 1998 and served
13 continuously until November 2010. I served as Mayor for five terms.

14 **Q. What is the purpose of your testimony in this proceeding?**

15 A. On November 3, 2017, FPL filed a petition with this Commission for authority to
16 charge FPL rates to former COVB customers and approval of their accounting
17 treatment for the COVB transaction, and to alter territorial agreements. My testimony
18 is directed to the claims that this sale is in the public interest and how the CAIRC has
19 always played a role in City issues.

20 **Q. Summary of your testimony.**

21 A. The facts set forth by FPL about the rates and fees being charged are not supported
22 by the facts and call into question the alleged benefits to the public interest of a sale.
23 The CAIRC, where I've been a member for many years, has always spoken about it.

24 **Q. Do you have any exhibits?**

1 A. Yes. TPW - 1, Resume of City and civic activities.

2 **Q. How did the sale of the COVB utility to FPL become such an important**
3 **item for the City Council?**

4 A. As a member of the Council, I know it was not a pressing issue until about 2006
5 or 7. The cry for FPL did not become a real factor until a couple of County residents
6 started telling the public that we would save \$50 to \$100 on their Utility Bills, that
7 was around 2008 or so. FPL became a major player by supporting candidates for the
8 City Council. In fact FPL spent thousands to get pro FPL candidates in office, and
9 they succeeded. They then succeeded in pushing for a contract to buy our electric
10 system.

11 **Q. In your experience on the Council, do you believe the Council is responsive**
12 **to all customers, including those in the county?**

13 A. Yes, they are able to participate just like city customers, which is to say serve on
14 committees, speak at public hearings and participate in elections for City Council
15 through lobbying and funding of campaigns. Right now, they control the Council.
16 There has never been any difference in the services, rates, or access to authority
17 among all COVB customers.

18 As far as county customers, they've benefited substantially without having to pay City
19 taxes. The City ran new infrastructure into the County so they could have electric and
20 water without asking them to annex that land into the City. Not realizing that more
21 building would go on in the County that would so directly affect the City, we made
22 agreements with the County on service. We as a Council worked very hard to give our
23 utility customers the best service and rates, and for much of my time on Council we
24 had expert utility professionals handling the utility and the plant itself. The
25 FPL-backed candidates who were elected started eliminating anyone with expertise in

1 the utility field, then shut down any conversation at the committees and boards that
2 are concerned with utility matters.

3 **Q. As a long-time member of CAIRC, what would you say have been their**
4 **goals over the years?**

5 A. To support issues that impact the City, particularly, and since the County has
6 grown to immensely, issues that impact everyone in the area. From zoning matters to
7 tree ordinances, charter issues for the County, anything that affects our quality of life.
8 Things that are important to all of us, and it's why so many people are members.

9 **Q. How long has CAIRC been involved in the issues of selling the electric**
10 **utility to FPL?**

11 A. As I recall, they were involved in the 70's when that first attempt failed. But
12 CAIRC, along with Warren Winchester, really got involved again when the efforts to
13 sell were being proposed seriously in about 2009-2010. We all knew, especially those
14 of us who were in office, how many hurdles there would be to a sale, and how
15 uncertain the City's future would be without solid, long-term planning if the electric
16 was sold. So as it seemed like everyone was getting confusing information about a
17 possible sale, CAIRC really took the lead in speaking out about all those issues. For
18 instance, when there was a referendum proposed about leasing the land under the
19 power plant, land that is protected under our City Charter, it seemed like a normal
20 thing to do in case that option came up. But then the pro-FPL crowd began stating that
21 this had really been a vote to sell the whole system. Many residents were very
22 confused about what was going on, and the CAIRC board came to City meetings to
23 bring attention to the facts.

24 The Council had just been through a long arbitration with the FMPPA, which we lost,
25 and so much of the higher rates we were experiencing weren't really understood, or

1 were being misrepresented, by the FPL crowd. The only people that I recall, other
2 than the Council at the time, speaking publicly about the concerns regarding a sale
3 were Warren Winchester, Caroline Ginn, Tom Nason, Ken Daige and Lynne Larkin,
4 all from the CAIRC. As an elected official, myself, the City Manager & City Attorney
5 spent many hours with FMPA after the arbitration, and we even tried to see if they
6 would take over our plant. They told us that they would consider it, and but after a
7 year of doing nothing to help us, we had to look for other assistance with Orlando.

8 **Q. Was there a concerted effort by the City to educate the public on what a sale**
9 **would mean to both city residents and to outside customers of the city?**

10 A. No. The City has followed FPL's public relations line all through this process.
11 That has never happened before, that I can recall.

12 **Q. When Council and FPL state that the public has "spoken" on its desire to**
13 **sell to FPL, do you think that is true?**

14 A. I feel very strongly both that people have only been promised lower rates without
15 real facts to back that up, and about not selling our assets to FPL. In my opinion FPL
16 has not acted fairly with the City in manipulating elections and making promises they
17 can't keep. I do not see the benefit the City officials are promising to the residents.
18 As a resident and rate payer for 44 years, money made by the City of Vero Beach has
19 helped keep our tax base low, help support our Police Department and keep our parks,
20 recreation and beaches some of the best. Not to mention that all money made from our
21 utilities stays here to benefit every one that comes into the City. That message
22 concerning the public interest, our future, and what our rates and total bills will be,
23 has been ignored.

24 **Q. What has been your experience with the utility and T&D departments?**

1 A. TD dept is the best of the best. The staff and crew worked very hard during the
2 hurricanes of 2004, 2005 etc. The City always had electricity turned on within
3 minutes from your call in normal weather if the power went out. I really could not say
4 enough about T&D and customer service. Exemplary in every way.

5 **Q. Does this conclude your pre-filed testimony?**

6 A. Yes.

7

FPSC DOCKET NO. 2017-0235, 0236**DIRECT TESTIMONY OF HERBERT V. WHITTALL****ON BEHALF OF****THE CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC.****SEPTEMBER 7, 2018**

1 **Q. Please state your name, address, and occupation.**

2 A. My name is Herbert V. Whittall. My address is 19 Park Avenue, Vero Beach,
3 Florida, 32960. I am currently retired from a career in mechanical engineering with
4 experience in electrical generation systems. I have served on the Vero Beach City
5 Utilities Commission [“COVB-UC”] since 2003, although not continuously, and I
6 currently sit on that Commission. I have also served on the City Code Enforcement
7 Board and the Historical Commission. Since 2004 I have been one of the two City
8 representatives on the Citizens Advisory Committee of the Metropolitan Planning
9 Organization (MPO).

10 **Q. Can you briefly summarize your education and employment?**

11 A. I received a Bachelor’s Degree in Mechanical Engineering in 1959 from Cornell
12 University and a Master’s Degree in Mechanical Engineering from Bradley
13 University in 1964. I worked for Caterpillar, Inc., from 1959 until September 1995,
14 when I retired. The last 13 years at Caterpillar I worked with Generator Sets. From
15 1996 until December 31, 2017, I was the Technical Director of the Electrical
16 Generating Systems Association of Boca Raton, Florida.

17 **Q. What is the purpose of your testimony in this proceeding?**

18 A. On November 3, 2017, FPL filed a petition with this Commission for authority to
19 charge FPL rates to former COVB customers and approval of their accounting
20 treatment for the COVB transaction, and to alter territorial agreements. My testimony

1 is directed to the claims of “extraordinary circumstances” and the actual nature of the
2 public interest invoked in the FPL petition.

3 **Q. Summarize your testimony.**

4 A. The public interest has been ignored in this transaction, and from the view of a
5 member of the Utilities Commission, I speak to the ways in which this has occurred.

6 **Q. What are your duties and responsibilities as a member of the COVB-UC?**

7 A. As a member of the COVB-UC, I reviewed the maintenance, budgets, and
8 planning status for all the utility functions of the City of Vero Beach, including
9 electric, sewer, water and storm water. The heads of these various functions would
10 bring us up to date on repairs, capital expenditures and what they were for, and any
11 outages. We passed resolutions advising the City Council on our decisions
12 concerning these topics.

13 We also heard testimony from the City Manager about the various contracts the city
14 got involved in such as the COVB contract with Orlando, but did not review them for
15 legal detail. Concerning the electric utility, we would discuss the particular contract,
16 give expert opinion on what was proposed, and then review any parts of the written
17 contract that needed more specific study. When setting up a utility authority was
18 being considered by the City Council, around 2013, that was also discussed for the
19 pros and cons involved in operating under such a system. We did not discuss rate
20 structures, as the Finance Committee handles the details of rate setting, but we did
21 consider how any decision being made might impact budget and rates. For example,
22 in considering adding a new turbine to our power plant, a \$3.5 million expense was
23 discussed in relation to the effect such an expense would have on budgeting and rate
24 making.

1 **Q. What has traditionally been the make-up of the COVB-UC, meaning who**
2 **serves on that board?**

3 A. Out of the five members of the COVB-UC, there were always at least two and
4 often three members who did not live in the City of Vero Beach. Currently, the
5 Chairman of the Commission is Robert Auwaerter, a Town council member and
6 former Vice-Mayor of Indian River Shores. They bring the voices of the outside
7 customers to the COVB-UC work.

8 **Q. How often does the COVB-UC normally meet?**

9 A. Up until the last two years the Utility Commission has always met monthly
10 except during July and August.

11 **Q. How often do citizens, customers attend or participate in your meetings?**

12 A. Between 2003 and today, I would estimate that at most five people in total ever
13 attended any meetings. Not a single meeting, I mean total for all meetings I attended.
14 These were usually customers with personal complaints that they addressed to the
15 COVB-UC.

16 **Q. In your experience, did any of the members, including yourself, ever address**
17 **the alleged difference in status between inside the city versus outside electric**
18 **customers?**

19 A. No. The rates are the same for all customers, although anyone may comment to
20 the Council or to the boards and commissions regardless of residence. The county
21 residents are only taxed by the County itself, so we don't receive questions on taxes
22 added to the bills.

23 **Q. When was the most recent meeting of the COVB-UC?**

24 A. The last meeting we had was in August, 2017.

1 **Q. Did you discuss the pending offer and subsequent contract from FPL at that**
2 **meeting?**

3 A. No. We were instructed not to discuss the sale of Vero Electric to FPL.

4 **Q. With all the interest and activity concerning the FPL contract, do you know**
5 **why your commission didn't discuss this particular contract?**

6 A. No. We were simply and specifically instructed by the Chairman, by notation on
7 our agenda, not to discuss this contract.

8 **Q. Is that an unusual instruction?**

9 A. In my experience, it has never occurred before.

10 **Q. Do you know whether or not the COVB-UC is still functioning?**

11 A. I'm not certain. I made a request to the Chairman that we have a meeting in
12 January, 2018, as there is other business concerning water, sewer, etc., but since none
13 was scheduled. In my opinion, I feel that the last two mayors did not want us to get
14 involved with the sale

15 **Q. And as a long-time member of the COVB-UC, do you have an opinion on**
16 **the complaints made by some outside customers regarding the alleged "taxation**
17 **without representation?"**

18 A. There is no tax. Quite simply, everyone pays the same rates for electric service,
19 and we all want lower rates. But the income transferred to the COVB general fund is
20 not a tax. County residents are free to comment or complain just as openly and
21 effectively as any city resident.

22 **Q. Does this conclude your pre-filed testimony?**

23 A. Yes.

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FPSC DOCKET NO. 2017-0235, 0236**DIRECT TESTIMONY OF JENS TRIPSON****ON BEHALF OF****THE CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC.****SEPTEMBER 7, 2018**

1

2 **Q. Please state your name, address, and occupation.**

3 A. Jens Tripson, 2525 14th Avenue, Vero Beach, FL 32960. I was born in Vero
4 Beach, and I have lived here my entire life. My maternal grandfather, Waldo Sexton,
5 came here in 1912. Currently I'm retired. I owned a landscape nursery 1988-2005, ran
6 a stained glass studio 1980-1987, and Tripson Dairies 1964-1973. I was a member of
7 Pelican Island Audubon Society 1986-2010, President of PIAS 1992-2002. Involved
8 in City and County government meetings 1986-2012. Member of the Indian River
9 County Planning and Zoning Commission from 2009-2012.

10 **Q. What is the purpose of your testimony in this proceeding?**

11 A. On November 3, 2017, FPL filed a petition with this Commission for authority to
12 charge FPL rates to former COVB customers and approval of their accounting
13 treatment for the COVB transaction, and to alter territorial agreements. The Civic
14 Association of Indian River County [CAIRC] protested in that docket. My testimony
15 is in support of their efforts to protect the public interest of our City and County
16 residents, as I believe the current City government is not doing so.

17 **Q. Please summarize your testimony.**

18 A. As an informed and active member of the public, I speak to the details of how
19 this sale has evolved, the lack of information made available to the public, and the
20 unreliable and destructive nature of our local government's actions. FPL has not

1 provided good or accurate information, nor has the City, leaving the public out in the
2 cold on an issue of tremendous local importance.

3 **Q. Have you kept informed on the proposed utility sale to FPL?**

4 A. I am aware of and have followed the proposed sale of the COVB Utility system
5 and vehemently oppose it.

6 **Q. What is your impression of the process being used by the City to sell its
7 utility to FPL?**

8 A. I think that the information put out by the current and previous city council, the
9 current and previous City Administrator, the citizens group that want the city out of
10 business and the Press Journal have only given the general public information that
11 makes the sale appear positive. None of them have mentioned how the city will make
12 up the shortfall in revenue without the income from the power plant. They have talked
13 at length about how high the city electric rates are but they have never mentioned that
14 the base rate is lower than that of FPL, nor that the higher bills are based on cost of
15 fuel adjustments. This latter issue also shows the ineptitude of the previous councils
16 regarding signing contracts that were not in the City's best interest.

17 **Q. As someone deeply involved in local government, how would you assess the
18 actions of the last two city councils as far as handling the sale and informing
19 their constituents about those actions?**

20 A. I believe the current and previous city council have made their decisions based
21 on one-sided information, and that is the only information they give to the public. I
22 would give them a very low grade for their business acumen, concern for the public
23 interest, and neglect of their duties of office.

24 **Q. What questions do think have not been answered about the proposed sale?**

1 A. So many. Why would any person representing the City agree to put into a
2 contract a clause that sells off a portion of the system if the full sale doesn't go
3 through? This is of absolutely no benefit to the City, nonetheless these council
4 members agreed to something that will harm the City if the sale doesn't occur.
5 However, when you see the thousands of dollars that their campaigns have received
6 from Indian River Shores residents, questions arise as to whose interests are foremost
7 in this Council's agenda. I don't understand the logic in selling a profitable part of an
8 asset. The clause in the contract that allows for this to happen was a dereliction of
9 duty by everyone involved from the City of Vero Beach. Once again, this was
10 driven by unproven promises to Indian River Shores and County residents that FPL
11 was going to deliver lower rates. Much of the information we've seen on this is
12 already proving to be false. They also have continued to claim nearly unanimous
13 support for a sale, but they've ignored anyone who questions their tactics or
14 motivations. They actually shut down public input on a subject as important as this.
15 Nothing could be more outrageous or damaging to our citizens.

16 **Q. What has been your experience with the rates and services provided by**
17 **COVB electric?**

18 A. My family has been here since the first power plant was built. I have had no
19 problem with the rates charged by the city for electricity. I am on a fixed income and
20 paying an average of \$120 per month is quite reasonable whether I am using my
21 heating or cooling system. We all would like it to be really cheap or free but reality is
22 you need to pay someone. As for the service provided by the city on a day to day
23 basis, it is superb. If there is a problem, the line men are out there quickly day or night
24 to remedy the problem. In storm events the city has responded in an exemplary
25 fashion. I believe in most cases the City has restored service much faster than FPL.

1 **Q. You've received service from both utilities on your different properties, can**
2 **you compare those experiences with those you've received from FPL?**

3 A. My family and I have had various agricultural in the southern and western parts
4 county over the past 50 years or more and found FPL service to be adequate for
5 general or localized outages but it is quite slow in wider spread storm event outages.

6 **Q. What do you think this sale will mean to the City, the quality of life found**
7 **here, and the future for all our residents?**

8 A. I think my grandfather, Waldo Sexton, a founding father of Vero Beach, would
9 be disheartened at the sale of the city power plant. He lived here before the city utility
10 was created and believed its establishment helped in the growth of the city, providing
11 a good atmosphere in which businesses could thrive. It seems clear the sale will
12 inevitably cause a large increase in taxes to make up for the loss of income or services
13 to be cut so drastically that our present life style will be degraded. Those promoting
14 the sale cheer for our demise, and even if Vero Beach survives, it will be a less
15 wonderful place to live, raise families and operate a local business. I can't see how
16 that is in the public interest.

17 **Q. Has anyone demanded more information on the FPL issue?**

18 A. Other than the Civic Association, no other person or group has spoken up for the
19 citizens' right to be informed.

20 **Q. Does this conclude your pre-filed testimony?**

21 A. Yes.

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FPSC DOCKET NO. 2017-0235, 0236
DIRECT TESTIMONY OF KEN DAIGE
ON BEHALF OF
THE CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC.
SEPTEMBER 7, 2018

1 **Q. Please state your name and residence.**

2 A. My name is Kenneth Daige. I am a resident of the City of Vero Beach, Florida. I
3 have lived approximately 30 years in the City of Vero Beach, and in Indian River
4 County for a total of 43 years. I served on the Vero Beach City Council from 2006 to
5 2008 and in 2010. I currently sit on the Planning and Zoning Board. I have been a
6 member of the Civic Association of Indian River County since 2006.

7 **Q. Can you briefly summarize your employment?**

8 A. I was formerly a US Army Specialist-Airborne and received multi-faceted
9 military leadership training. I currently co-own and operate an interior design-trades
10 business.

11 **Q. What is the purpose of your testimony in this proceeding?**

12 A. On November 3, 2017, FPL filed a petition with this Commission for authority to
13 charge FPL rates to former COVB (electric) customers and approval of their
14 accounting treatment for the COVB transaction, and to alter territorial agreements.
15 The Civic Association of Indian River County [CAIRC] protested in that docket, and
16 FPL has challenged CAIRC's standing to be a party in this case. My testimony is
17 directed to the challenge of our standing.

18 **Q. Please summarize your testimony.**

19 A. To substantiate our long-standing involvement in the utility issues, our mission
20 statement, and our deep concern regarding having the truth be available to our
21 members and the entire county regarding what this sale means for future rates,
22 services, and quality of life.

23 **Q. How long have you been a member of the Board of Directors of CAIRC?**

1 A. I've been a board member since 2006. The goals of CAIRC have always been to
2 support good government practices in our county and municipal governments, and
3 most importantly to preserve our quality of life in Vero Beach.

4 **Q. How often does the CAIRC normally meet?**

5 A. Up until the last five years we met monthly at the Indian River Library. As we
6 became more involved in the issue of the utility sale, we used telephone meetings
7 more often to accommodate those members having difficulty traveling, or at the Oak
8 Harbor meeting rooms.

9 **Q. How does the Board operate?**

10 A. Anyone can put issues on the meeting agendas, the president presides, and until
11 2013 we had a paid administrative secretary take the minutes of our meetings.
12 Members are encouraged to attend, but very few ever do. The decisions on action
13 items are voted on by the board and simple majority rules.

14 **Q. How long has CAIRC been involved in the issues of selling the electric
15 utility to FPL?**

16 A. We were very active during the 1976-78 attempts by FPL to purchase COVB
17 utility, according to Board records, news reports, and discussions by board members
18 who were part of that issue both as members of the City Council, members of City
19 committees, and City staff. At that time, CAIRC was in favor of a sale under the
20 right circumstances, but when it was proven that the promises being made by FPL
21 were untrue, our Board was then opposed to the deal. In 2009 our Board was made
22 aware of and addressed a movement to further regulate government-owned utilities.
23 Concurrently that year FPL was invited to purchase Vero Electric. The Board has
24 been actively following this issue, and we have intervened at most levels where

1 government approvals are involved, including at the Federal Energy Regulatory
2 Commission [FERC].

3 **Q. In your experience, did your discussions include the alleged difference in**
4 **status between inside the city versus outside electric customers?**

5 A. Yes. Although the rates are the same for all customers, and our members come
6 from all areas of the cities and county, a few people stirred up the idea that paying for
7 your electric service was “unfair” to county customers since a portion of the revenue
8 was used for supporting the Vero Beach budget. This was of huge concern to us, since
9 maintaining good services for all residents who use city resources takes a certain level
10 of funding. It’s been our position that we have been fortunate to not have to cut those
11 services, or eliminate parks and facilities, since the utility profits don’t leave our area
12 via a public utility but rather stay to enrich everyone’s quality of life.

13 **Q. When was the most recent meeting of the CAIRC board?**

14 A. The last meeting we had was in August, 2018, as of this writing.

15 **Q. Do all the board members agree with the protest filed with the PSC?**

16 A. No. But a large majority do and everyone is working to bring this case forward.

17 **Q. With all the interest and activity concerning the FPL contract, why aren’t**
18 **more directors and members speaking up in public about their concerns?**

19 A. We have spoken as often as possible. We’ve also been subject to rather harsh
20 abuse in our efforts to remain involved in this matter. Since the FPL-funded public
21 relations machine, which includes several local citizens’ efforts via newsletters, ads,
22 and other media placements, often involves attacking those with whom they disagree,
23 very few citizens are comfortable facing that sort of attention. The pro-sale crowd
24 boycotts businesses, using intimidation via forms of social media, to discourage any
25 voice of dissent. Recently, just after veiled threatening facebook comments were

1 posted about me and other CAIRC members, my personal vehicle was vandalized
2 (police report on file).

3 **Q. Have members spoken up to the City Council on this matter?**

4 A. At least since 2009 they have. Those who do are received with open hostility and
5 contempt. City staff has been muzzled, as have the City boards and commissions, and
6 one member of the City Council threatened to fire anyone on staff who threatened the
7 sale by producing data or information unhelpful to the transaction. Until recently,
8 former County Commission Chair Caroline Ginn has been quite prominently speaking
9 out about the problems not being addressed by City Council, and until his recent death
10 in April, Ralph King, former head of the City Planning and Zoning Board, also was
11 quite involved. I've made presentations to Council and to other civic groups, as well.
12 This issue affects all of us, now and in the future. It is one of the biggest decisions
13 being made for our City, for the utility customers, and for all FPL customers who may,
14 or may not, end up paying for such transactions.

15 **Q. Has communication with members, as well as fundraising, continued since
16 fully taking on the FPL issue?**

17 A. To a limited extent since the paid administrator lost our paper files for several
18 years, and claimed that our electronic files were lost. Putting our mailing and member
19 list back together is labor-intensive and is being worked on by one of our committees.

20 **Q. Do you feel that the public has been adequately informed about the contract
21 and its ramifications for our area?**

22 A. No. That is the key to what we seek in this action, and the public interest has
23 been ignored too long by the City Council.

24 **Q. Does this conclude your pre-filed testimony?**

25 A. Yes.

1 CHAIRMAN GRAHAM: Okay. OPC.

2 MS. MORSE: OPC has one witness, Lane Kollen.
3 We would like to have his testimony moved into the
4 record, along with his exhibits. He has both
5 direct and supplemental direct testimony.

6 CHAIRMAN GRAHAM: Is there any objections to
7 that going into the record? Seeing none --

8 MR. MURPHY: Chairman Graham, that -- the
9 supplemental is one of the things that's on your
10 table up there. It was not provided earlier. It
11 was the subject of a motion, and this is the
12 testimony that is subject -- it can only come in
13 subject to a stipulation that FPL would like to
14 address, and has been waiting to address. And I
15 think it would be more appropriate to address the
16 stipulation that relates to the testimony before
17 it's moved in, if that's okay.

18 CHAIRMAN GRAHAM: Well, let's go ahead and
19 move in Lane Kollen's direct testimony and exhibits
20 into the record as though read.

21 (Whereupon, prefiled testimony was inserted.)

22

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1 Kennedy and Associates, providing services to consumers of utility services and state and
2 local government agencies in the areas of utility planning, ratemaking, accounting, taxes,
3 financial reporting, financing and management decision-making. From 1983 to 1986, I
4 was a consultant with Energy Management Associates, providing services to investor and
5 consumer owned utility companies in the areas of planning, financial reporting, financing,
6 ratemaking and management decision-making. From 1976 to 1983, I was employed by
7 The Toledo Edison Company in a series of positions providing services in the areas of
8 planning, accounting, taxes, auditing, and financial and statistical reporting.

9 I have appeared as an expert witness on utility planning, ratemaking, accounting,
10 reporting, financing, and tax issues before state and federal regulatory commissions and
11 courts on hundreds of occasions. I have appeared before the Florida Public Service
12 Commission (“Commission”) in numerous proceedings, including the five most recent
13 Florida Power & Light Company (“FPL” or “Company”) base rate proceedings in Docket
14 Nos. 160021-EI (2016), 120015-EI (2012), 080677-EI (2009), 050045-EI (2005) and
15 001148-EI (2002). I also appeared before the Commission on June 5, 2018 in this
16 proceeding and provided comments prior to the vote on the Proposed Agency Action. I
17 have developed and presented papers at various industry conferences on ratemaking,
18 accounting, and tax issues.¹

19
20 **Q. On whose behalf are you providing testimony?**

¹ My qualifications and regulatory appearances are further detailed in my Exhibit (LK-1).

1 A. I am providing testimony on behalf of the Florida Office of Public Counsel (“OPC”).
2 Accordingly, I am appearing on behalf of the Citizens of the State of Florida.

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

4 A. The purpose of my testimony is to address FPL’s plan to acquire the Vero Beach municipal
5 electric system (“Vero Beach”) for \$185 million, its request for accounting treatment of
6 the \$116 million (updated to \$114 million) acquisition premium, and its request to amortize
7 the regulatory asset and recover the amortization expense, along with a return on the
8 regulatory asset, primarily from existing FPL customers.

9
10 **Q. Does OPC support FPL’s proposed acquisition of Vero Beach?**

11 A. Yes. OPC supports the proposed acquisition. The OPC does not support the imposition of
12 unreasonable costs onto or harm to the general body of FPL customers (the general body
13 of FPL customers ultimately will include the former customers of the City of Vero Beach
14 if our recommended approval of the acquisition and application of FPL rates is approved).

15
16 **Q. Does OPC support FPL’s request for authority to charge FPL rates to former City of
17 Vero Beach customers?**

18 A. Yes. OPC supports charging FPL rates to former City of Vero Beach customers. The OPC
19 does not support the imposition of unreasonable costs onto, or harm to, the general body
20 of FPL customers.

21
22 **Q. Does FPL require Commission approval to record the acquisition premium in
23 Account 114 *Electric Plant Acquisition Adjustment*?**

1 A. No, it does not. No Commission approval is necessary to record an acquisition premium
2 in Account 114 and OPC opposes the Company's request for approval for that reason. FPL
3 is *required* to record the acquisition premium as "goodwill" under generally accepted
4 accounting principles ("GAAP")² and, more specifically, is *required* to record the
5 acquisition premium in account 114 under the Federal Energy Regulatory Commission
6 ("FERC") Uniform System of Accounts ("USOA").³

7

8 **Q. Should FPL be allowed to recover amortization expense in rates, recover a return on**
9 **any acquisition premium in rates, or amortize any acquisition premium to Account**
10 **406?**

11 A. No. OPC opposes recovery of amortization expense or a return on the acquisition premium
12 from FPL customers and opposes recording amortization expense in Account 406. FPL
13 cannot record amortization expense in Account 406 unless the Commission approves
14 recovery of the expense in rates pursuant to the requirements of both GAAP and the FERC
15 USOA. In other words, even though any acquisition premium will be recorded in Account
16 114 regardless of Commission approval, there will be no amortization in Account 406
17 unless the recovery and amortization are approved by the Commission. As a general
18 matter, GAAP does not allow amortization of an acquisition premium unless it involves a
19 regulated utility and the regulator authorizes amortization and recovery.⁴ Similarly, the
20 FERC USOA does not allow amortization of an acquisition premium or recording of
21 amortization expense in Account 406 unless the regulator authorizes amortization and

² I have attached a copy of ASC 980-350-35 as my Exhibit (LK-2).

³ I have attached the description of Account 114 in the USOA as my Exhibit (LK-3).

⁴ ASC 980-350-35.

1 recovery.⁵ In other words, there will be no amortization of the acquisition premium if there
2 is no ratemaking recovery.

3
4 **Q. Please summarize your recommendations.**

5 A. I recommend the Commission approve FPL's acquisition of Vero Beach and approve its
6 request to charge FPL's rates to the former Vero Beach customers. I further recommend
7 the Commission decline the Company's request to approve the recording of any acquisition
8 premium in Account 114 because it is unnecessary. Additionally, I recommend the
9 Commission reject the Company's request for approval of the ratemaking and accounting
10 treatment of the amortization expense and that it deny the request for a return on any
11 acquisition premium because these requests will impose additional costs onto, thus harm,
12 the general body of FPL customers. I would note that the Commission has the option to
13 not deny the Company's requests regarding recovery of the amortization expense and a
14 return on any acquisition premium in this proceeding and to defer a final decision on this
15 request until the Company's next base rate proceeding.

16
17 **Q. Why should the Commission reject the Company's request for ratemaking recovery**
18 **of an amortization expense, approval to record the amortization expense in Account**
19 **406, and a return on any acquisition premium?**

20 A. First, the recovery of amortization expense and a return on the acquisition premium
21 necessarily impose certain and known costs and harm onto the general body of FPL
22 customers, all else equal. More specifically, the Company's proposal will impose costs of

⁵ I have attached the description of Account 406 in the USOA as my Exhibit (LK-4).

1 more than \$200 million on these customers over the next 30 years.

2 Second, the acquisition premium is one of several costs incurred solely to acquire
3 Vero Beach and to extricate the Vero Beach customers from the Vero Beach system. In
4 other words, these costs are “exit” fees that have minimal or no value to existing FPL
5 customers. Nevertheless, FPL seeks recovery of these costs, primarily from the existing
6 FPL customers, rather than foregoing recovery or seeking to recover all or most of these
7 costs from the former Vero Beach customers through a phase-down of the Vero Beach
8 rates to the existing FPL rates or in some other manner. Neither OPC nor I recommend
9 such a special recovery from the former Vero Beach customers.

10 Third, and in contrast to the certain and known costs for recovery of amortization
11 expense and a return on any acquisition premium, FPL’s claim of offsetting savings to
12 existing FPL customers is uncertain and unknown. The Company’s estimated savings are
13 based on a flawed economic study that cannot be relied on. More specifically, the initial
14 study was based on an outdated forecast that no longer accurately reflects the Company’s
15 forecasted cost of service with or without Vero Beach. In addition, both the initial study
16 and the updated study include numerous errors in assumptions and methodologies, all of
17 which overstate the estimated savings or understate the costs to serve the former Vero
18 Beach customers.

19 Fourth, this Commission, as well as other state regulatory commissions and the
20 FERC, historically have set rates based on the depreciated original cost of plant, absent
21 extraordinary circumstances. The Company’s proposal to recover the acquisition premium
22 would change the historic depreciated original cost of plant ratemaking paradigm to a fair
23 value ratemaking paradigm, at least for the acquired assets. The historic depreciated

1 original cost of plant paradigm protects customers from the utility's acquisition of assets
2 at inflated prices and provides a behavioral incentive for utilities to minimize any
3 acquisition costs in excess of the net book value of assets. The proposed fair value
4 paradigm strips away these basic ratemaking protections and creates a harmful precedent.

5 Fifth, there does not appear to be any extraordinary circumstance that would require
6 or otherwise justify a decision to specifically approve recovery of amortization expense
7 and a return on any acquisition premium to resolve that circumstance. In its PAA Order,
8 the Commission itself noted that rate disparity was not an extraordinary circumstance. The
9 Commission also noted that the claimed savings as the result of the Company's study was
10 not an extraordinary circumstance. The Commission appears to have concluded that the
11 territorial dispute is an extraordinary circumstance sufficient to impose the acquisition
12 costs (amortization expense and a return on any acquisition premium) on the general body
13 of FPL customers. However, it is not evident how this dispute is an extraordinary
14 circumstance sufficient to merit a departure from the Commission's historic reliance on
15 depreciated original cost of plant. The Commission could resolve the territorial dispute
16 without approving FPL's requested accounting and ratemaking treatments of the
17 acquisition premium. Nor is there any history that such a dispute is an extraordinary
18 circumstance that requires or justifies recovery of an amortization expense or a return on
19 any acquisition premium.

20 Sixth, this case may well be viewed by a future Commission as a precedent for
21 future and larger acquisitions by FPL and other utilities.

22 **Q. Describe the Company's claim that the costs incurred to acquire Vero Beach are**

1 **offset by net savings of \$105 million (updated to \$99 million) on a net present value**
2 **basis.**

- 3 A. The Company’s initial claim of net savings of \$105 million was based on an economic
4 study that it performed specifically for this purpose using financial statement forecasts with
5 a starting point in late 2018 that extended for a 30-year study period. This study is
6 described by FPL witness Mr. Scott Bores in his Direct Testimony.

7 The initial study was updated to reflect a starting date in January 2019, the effects
8 of the Tax Cuts and Jobs Act (“TCJA”), the effects of the Company’s new net energy for
9 load and long-term generation plan, including revised fuel and emission pricing, and the
10 effects of revisions to certain other revenues and costs, as described by Mr. Bores in his
11 Supplemental Direct Testimony. The updated claim of net savings is \$72 million, without
12 the claimed TCJA savings, or approximately \$2.4 million per year over the 30-year study
13 period.

14 Like the initial study, the revised study relies on a “base” forecast without Vero
15 Beach and then develops another forecast that superimposes the Vero Beach acquisition
16 onto the base forecast in order to determine the net savings or costs of the acquisition each
17 year and on a cumulative net present value basis.

18 The two forecasts rely on hundreds of assumptions regarding FPL and Vero Beach
19 in the future and include projections of revenues, fuel expenses, non-fuel operation and
20 maintenance (“O&M”) expenses, depreciation expense, income tax expense, construction
21 expenditures, loads, capacity additions and retirements, and capacity and energy purchases
22 and sales, among numerous other projections.

1 **Q. Are these forecasts reasonable such that the Commission can reasonably rely on the**
2 **study results?**

3 **A.** No, they are not. The forecasts are not reasonable and the Commission should not rely on
4 the study results to justify ratemaking recovery of the acquisition premium. Less than one
5 year ago, the Company claimed savings of \$105 million. Now, the Company claims
6 savings of \$72 million, excluding the claimed savings from the TCJA,⁶ which should have
7 very little impact on the savings from the Vero Beach acquisition, if any. Just this simple
8 comparison of claimed savings between the initial study and the updated study
9 demonstrates that the savings, if any, are uncertain and unknown. In contrast, the
10 Company's request for rate recovery of the updated \$114 million acquisition premium, a
11 cost to the general body of FPL customers, is certain and known.

12 In addition, there are specific significant flaws in the original study that appear to
13 be repeated in the updated study. The Staff also found significant flaws in the initial study,
14 which it described in a Memorandum to the Commission dated May 25, 2018. In general,
15 the FPL studies overstate the revenues, which it characterizes as "savings," from both the
16 former Vero Beach customers and existing FPL customers. In general, the studies also
17 understate or delay the capital expenditures and operating expenses that FPL will incur
18 after it acquires Vero Beach. Lastly, the studies suffer from various methodological errors
19 that overstate the alleged savings.

20 **Q. Describe the specific significant flaws in the Company's studies.**

21 **A.** The most significant flaw is that FPL incorrectly assumes it can serve the Vero Beach load

⁶ Exhibit SRB-3 attached to the Supplemental Direct Testimony of Scott Bores (\$98.6 million total savings less \$26.2 million due to tax reform).

1 in most years from 2019 through 2032 without incurring the cost to purchase or build
2 additional capacity.⁷ The Staff also noted this flaw in its May 25, 2018 Memorandum. I
3 estimate this flaw overstates the savings by approximately \$55 million based on the initial
4 study. This flaw understates the cost of capacity necessary to serve the Vero Beach load
5 and fails to consider the lost capacity revenues as a cost to serve the Vero Beach load. FPL
6 forecasts that it will have excess peaking capacity in most years from 2019 through 2032.
7 In reality, FPL sells that excess capacity, although it inexplicably failed either to reflect the
8 forecast sales revenues from these capacity sales in its base case or to reflect the reduction
9 in the forecast capacity sales revenues in the Vero Beach case.⁸ It includes only the
10 incremental capacity purchase costs in the Vero Beach case in certain months when its
11 excess peaking capacity is insufficient to meet the entirety of the Vero Beach load.

12 The second most significant flaw is the rate used to discount the annual costs or
13 savings. The Company used the weighted average cost of capital for this purpose, rather
14 than the grossed-up weighted average cost of capital that it used to calculate the revenue
15 requirement. I estimate that this flaw overstates the savings by approximately \$41 million
16 based on the initial study. The Company's methodology creates a mismatch between the
17 discount rate and the rate of return used to calculate the nominal revenue requirement each
18 year. Conceptually, for purposes of comparing costs and benefits on an equal footing, the
19 discount rate and the rate of return should be the same. The difference between the grossed-
20 up weighted cost of capital and the weighted cost of capital is that the former includes an
21 increment for the income taxes on the equity component of the return. Consider the

⁷ Response to OPC Interrogatory 1(a). I have attached a copy of the entirety of the response to OPC Interrogatory 1 as my Exhibit (LK-5).

⁸ Response to OPC Interrogatory 1(b).

1 following example. The Company invests \$1 million. The weighted cost of capital is 10%
2 and the grossed-up weighted cost of capital is 12%. The revenue requirement, using the
3 grossed-up weighted cost of capital, is \$120,000, which results in a future value of
4 \$1,120,000. If the future value is discounted using the 12% grossed-up weighted cost of
5 capital, then the net present value is the same \$1 million that the Company invested. If,
6 however, the future value is discounted using the 10% weighted cost of capital, then the
7 net present value is \$1,018 million -- or more than the Company invested. This is the
8 problem with the Company's methodology. It used the grossed-up weighted cost of capital
9 to calculate the forecasted revenue requirements, but then used the weighted cost of capital
10 to discount the nominal net costs or savings in each forecasted year.

11 Another significant flaw is the assumption that adding Vero Beach will reduce the
12 average fuel cost to existing FPL customers. This overstates the "savings" to existing FPL
13 customers. This outcome is inherently counter-intuitive because the sales to the former
14 Vero Beach customers will displace economy sales to third parties, presumably at the same
15 cost to generate. Of course, as I noted previously, the Company's base case does not
16 include sales to third parties, so the savings, if any and if legitimate, from incremental
17 generation and sales, are a function of the forecast methodology and do not reflect reality.
18 Even if the Company had included economy sales to third parties in its base forecast, it is
19 unlikely that incremental sales to third parties will cost less to generate than the average
20 cost of sales for existing FPL customers, especially during peak hours. Similarly, it is
21 equally unlikely that incremental sales to the former Vero Beach customers will cost less
22 to generate than the average cost of sales for existing FPL customers, especially during
23 peak hours.

1 Another significant flaw is the Company’s assumption that FPL’s base rates on a
2 per kWh basis will not vary between the forecast base case and the Vero Beach case.⁹ This
3 flaw overstates the “savings” to existing FPL customers. The assumption is flawed because
4 the Vero Beach kWh load will be included in the calculation of the base rates on a per kWh
5 basis starting in 2021 in the initial study or in 2022 in the updated study, the years that FPL
6 assumes base rates will be reset in each of those studies, and will reduce those rates per
7 kWh and the resulting base revenues.

8 Other significant flaws are the Company’s assumptions that FPL capacity,
9 conservation, and environmental clause rates on a per kWh basis will not vary between the
10 forecasted base case and the Vero Beach case.¹⁰ These assumptions overstate the “savings”
11 to existing FPL customers because the Company also assumed that it will incur no
12 incremental capacity, conservation, and environmental costs to serve the former Vero
13 Beach load. If there are no incremental costs, then the capacity, conservation, and
14 environmental clause rates on a per kWh basis are overstated because the Vero Beach kWh
15 load will be included in the calculations of these rates starting in 2019, will reduce those
16 rates per kWh, and will leave the clause revenues unchanged compared to the base forecast.

17 Other flaws include the Company’s assumptions regarding the timing and amounts
18 of capital expenditures and operating expenses that it will incur to upgrade the Vero Beach
19 system to FPL standards, and to operate and maintain the Vero Beach system. These
20 assumptions understate the cost of acquiring Vero Beach by delaying and/or understating
21 the costs, which understate the net present value of the costs, all else equal. For example,

⁹ Response to OPC Interrogatory 7(a). I have attached a copy of the entirety of the response to OPC Interrogatory 7 as my Exhibit (LK-6).

¹⁰ Response to OPC Interrogatory 7(b).

1 FPL assumes it will not commence “hardening” the Vero Beach system until 2020, and
2 then it will take at least eight years to complete this effort.¹¹ FPL also assumes that it will
3 not incur incremental operating expenses for the Vero Beach system after 2019 for
4 customer service planning and performance (CSPP), DSM, marketing, communications,
5 or information technology.

6 Finally, FPL incorrectly included zero cost accumulated deferred income taxes
7 (“ADIT”) in its calculation of the grossed-up weighted average cost of capital used for the
8 return on Vero Beach rate base and the weighted average cost of capital used for the
9 discount rate, understating both rates. This error understated the nominal annual costs and
10 overstated the nominal annual savings, and thus, the net present value of the savings. This
11 effect was compounded through the discount rate, which further overstated the net present
12 value of the projected savings. Neither the rate of return nor the discount rate should
13 include ADIT for the purpose of this study because none of the ADIT used in the
14 calculation of these returns was due to, or will be caused by, financing the acquisition of
15 Vero Beach. The actual financing for the acquisition will consist solely of equity and/or
16 debt.

17
18 **Q. Do you have any further observations about the implications of the proposed**
19 **ratemaking recovery of an acquisition premium?**

20 A. Yes. The acquisition premium is inherently discretionary. It is based on the structure and
21 other critical elements of the transaction. FPL and (ostensibly) its parent, NextEra Energy,
22 Inc. (“NextEra”), intentionally structured the transaction so that FPL could seek recovery

¹¹ Response to OPC Request for POD 9. I have attached a copy of this response as my Exhibit (LK-7).

1 of the significant transaction costs, including the acquisition premium and the purchased
2 power contract buyout costs, from the general body of FPL customers. In contrast to the
3 Vero Beach transaction, NextEra structured its proposed acquisition of Gulf Power
4 Company so that it, not FPL, would acquire Gulf Power Company. In its filing with the
5 FERC, NextEra claims that it will not record any of the Gulf Power transaction costs on
6 either FPL's or Gulf Power Company's accounting books.¹²

7 The Commission should consider the structure and the following critical elements
8 of the Vero Beach transaction in light of the inherent discretion that NextEra and FPL
9 exercise in the context of an acquisition. If NextEra was the acquiring entity, and not FPL,
10 then NextEra would record the acquisition premium, not FPL, and FPL would not be able
11 to recover these costs through rates. Similarly, NextEra would record the contract buyout
12 costs either as an additional acquisition premium or as an expense, and FPL would not be
13 able to recover the costs through its Fuel and Purchased Power Recovery Clause or its
14 Capacity Cost Recovery Clause.

15 In other words, FPL/NextEra could have structured the transaction so that the
16 acquisition premium was recorded on NextEra's accounting books, or so that the
17 acquisition premium comprised a lower amount than it proposes in this proceeding, but it
18 did not do so.

19
20 **Q. Does this complete your Direct Testimony?**

21 **A. Yes.**

¹² FERC Docket No. EC18-117-000. I have attached selected pages from the Joint Application of NextEra and Gulf Power Company in that proceeding as my Exhibit (LK-8).

DIRECT TESTIMONY**OF****Lane Kollen**

On Behalf of the Office of Public Counsel

Before the

Florida Public Service Commission

Docket Nos. 20170235-EI, 20170236-EU

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

2 A. My name is Lane Kollen. My business address is J. Kennedy and Associates, Inc.
3 (“Kennedy and Associates”), 570 Colonial Park Drive, Suite 305, Roswell, Georgia
4 30075.

5

6 **Q. Have you previously submitted testimony in this proceeding?**

7 A. Yes. I previously submitted prefiled Direct Testimony on behalf of the Office of Public
8 Counsel (“OPC”) on September 7, 2018 and also provided comments before the
9 Commission on June 5, 2018 when it considered and voted on the Proposed Agency
10 Action.

11 In my Direct Testimony, I affirmed the OPC’s support for Florida Power &
12 Light Company’s (“FPL”) proposed acquisition of the Vero Beach municipal electric
13 system and the extension of FPL rates to the former Vero Beach customers.

14 I recommended that the Commission reject the Company’s request for approval
15 of an acquisition premium because it was unnecessary under generally accepted

1 accounting principles (“GAAP”) and under the Federal Energy Regulatory
2 Commission (“FERC”) Uniform System of Accounts (“USOA”).

3 In addition, I recommended that the Commission reject the Company’s request
4 for recovery of the acquisition premium for numerous reasons, or alternatively, defer a
5 decision on this request until the Company’s next base rate case proceeding.

6

7 **Q. What is the purpose of your Supplemental Direct Testimony?**

8 A. The purpose of my testimony is to address the Company’s “errata” to the Supplemental
9 Direct Testimony and the Rebuttal Testimony of Mr. Scott Bores. The “errata” are the
10 result of a new and third economic study developed by FPL, which updates and revises
11 the second economic study addressed in the pre-“errata” version of the Supplemental
12 Direct Testimony of Mr. Bores. The second economic study purported to update and
13 revise the initial economic study (“first study”) addressed in the Direct Testimony of
14 Mr. Bores and cited in the Company’s Application. Whereas the second study reflected
15 a significant reduction in the cumulative present value of revenue requirements
16 (“CPVRR”) “savings” compared to the first study, the third study reflects a significant
17 increase in the CPVRR “savings” compared to the second and first studies.

18

19 **Q. Please summarize your testimony.**

20 A. I continue to affirm FPL’s acquisition of the Vero Beach municipal electric utility
21 system and to affirm FPL’s request to apply the FPL rates to the former Vero Beach
22 customers. I also continue to recommend that the Commission reject the Company’s
23 proposal to amortize and recover the acquisition premium from the general body of

1 FPL ratepayers.

2 The wildly different results of the Company's three studies demonstrate that
3 any savings are uncertain at best and are highly dependent on the Company's unreliable
4 projections, including the assumptions and methods used for this purpose. All three
5 studies suffer from the same infirmities that I identified in my Direct Testimony with
6 one exception.¹

7 The Company's counsel claims that "FPL determined that it had included the
8 electric system load of the City of Vero Beach twice in its analysis and had incorrectly
9 revised depreciation amounts in the CPVRR analysis after deferral of the assumed
10 transaction closing date to January 1, 2019." However, that does not appear to be an
11 accurate or complete description of the reasons for the very significant revisions in the
12 third study compared to the second study. More specifically, it appears that in the
13 second study the Company included the Vero Beach load in the base case and then
14 included it twice in the Vero Beach case, effectively including it only once in the
15 calculations of the incremental effects on FPL customers, not twice.

16 Unfortunately, FPL failed to provide supplemental responses to all relevant
17 discovery directed toward the first and second studies, which limited my ability to
18 review the underlying support for the third study and the claimed errors in the second
19 study, although yesterday it did provide some responses to OPC discovery directed
20 specifically toward the second and third studies. FPL's counsel is not a witness in this
21 proceeding and Mr. Bores himself does not acknowledge or describe the third study or

¹ Except that I have concluded that ADIT was not included in the Company's calculation of the cost of capital used for the economic studies.

1 the errors in the second study in his errata. Thus, the Commission cannot fully assess
2 the alleged errors in the second study or the accuracy of the third study given the limited
3 time before the hearing.

4 Further, the errata provided to the Supplemental Direct Testimony of Mr. Bores
5 appear to be inconsistent in part with the assumptions, methods, and results of the third
6 study, which renders the corrected Supplemental Direct Testimony of limited value, if
7 any.²

8 Finally, the Company knew of the alleged errors in the second study on or
9 before September 24, 2018, the date when it developed the third study. However, it
10 failed to inform the parties until the date when the pre-hearing positions statements
11 were due on September 26, 2018 when it was too late to respond.

12

13 **Q. Can you provide an example of where the errata provided to the Supplemental**
14 **Direct Testimony of Mr. Bores is inconsistent with the assumptions, methods, and**
15 **results of the third study?**

16 A. Yes. In his corrected and revised Supplemental Direct Testimony, Mr. Bores now
17 claims that lower fuel consumption and costs as well as more efficient generation
18 reduces the contribution from former COVB customers to offset the overall system fuel
19 cost, but somehow *increases* the CPVRR savings instead of *reducing* the savings. This
20 conclusion in the corrected and revised Supplement Direct Testimony of Mr. Bores is

² I have attached a copy of the Supplemental Direct Testimony of Mr. Bores with the errata handwritten onto the testimony as filed for ease of reference as my Exhibit__(LK-9).

1 incomprehensible and directly contradicts his original Supplemental Direct Testimony
2 wherein he claimed the same fact pattern, but that it *reduced* the CPVRR savings.

3 To highlight these contradictory conclusions, I have replicated the pre-errata
4 testimony in the first excerpt below and then his corrected and revised testimony in the
5 second excerpt below.

6 Incorporating FPL’s new net energy for load forecast and long-term generation
7 plan, including revised fuel and emissions pricing, *reduce* the CPVRR benefit
8 by \$31 million. This is primarily the result of lower forecast fuel consumption
9 and prices, combined with more efficient generation in the FPL system, which
10 reduce the amount of projected revenues to be contributed by COVB customers
11 to offset the overall system fuel cost. (*emphasis added*).

12 Incorporating FPL’s new net energy for load forecast and long-term generation
13 plan, including revised fuel and emissions pricing, *increases* the CPVRR
14 benefit by \$7.8 million. This includes the result of lower forecast fuel
15 consumption and prices, combined with more efficient generation in the FPL
16 system, which reduce the amount of projected revenues to be contributed by
17 COVB customers to offset the overall system fuel cost. (*emphasis added*).

18

19 **Q. Have you analyzed the progression of results from the first study to the third**
20 **study?**

21 **A. Yes.** The following tables compare the components comprising the CPVRR results
22 from FPL’s first study to its third and most recent study. There are changes in every
23 component, not only to the “system impact” and “depreciation and amortization”
24 components cited in the Company’s errata cover letter sent by its counsel, although
25 those are the components with the most significant changes.

FPL ACQUISITION OF CITY OF VERO BEACH MUNICIPAL ELECTRIC SYSTEM COMPARISON OF FPL ECONOMIC STUDIES (\$ MILLION)						
	FPL First Study		FPL Second Study		FPL Third Study	
	Nominal	CPVRR	Nominal	CPVRR	Nominal	CPVRR
Base Rates: Incremental Revenue Requirements						
Operations and Maintenance	161.3	62.1	157.3	57.6	157.3	57.6
Property Tax and Insurance	112.1	35.5	113.6	33.6	105.0	31.5
Depreciation and Amortization	331.5	120.3	267.3	83.1	326.9	115.1
Interest Expense	122.6	46.4	141.6	49.6	122.5	44.4
Return on Equity	369.1	139.8	451.6	158.1	390.8	141.7
Income Tax	231.8	87.8	153.3	53.7	132.7	48.1
System Impact	433.9	86.7	614.9	118.2	399.5	83.1
Total Incremental Base Rate Revenue Requirements	1,762.4	578.5	1,899.5	553.9	1,634.7	521.6
Base Rate Revenue from COVB Customers	(2,014.3)	(687.6)	(1,967.9)	(645.8)	(1,984.6)	(648.8)
Base Rate (Savings)/Cost from COVB Customers	(251.9)	(109.0)	(68.4)	(91.9)	(349.9)	(127.2)
Clause: Incremental Revenue Requirements						
OUC PPA Payments	23.5	20.6	21.1	18.1	21.1	18.1
System Impact	1,201.2	373.7	1,061.3	316.3	1,072.1	315.0
Total Incremental Clause Revenue Requirements	1,224.7	394.3	1,082.4	334.4	1,093.2	333.1
Clause Revenue from COVB customers	(1,258.6)	(390.6)	(1,100.0)	(341.0)	(1,100.0)	(341.0)
Clause (Savings)/Cost from COVB Customers	(34.0)	3.7	(17.6)	(6.6)	(6.8)	(7.9)
Total Net Customer (Savings)/Cost	(285.9)	(105.3)	(86.0)	(98.6)	(356.7)	(135.1)

FPL ACQUISITION OF CITY OF VERO BEACH MUNICIPAL ELECTRIC SYSTEM COMPARISON OF CPVRR OF REVENUES AND COSTS IN FPL ECONOMIC STUDIES (\$ MILLION)			
	FPL First Study CPVRR	FPL Second Study CPVRR	FPL Third Study CPVRR
1. Acquired Inventory	4,293.2	4,115.8	4,115.8
2. PP&E - Dist	74,589.9	63,193.3	65,549.9
3. PP&E - Transmission	8,990.6	7,512.5	7,859.6
4. PP&E - General Plant	1,120.4	959.8	1,013.8
5. PP&E - Land (included in Trans and Dist)	2,964.0	2,438.3	2,438.3
6. Asset Acquisition Adjustment	143,724.6	126,263.5	126,263.5
7. Lease Easement Indian River	359.8	331.6	331.6
8. Prepaid Easement Vero Beach	2,796.5	2,312.0	2,312.0
9. OUC PPA Payment - Above Market	15,281.3	12,380.0	12,380.0
10. PPA Energy Savings	(6,029.5)	(5,445.7)	(5,445.7)
11. Ongoing Distribution Capex	136,846.3	122,038.5	122,038.5
12. Ongoing Transmission Capex	43,744.2	39,519.7	39,519.7
13. Customer Service O&M	10,018.1	9,082.8	9,082.8
14. Ongoing Distribution O&M	35,060.8	33,093.4	33,093.4
15. Ongoing Transmission O&M	13,207.2	11,908.6	11,908.6
16. Dark Fiber Lease	2,700.0	2,479.7	2,479.7
17. OUC PPA Payment - At Market	7,983.7	7,033.5	7,033.5
18. Transaction Cost	723.2	722.6	722.6
19. System Impact Short Term PPAs	13,093.2	11,641.9	6,296.9
20. Customer Service Capital	8,035.7	8,448.2	8,448.2
21. Vero Revenue - Fuel Other Clauses	(390,612.5)	(341,044.1)	(340,992.8)
22. Vero Revenue - Base Rates	(687,558.5)	(645,846.8)	(648,839.0)
23. System Impact Fixed Cost	86,664.9	118,200.2	83,118.9
24. System Impact VOM, Emissions	44,925.4	20,236.9	25,423.5
25. System Impact Fuel	321,732.6	289,864.6	288,722.2
Total	(105,344.9)	(98,559.5)	(135,124.5)

1 **Q. Have you further analyzed the components of the system impact costs among the**
2 **three studies?**

3 A. Yes. The following table provides a comparison of the CPVRR for each of the major
4 components of the system impact costs among the three studies. It is striking that there
5 is a significant reduction in the second study compared to the first study in the non-
6 solar generation capital costs in both the base case and the Vero Beach acquisition case.
7 Again, this is contrary to the expected increase in the second case if, in fact, the Vero
8 Beach load had been counted twice in the second study. The non-solar generation
9 capital costs decline even further in the third study so that the third study is well below
10 even the first study. These anomalies are offset by unexpected increases in capital
11 replacement costs in the second and third studies compared to the first study. In short,
12 it appears that the third study still retains certain errors apparently introduced in the
13 second study or that the first study was itself flawed.

COMPARISON OF FPL ECONOMIC STUDIES BASE RATE REVENUE REQUIREMENTS - SYSTEM IMPACTS (CPVRR \$ MILLIONS)			
	First Study	Second Study	Third Study
Discount Rate:	7.57%	7.76%	7.76%
Base			
Non-Solar Generation Capital Costs	3,122	3,042	2,977
Non-Solar Fixed O&M Costs	129	145	142
Transmission Interconnection Costs	191	191	187
Capital Replacement Costs	264	433	422
Total Base Rate System Impact	3,707	3,811	3,728
With Vero Beach			
Non-Solar Generation Capital Costs	3,195	3,134	3,042
Non-Solar Fixed O&M Costs	133	150	145
Transmission Interconnection Costs	196	197	191
Capital Replacement Costs	271	448	433
Total Base Rate System Impact	3,794	3,929	3,811
Difference			
Non-Solar Generation Capital Costs	72.9	92.4	65.0
Non-Solar Fixed O&M Costs	3.1	5.1	3.2
Transmission Interconnection Costs	4.4	5.8	4.1
Capital Replacement Costs	6.8	14.9	10.8
Total Base Rate System Impact	87.3	118.2	83.1
*Note that the 87.3 from the first study does not match to the 86.7 reported in exhibit SRB-1 due to a difference between the reported values in 2048 between the exhibit and supporting			

1 **Q. Do you have any additional comments in response to FPL counsel's claim in his**
2 **cover letter to the Commission that the errors in the second study were the result**
3 **of counting the Vero Beach load twice.**

4 **A. Yes.** The primary differences in the second study compared to the first study and the
5 third study are in the system impact and amortization and depreciation components.
6 However, the system impact cost in the second study is greater than in the first and

1 third studies while the amortization and depreciation expense components are less.
2 This is clearly an anomalous result if the Vero Beach load was counted twice in all cost
3 components. If that had been the case, then both the system impact and the
4 amortization and depreciation components would have been greater in the second study
5 than in the first and third studies, not less, consistent with the increase in the system
6 impact.

7 In addition, the differences in the system impact component in the second study
8 compared to the first study and the third study are primarily in only two years. It
9 appears that the Vero Beach load accelerated the timing of FPL's next resource, the
10 entire cost of which was allocated to the Vero Beach acquisition, as it should have been.
11 However, there were no similar costs included in the first and third studies. In other
12 words, it appears that the Company's "error" in the system impact component in the
13 second study was to include the entirety of the cost of accelerating the next FPL
14 resource as a cost of the Vero Beach acquisition, not counting the Vero Beach load
15 twice. If indeed the "error" was to include the entirety of the cost of accelerating the
16 next FPL resource, then, in fact, that was not an error, but an accurate reflection of the
17 cost of the Vero Beach acquisition in those years until the next resource would have
18 been required for all FPL customers in the absence of the Vero Beach load.

19 **Q. What is your conclusion after review of the third economic study in addition to**
20 **the second and first studies?**

1 A. The FPL economic studies are all unreliable and do not provide a reasonable basis for
2 the Commission to approve amortization and recovery of the acquisition premium.
3 More specifically, the third study introduced by the Company through the errata to the
4 Supplement Direct Testimony of Mr. Bores appears to retain errors from the second
5 study or otherwise reflect errors in comparison to the first study.

6

7 **Q. Does this complete your Supplemental Direct Testimony?**

8 A. Yes.

1 CHAIRMAN GRAHAM: And then we will deal with
2 the supplemental right now.

3 MR. ANDERSON: Great. Thank you, Chairman
4 Graham.

5 What we have before us is a document called
6 Stipulation Group Exhibit. We would request that
7 it be assigned a number. I think we are up to 60.

8 CHAIRMAN GRAHAM: Correct.

9 (Whereupon, Exhibit No. 60 was marked for
10 identification.)

11 MR. ANDERSON: And what this is is it consists
12 of certain discovery responses, and also stipulated
13 changes to Mr. Kollen's supplemental testimony and
14 FPL witness Terry Deason's rebuttal testimony. And
15 among it, there is also listed a Interrogatory 21,
16 which would be a very voluminous exhibit. It's
17 something that's already been distributed to the
18 parties. The court reporter has it, but it's a CD
19 disk with a computer model on it.

20 And I chatted with your staff this morning,
21 and if it works for you, if y'all want to have the
22 disks, you are welcome to them, otherwise they have
23 already been distributed. And I have been informed
24 the only person in the room who really has to have
25 it is the court reporter for the record, so we are

1 good on that.

2 So with that, we would offer the Stipulation
3 Group Exhibit 60 into evidence, and with that, we
4 have no objection to the admission of the
5 supplemental testimony of Mr. Kollen.

6 CHAIRMAN GRAHAM: Any objections or comments
7 on that stipulation?

8 Seeing none, we will enter Exhibit 60 with all
9 the added stipulations into the record.

10 (Whereupon, Exhibit No. 60 was received into
11 evidence.)

12 MR. MURPHY: Yes, sir, thank you. And I
13 believe that there is an exhibit related to his
14 supplemental testimony that OPC may need to address
15 now.

16 MS. MORSE: Yes, Exhibit LK-9 is the exhibit
17 to Mr. Kollen's supplemental direct testimony. We
18 would move that into evidence.

19 CHAIRMAN GRAHAM: I think that's the one I
20 just labeled No. 60. Now, Witness Sam Forrest is
21 the one we labeled as 60. Let me back up.

22 Okay, so which one is labeled 60, is that the
23 one Witness Kollen?

24 MR. ANDERSON: Just to review the bidding. We
25 have the Stipulation Group Exhibit 60, and what

1 Public Counsel was referring to is an attachment to
2 Lane Kollen, I think it was -- is that right, Ms.
3 Morse?

4 MS. MORSE: It is. And we --

5 MR. DONALDSON: We are fine with it.

6 MS. MORSE: We distributed that separately.
7 So, yeah, ours says Witness Lane Kollen at the top.

8 CHAIRMAN GRAHAM: Okay. So the one that I --
9 so I mislabeled this. I apologize, Commissioners
10 and staff. The one that's Witness Sam Forrest
11 labeled Sam Forrest Stipulation Group Exhibit --

12 MR. ANDERSON: Yes, sir.

13 CHAIRMAN GRAHAM: -- is the one that we
14 labeled No. 60.

15 MR. ANDERSON: Yes, sir. That's right.

16 CHAIRMAN GRAHAM: And that one is the one that
17 we entered into the record.

18 And now OPC is talking about the one that says
19 Witness Lane Kollen. The description is
20 Supplemental Direct Testimony of Scott Bores
21 exhibit with handwritten errata.

22 MS. MORSE: Exactly. Correct.

23 CHAIRMAN GRAHAM: Okay, that is going to be
24 listed as Exhibit NO. 61.

25 (Whereupon, Exhibit No. 61 was marked for

1 identification.)

2 CHAIRMAN GRAHAM: Is there any objections to
3 entering Exhibit 61 into the record?

4 Okay. Seeing no objections, we will enter 61
5 into the record.

6 (Whereupon, Exhibit No. 61 was received into
7 evidence.)

8 CHAIRMAN GRAHAM: Okay. Staff, tell me where
9 I am.

10 MR. MURPHY: I think you are at the
11 Association's motion for reconsideration.

12 CHAIRMAN GRAHAM: Okay.

13 MS. LARKIN: Our motion was regarding
14 discovery, of course. In and an attempt to get as
15 much cover, we were unaware that the City of Vero
16 Beach would not be submitting any testimony, any
17 direct testimony. So we attempted to get a
18 deposition of Mayor Howell, and in order to have
19 the statements of someone who is a
20 decision-maker -- why ask that hard to say -- for
21 the City in order to get their background on their
22 decisions on their history of a number of the
23 issues that we have in record.

24 The City claimed that they could substitute
25 anybody. We were going specifically for someone on

1 the council who has been very vocal, and who has
2 stated a number of things which impact on the
3 issues, especially concerning public service,
4 public interest and extraordinary circumstances.
5 So it was important to us to get that kind of
6 testimony on the record.

7 Of course, we know that there is a shortened
8 timeline here, and we couldn't argue that motion in
9 time for today, but we feel that it's an
10 exceedingly important matter to have direct
11 testimony from the City regarding the actions that
12 impact on our issues, such as what happened with
13 preventing the commissions from entertaining the
14 contracts at different points. All those sorts of
15 things were made as decisions by the City Council,
16 and were spoken of directly in meetings, and
17 certainly in the media, on what their thoughts
18 were, but that was not on the record.

19 So to have sworn testimony is really what our
20 goal was from the City. Now, the City Manager is
21 being put up, but, again, not a decision-maker, and
22 so I don't know that that is going to really cover
23 what we are talking about as far as intentions go
24 with the extraordinary circumstances particularly.

25 Public interest is a little more general, but

1 there are several issues that we think that Mr.
2 Howell or Mr. Zudans, but Mr. Howell is the person
3 that we thought best represented simply because he
4 has been the most vocal, and he has been here
5 before you as well.

6 CHAIRMAN GRAHAM: Now, was anything that he
7 said -- because I figure most of the things that he
8 said was, because of our Sunshine Law, in a public
9 meeting and there is minutes and records of that.
10 Is there anything else more relevant than those
11 things?

12 MS. LARKIN: Well, there are some other
13 things, too. But when it gets down to our standing
14 issue and the people who will appear here. There
15 is also the issue of -- let's see, discouraging
16 people from speaking out. And a lot of what Mr.
17 Howell has been saying has been discouraging and
18 intimidating to people.

19 And as far as standing goes, we don't have a
20 mass of people here to stand you and say, yes, we
21 are concerned. We feel that's important. We want
22 you to hear from the public as well. There are
23 some letters, but that's also not testimony. And
24 the level of intimidation has been extreme. And I
25 know we filed a motion, and I know you have

1 probably seen the attachments thereto.

2 It's been -- I hate to keep using the word
3 extraordinary, but it's been a difficult thing to
4 get even our board members to want to appear here.
5 I mean, the fact that we got five people to stand
6 up and give testimony was an attribute to their
7 courage.

8 Their businesses -- it's a small town, and the
9 effect on these people when they have small
10 businesses, when they need to be in concert with
11 many of the people who are on both sides.

12 We also feel a lot of the public doesn't
13 understand our position, and I don't think it's
14 been helpful that the City Council itself has been
15 sort of running a campaign to keep us silent. So
16 Mr. Howell stands out in that respect as well.

17 CHAIRMAN GRAHAM: So what specifically is your
18 motion?

19 MS. LARKIN: My motion is to -- I don't know
20 exactly how to set a deposition before the hearing,
21 but we would like to have the opportunity to depose
22 Mayor Howell for those many reasons, and if
23 possible, enter it into the record.

24 CHAIRMAN GRAHAM: Other parties?

25 MR. WALLS: Yes. Mike Walls on behalf of the

1 City of Vero Beach.

2 Let me start out with I think she made a claim
3 that she wanted someone, as she said in her emails
4 about this, to be the primary spokesman for the
5 City. The Rules of Civil Procedure in the law is
6 very clear that if you are asking for the spokesman
7 for a public entity, that entity gets to pick the
8 party to speak on behalf of the public entity, or a
9 corporation. That's the rules. That's the law.
10 That's what we did.

11 We offered Ms. Larkin our representative, the
12 City Manager, who has filed rebuttal testimony and
13 will be here today to speak on behalf of the City,
14 for deposition. We offered it three times and she
15 never took us up on that offer.

16 It's clear she wants to depose the Mayor to
17 speak on behalf of the City, but we have the right
18 to select, under the law, who speaks on behalf of
19 the City, and that's what we have done, and we
20 offered to make him available and she elected not
21 to depose him, and that's her choice.

22 You made a very good point about what happened
23 all the claims about what happened to prevent the
24 Commission -- and these are all matters of public
25 record. The Commission meetings, all of that is

1 recorded. People have the opportunity to speak.

2 You will see that Ms. Larkin has even
3 introduced as an exhibit, or attempted to introduce
4 as an exhibit, City Council meeting minutes. They
5 are public. Everyone has an opportunity to speak
6 there.

7 She says the public doesn't understand her
8 position. Well, quite frankly, I don't understand
9 her position. I don't know why she's here. I
10 don't know what she's bringing up that has any
11 import to what the Commission is here to decide.
12 These are all matters of local political concern.

13 And you can see the record -- or review the
14 public records and see that this city has provided
15 multiple opportunities for people to speak out on
16 this issue. And we have complied with the law, and
17 we believe that this motion was correctly granted
18 by the Prehearing Officer, and her motion for
19 reconsideration should be rejected. She's shown no
20 reason or irreparable harm, as she alleged, for
21 reconsideration.

22 CHAIRMAN GRAHAM: Anybody else?

23 Staff.

24 MR. MURPHY: Staff recommends that the motion
25 for reconsideration should be denied because it

1 fails to identify a point of law or fact that the
2 prehearing officer overlooked or failed to
3 consider, and instead, elaborates upon and reargues
4 matters that have already been considered by the
5 Prehearing Officer, thus it is that they don't meet
6 the standard for granting a reconsideration.

7 CHAIRMAN GRAHAM: Mr. Walls, Vero Beach, is
8 that a strong city manager or strong form mayor for
9 government?

10 MR. WALLS: Now you asked me a question I
11 don't know the answer to.

12 UNIDENTIFIED SPEAKER: City manager.

13 MR. WALLS: City manager. I have plenty of
14 support.

15 CHAIRMAN GRAHAM: You better thank those
16 people back behind you.

17 Seeing that it is a strong city manager form
18 of government, number one, and that they do have
19 the ability to pick whoever is going to be
20 representing --

21 MS. LARKIN: Mr. Chairman --

22 CHAIRMAN GRAHAM: -- I think both of those
23 things speak towards denying the motion, but
24 please, add to that, Ms. Larkin.

25 MS. LARKIN: Thank you for a little added

1 time.

2 As far as finding my reasons for setting
3 someone for hearing, I don't -- I am not aware that
4 putting in an email is something -- it's usually
5 put into the motion, which I did not put, you know,
6 that I wanted somebody who was the primary
7 spokesman or a spokesperson for the City.

8 I was specific about just having someone who
9 is -- has been speaking, and not necessarily on the
10 public record, and that's been important. And
11 again, especially towards standing, which we
12 couldn't address at the prehearing conference.
13 That was delayed, again, until today. So we have a
14 few things that have been pushed off until now.

15 As far as -- as I say, as far as the City
16 Manager, as I think we all know, city managers do
17 what the City Council tells them to do, and it
18 would be merely hearsay for him to speak as to
19 their intentions, or as to what they really meant
20 by, say, shutting down the commissions. What the
21 City Manager does is just make sure that those city
22 commissions are shut down.

23 So I think a decision-maker is important. I
24 think that's the only person who can help with us
25 our standing issues. And, again, Mayor Howell was

1 the vocal person who was trying very hard to make
2 sure that none of us spoke up. And I think that's
3 a very key issue here, especially, again,
4 concerning the Civic Association.

5 CHAIRMAN GRAHAM: Well, Mayor Howell can speak
6 specifically to his position, but how does he have
7 any more knowledge than the City Manager, who is
8 sitting in that same meeting, on how the collective
9 thought about that position?

10 MS. LARKIN: As far as intentions, I think
11 they do. I was City Council in Vero Beach, and I
12 know how that work. And a lot of times what you
13 are doing is only consulting among each other
14 during a hearing, but you are making decisions on
15 your own.

16 I mean, I could depose all five. I just
17 didn't want to be obnoxious about it. We only had
18 a certain amount of time. I had to pick one. I
19 picked one, that was the Mayor. He has been making
20 a lot of decisions, too, about procedure, and
21 certainly entertaining a lot of -- or interjecting
22 the ideas for a lot of these things. So he seemed
23 to be the perfect one.

24 Quite frankly, I could alter it to any others,
25 or I would accept all five, because I need to know

1 what it is that their intention was, and that goes
2 to the public interest. It goes very much to what
3 is good and bad for the population of both the
4 City, and certainly of the outside customers.

5 So if their intention is to represent the
6 outside city customers, I have not seen, you know,
7 anything in the public record that has been a
8 flat -- I have seen both. I have seen the public
9 records stating that we do represent the outside
10 customers. They are important to us. And then I
11 have the City Manager saying, we can only represent
12 the City customers.

13 I think that's a huge difference. And I think
14 the evidence that we are going to go through here
15 is very much about what happens in those
16 commissions, who is represented and who is making
17 decisions.

18 So I think it's very important that the
19 decision-makers are the ones who speak. And I -- I
20 know that a city manager is a very intelligent and
21 well-versed person, but he is also hired to do what
22 the City Council wants him to do.

23 CHAIRMAN GRAHAM: Thank you, Ms. Larkin.

24 Staff, do the parties to this case have
25 subpoena authority, or is it just the Commission

1 that has that?

2 MS. HELTON: They could come to the Commission
3 and ask -- could have asked the Prehearing Officer
4 or the Clerk to enter a subpoena.

5 CHAIRMAN GRAHAM: So it's just the Commission?
6 I mean, they have to come through us, and it's
7 through us, or through the Chair to do that
8 subpoena?

9 MS. HELTON: That's my understanding.

10 CHAIRMAN GRAHAM: Okay. Well, Ms. Larkin,
11 think at this point, I think we are past that. I
12 don't know if you had asked our Prehearing Officer
13 for a subpoena.

14 MS. LARKIN: I didn't have time, no, because I
15 knew pretty quick -- I had a subpoena actually out
16 on the road, but it didn't get to you, so, you
17 know --

18 CHAIRMAN GRAHAM: Well, we are going to deny
19 your motion. I will, however, give you some
20 flexibility when it comes to your ability to get
21 minutes and things along that line into the record,
22 because I think that addresses some of the things
23 specifically and that the parties that said that
24 may tie right into the things that you are saying.

25 MS. HELTON: Mr. Chairman, if could I just

1 make a point of order. Because it was a Prehearing
2 Officer's order that Ms. Larkin sought
3 reconsideration of, the full Commission would need
4 to vote whether to approve or deny that motion for
5 reconsideration.

6 CHAIRMAN GRAHAM: Okay. We have a comment
7 from Commissioner Brown, and then we will take that
8 vote.

9 COMMISSIONER BROWN: I was just going to make
10 the motion to move to deny the motion for
11 reconsideration.

12 COMMISSIONER POLMANN: Second.

13 CHAIRMAN GRAHAM: Okay. Any further
14 discussion?

15 Seeing none, all in favor, say aye.

16 (Chorus of ayes.)

17 CHAIRMAN GRAHAM: Any opposed?

18 (No response.)

19 CHAIRMAN GRAHAM: By your action, you have
20 approved that motion.

21 It sounds like a good thing I made that
22 motion.

23 Okay. Staff, tell me where we are.

24 MR. MURPHY: I think you are at opening
25 statements.

1 CHAIRMAN GRAHAM: Okay. Now is the -- opening
2 statements. How much time do we have for opening
3 statements?

4 MR. MURPHY: 10 minutes for each side, and
5 it's the petitioner and the municipal government
6 and county government, and on the other side is OPC
7 and the CAIRC.

8 CHAIRMAN GRAHAM: Okay. You guys heard that.
9 You guys, I take it, have already split up your
10 time.

11 Okay, go.

12 MR. ANDERSON: Great. Thank you.
13 Commissioners, we appreciate the opportunity to
14 appear before you today.

15 We are here seeking your approval of two
16 petitions that will allow Vero Beach electric
17 utility customers to be served by Florida Power &
18 Light Company.

19 The first petition jointly filed by the City
20 of Vero Beach is to eliminate our existing
21 territorial agreement. It brings them together.
22 The second petition is for approval to charge Vero
23 Beach customers FPL electric rates, which are much
24 lower.

25 In the second petition, we are also requesting

1 recovery of a positive acquisition adjustment and
2 power purchase agreement costs. These approvals
3 are needed for the transaction to close and for
4 Vero Beach customers to be transitioned to FPL
5 electric service.

6 This transaction has taken almost 10 years in
7 negotiations among many parties to consummate.
8 From the outset, FPL's commitments were to bring
9 lower rates to Vero Beach electric customers and
10 ensure that FPL's existing customers would not be
11 harmed. These goals have been more than
12 accomplished.

13 Vero Beach's approximate 35,000 electric
14 utility customers will receive immediate reductions
15 in their electric rates, while existing FPL
16 customers are projected to benefit by about
17 \$135 million in present value revenue requirements,
18 reduced costs over time.

19 I am sure counsel for Vero Beach, Indian River
20 County and Indian River Shores will expand on these
21 benefits.

22 In addition to the broad group of
23 beneficiaries to the transaction -- and let's not
24 forget about the Orlando Utilities Commission, the
25 20 municipalities of the Florida Municipal Power

1 Association, all of whom consented to this
2 transaction, the transaction brings an end to the
3 disenfranchisement tension that has long existed
4 among Vero Beach customers who live outside the
5 City's municipal limits.

6 As you know, these tensions have engendered
7 frustration and significant litigation before this
8 commission, the Florida Supreme Court, also civil
9 actions in the Indian River County circuit court.

10 The importance of this transaction to the
11 community is also reinforced by the supportive
12 letters and public statements that have made their
13 way into these dockets, and I am sure public
14 comments will you hear this afternoon.

15 For this transaction to happen and resolve all
16 the issues around the City's debt and contract
17 obligations, FPL is committed to make an investment
18 of \$185 million. That amount reflects the
19 negotiated cost to acquire the electric utility
20 assets. Like other prudently incurred utility
21 investments that FPL makes to save its customers
22 money, FPL is seeking to recover that investment.
23 The acquisition adjustment being requested
24 represents part of that investment, part of the
25 amount it took to get the deal done.

1 Our net benefits analysis demonstrates the
2 total investment saves the customers about
3 135 million present value after fully accounting
4 for recovery of the investment, including the
5 acquisition adjustment.

6 You are well aware of the overall facts, but
7 let me briefly summarize the evidence that has been
8 presented.

9 First, the circumstances, as you have all
10 heard, giving rise to this transaction are
11 extraordinary. This is shown in the prefiled
12 testimony of FPL witnesses Sam Forrest and Terry
13 Deason, who will you hear from today.

14 Witness Forrest's testimony describes the long
15 path that led to the transaction, as well as the
16 benefits that Vero Beach customers will enjoy as
17 FPL customers.

18 Witness Deason walks the Commission through
19 the many reasons why this transaction arises from
20 and constitutes extraordinary circumstances and is
21 in the public interest.

22 And as Mr. Deason provides his opinion and
23 explains why approval of the proposed acquisition
24 adjustment reflects sound regulatory policy. It's
25 consistent with prior Commission precedent.

1 Second, the transaction provides the very
2 substantial customer savings benefits of
3 135 million in present value. Mr. Bores
4 demonstrates the savings in the prefiled testimony
5 that was updated in errata.

6 Third, one transitioned to FPL's service and
7 FPL's lower electric rates, Vero Beach customers
8 will immediately save substantially in electricity,
9 service center FPL rates will save the typical Vero
10 Beach residential customer 22 percent on their
11 level truck bill, or \$330 per year per residential
12 customer. FPL Witness Tiffany Cohen provided
13 testimony and computations which are in the record.

14 Fourth, the accounting for the transaction is
15 appropriate. FPL Witness Keith Ferguson, who is
16 here today, explains the transaction's accounting
17 entries and how they are consistent with the
18 relevant to accounting standards.

19 FPL also presented the testimony of David Herr
20 of Duff & Phelps who conducted a fair value
21 assessment for the transaction, and whose testimony
22 supports the reasonableness of the purchase price.

23 In conclusion, for all the reasons I have
24 stated, this is a case of extraordinary
25 circumstances, and one in which granting the

1 approvals requested is solidly in the public
2 interest. That is why we are seeking approval of
3 the request before you today.

4 We yield the remaining of our opening time to
5 our County and our municipal partners.

6 CHAIRMAN GRAHAM: You have about five minutes
7 left.

8 MR. WALLS: Good morning again. I will be
9 brief. Mike Walls on behalf of the City of Vero
10 Beach.

11 The City Council voted for this sale and
12 signed this sale agreement because it benefits the
13 City, its citizens and its electric customers both
14 in and outside the City. The evidence demonstrates
15 that FP&L's customers benefit, too. This sale will
16 also end years of legal and regulatory disputes
17 between the City, the County and the Indian River
18 Shores, and years of disputes with its utility
19 customers outside the City over city decisions,
20 good or bad in hindsight, regarding rates and
21 service.

22 The City wants out of the electric utility
23 business, and it should not have to be on the verge
24 of bankruptcy, like the City of Sebring, to get out
25 of the business. It has taken a monumental effort

1 by the City, FPL, FMPA, its member cities, over a
2 decade to get to this point, and now the City needs
3 your approval of these petitions in this docket to
4 close the deal.

5 The evidence here is overwhelmingly in support
6 of granting those petitions, and we request your
7 vote of approval to help the City close this deal.

8 Thank you.

9 CHAIRMAN GRAHAM: Four minutes left.

10 MR. MAY: Thank you, Mr. Chairman. I will cut
11 to the chase.

12 Mr. Walls just said that Vero Beach shouldn't
13 have to be on the verge of bankruptcy like the City
14 of Sebring in order to exit the electric utility
15 business. He is absolutely right.

16 I represented Sebring in that case 25 years
17 ago, and I can attest that the Sebring model was
18 never intended to hamstring future commissions from
19 trying to solve a problem. Just the opposite.

20 The Sebring case encourages resourceful
21 problem-solving, and is based on the premise, and I
22 quote, "unique problems require unique solutions."
23 Please keep that in mind as you hear the evidence
24 in this case.

25 As the case unfolds, I would also ask that you

1 keep in mind what this proceeding is all about; but
2 perhaps more importantly, I would ask for you to
3 consider what this case is not about.

4 With respect, this is not the forum for former
5 elected officials to complain about local political
6 decisions, or why they lost local elections.
7 Instead, this proceeding is about a unique
8 opportunity for the Commission to allow a
9 transaction to close that would settle a complex
10 dispute that has plagued a region for decades, and
11 at the same time, provide substantial benefits to
12 all stakeholders.

13 The evidence will show that if you allow this
14 sale to close, thousands of Vero electric customers
15 will be given real rate relief. Thousands of
16 disfranchised customers of Vero Electric will be
17 given the regulatory protection of this commission.
18 FPL's general body of ratepayers will see present
19 value savings of approximately \$135 million.
20 Proceeds from the sale will give the City millions
21 of dollars to use as it deems appropriate, and
22 litigation pending before you in Docket No.
23 20160049 regarding the Town's constitutional claims
24 will be resolved ones and for all.

25 Finally, Commissioners, I would ask that you

1 keep in mind that this transaction is not only
2 unique. It's carefully balanced. Please know that
3 the sale will not close, and it's many public
4 benefits will not be realized if the regulatory
5 approvals requested by FPL and the City are not
6 granted.

7 Thank you, and I appreciate the opportunity to
8 appear before you today in support of this sale.

9 CHAIRMAN GRAHAM: You got about a minute left.

10 MR. REINGOLD: Good morning. I am joined this
11 morning by Chairman O'Bryan and Commissioner Zorc.

12 The Indian River Board of County Commissioners
13 has long believed that the best thing that can be
14 done for the County's economic development and our
15 low income families would be for all county
16 electric customers to have lower FPL rates.

17 The County has both Vero Beach and FPL
18 customers living within its limits. It's the Board
19 of County Commissioners of Indian River County's
20 duty to protect the interests of both. That is why
21 the Board supports the decision, or the petitions
22 before you today.

23 The Indian River County Board of County
24 Commissioners would not simply sacrifice the
25 customers served by FPL in order to get a better

1 deal for those customers served by the City of Vero
2 Beach. The granting of these petitions provides
3 for fairness for all customers. Therefore, the
4 County -- the Indian River County Board of County
5 commissioners supports the approval of the
6 petitions before you today.

7 Thank you very much.

8 CHAIRMAN GRAHAM: Thank you.

9 Other side.

10 MS. LARKIN: Good morning again,
11 Commissioners.

12 The Civic Association very much appreciates
13 your time and your attention to these complicated
14 issues. While you are very familiar with FPL, you
15 may not know much about the Civic Association, so I
16 am going to take just a short amount of time to
17 give you some background that might help you
18 understand our participation here, and our goals.

19 Our group began going to a serious violation
20 of the trust of Vero Beach. This is back in the
21 '60s. Height limits were an issue, and since the
22 rest of Florida grew, our voters wanted to ensure a
23 good quality of life, so height limits were put
24 into the code. It was a tremendous shock then when
25 highrises began growing on the beach, two of them.

1 The voting public, who thought they had been
2 protected, found out they were not. That three
3 people on the City Council could, indeed, change
4 the law, make an exception to the law, and under
5 cover and out of the sunshine, they voted to do
6 that. People were outraged. So a grassroots group
7 of people became watchdogs of the government and
8 also proponents for protecting the will of the
9 people.

10 The Civic Association incorporated in 1970,
11 and helped to pass a referendum that placed height
12 limitations for buildings into the city code. So
13 now that anybody who wants to go outside the
14 limitations of the code has to go to the vote of
15 the people.

16 Just to note, there hasn't been any successful
17 referendums.

18 Then in the '70s, right, nearly after that,
19 FPL made its first attempt to buy the City
20 electric. The Civic Association was in favor of
21 the sale at that time. We were trying to follow
22 the situation and follow the details, but the
23 effort did fail, and FPL withdrew its offer.

24 Some of that was because of the challenges of
25 the anti-competition laws at that time, but it was

1 also discovered that in the information that we
2 were relying on, and what the public was relying
3 on, was being given in conflicting testimony. That
4 which was being presented by FPL conflicted with
5 other testimony by FPL, and gave us pause, and we
6 started looking into it, but then the case was
7 dropped.

8 So bringing us to today, at least the past few
9 years, the Civic Association has been attempting to
10 represent the voices that have been ignored or
11 intimidated into silence these past couple years.

12 As you will note from the testimony of Ken
13 Daige, and from the motions that are part of this
14 record and that I mentioned previously, it has been
15 difficult to face the fiery rhetoric from public
16 officials, and especially from public officials.
17 It's one thing to have a discussion between
18 opposing parties, but to have the City Council
19 stating that we are out of line by bringing these
20 details to the floor, I think, is beyond the pale.

21 After Mayor Howell posted our addresses on
22 Facebook, Ken Daige's car windows were smashed out
23 in front of his house. We think that this is a
24 real indication of why we have a problem here. We
25 haven't had an open discussion, why we haven't had

1 a lot of people to speak out on our behalf. And we
2 any that's exceedingly important, because we know
3 you care, you are the Public Service Commission.
4 That's your role, listening to the public. We
5 would like to hear both sides.

6 As you have seen in our other witness
7 testimony, the current City Council has also shut
8 down input from its commissions, from its experts.
9 And most of its commissions are, or they were, very
10 much experts in the fields of utility and in
11 finance.

12 We find those attempts to silence their own
13 commission, their own experts and even their own
14 staff very questionable. And having do the due
15 diligence normally done in such an important case
16 as this, where you are talking about rates,
17 differentials and accounting problems, we think
18 it's quite telling that they would have to turn
19 away people who are offering good information.
20 There would be a great deal of more sworn testimony
21 we think from the City, from the shores, from the
22 County, if there has at least as much from the last
23 informal hearing, or non-sworn testimony hearing,
24 but there isn't.

25 Our interest in the participation in this

1 issue has been continuous. We have been involved
2 from the beginning. We sent letters to the City
3 Council. We made presentations to the City
4 Council, and we've had open hearings around town
5 about the many problems. Everyone speaks to the 10
6 years of how this has gone forward, but we have
7 been involved pointing out why this is such a
8 difficult issue to deal with.

9 CHAIRMAN GRAHAM: Ms. Larkin, just to let you
10 know, you are halfway through.

11 MS. LARKIN: Yea, thank you. I got my little
12 timer.

13 It wasn't until the citizens provided expert
14 testimony on the accounting issues that really let
15 us see, or verify, really, the discrepancies, the
16 problems and the errors in what FPL has been
17 providing to the City Council and to the public.

18 And basically our hair stood on end that there
19 are nine and 10 really basic things just in that
20 first review that are key to making this deal work,
21 or not work. And if it doesn't work, that then
22 impacts on whether those real, supposed rate
23 differences, are going to happen.

24 The fact that nobody on the Vero Beach City
25 Council has been alarmed, hasn't even brought up

1 this conflicting testimony. They have not brought
2 another expert, the City itself, which is at risk
3 if these data, if these opinions aren't addressed.
4 Endless calls for careful review of this deal,
5 including the details of what we are talking about
6 today have been ignored.

7 Our main focus today will be on extraordinary
8 circumstances basically, you know, the public
9 awareness, the public interest, it's what we talk
10 about and what the Civic Association is about, but
11 also about the arm's-length deal, or whether or not
12 there was one, whether there was negotiations and.
13 Testimony from our witnesses indicate that there is
14 deep questions about that, precedent and the issue
15 of the disfranchised customers. And I know we will
16 talk about that in testimony, but I want to make
17 sure that we are focused on whether or not that
18 actually is a problem.

19 Another thing to point out about this process
20 is the City has been winning. The controversies
21 that the County and the City and the Shores have
22 brought to the City have all been won by the City
23 until two years ago. They have been using
24 experienced attorneys, attorneys you are very
25 familiar with, and they were getting results at

1 every turn. But as proven in our testimony, the
2 City has basically relied on FPL data and
3 projections shutting down the experts and firing
4 their very successful attorney.

5 We wonder, why do you fire your winning team?
6 Why would you trade away your experts? That
7 attorney was taking on experts who could have done
8 what Lane Kollen was doing. We don't understand,
9 and we think that goes to the public interest.

10 We've worked hard in this docket to produce
11 useful and informative information directed to
12 these issues and tightly connected to what we are
13 talking about today. We've worked hard within the
14 short timeline, and we think that there is a lot of
15 more evidence that could be provided.

16 We hope that we can clearly make the case to
17 you that what you are hearing and what you did hear
18 in the first hearing on this wasn't at all what the
19 full truth would be.

20 There are a lot of things that people have
21 said aren't possible, things that aren't ever going
22 to happen plus, but we think FPL does have options,
23 and we shouldn't have this being based solely on
24 the discrepancy in rates, which seems to be the
25 backbone of the entire situation here. And as you

1 know, just a difference in rates shouldn't be the
2 entire discussion.

3 So once again, we appreciate the time that you
4 are taking to listen to our testimony and our
5 unique problems. Thank you.

6 CHAIRMAN GRAHAM: Thank you.

7 OPC, you got about 90 seconds.

8 MS. MORSE: Good morning.

9 As outlined in the testimony of the citizen
10 expert Lane Kollen, OPC supports the acquisition of
11 the City of Vero Beach's electric utility by FPL,
12 and OPC fully supports lower rates for the
13 customers currently served by the City's utility.

14 The accounting treatment proposed by FPL in
15 this transaction would include the largest positive
16 acquisition adjustment ever proposed for a rate
17 recovery, and it should be scrutinized accordingly,
18 especially given that it could impact future larger
19 positions by utilities in Florida.

20 To be clear, rate recovery of the acquisition
21 adjustment as proposed by FPL in this case means
22 that all of FPL's customers, both current and
23 future, would bear the entirety of the cost instead
24 of the Utility's shareholders bearing any portion
25 of that cost.

1 Objective scrutiny of the accounting treatment
2 is required, not only to protect the interest of
3 FPL's customers, but also to protect the interest
4 of the City's customers should they become FPL
5 customers and be asked to pay for this and similar,
6 if not exponentially larger acquisition adjustments
7 in the future.

8 OPC's review of the transaction has been
9 focused on ensuring that all aspects of the
10 transaction are consistent with Florida law and
11 commission precedent. As referenced in Mr.
12 Kollen's testimony, FPL has alternately relied on
13 three after economic studies in this case after
14 acknowledging various errors in each previous
15 study, with the result being that three different
16 iterations of the alleged savings forecast to be
17 gleaned from the transactions. The conflicting
18 data shows that FPL's studies are not adequately
19 reliable, and thus, should not be used as a basis
20 for recovery of the proposed acquisition premium
21 from customers.

22 We commend our expert's testimony for your
23 consideration in developing the order coming out of
24 this case in establishing the policies that may be
25 applicable in the future.

1 Thank you.

2 CHAIRMAN GRAHAM: Thank you, OPC.

3 All right. Staff, are we to swear any
4 witnesses?

5 MR. MURPHY: Yes. It would be time to swear
6 them in.

7 CHAIRMAN GRAHAM: Okay. We are going to swear
8 in witnesses at two different times. Right now we
9 are going to swear in the witnesses that are
10 speaking, that are going be -- that provided direct
11 testimony.

12 If I can get Witness Forrest, Ferguson,
13 Deason, O'Connor and Barefoot -- I believe that's
14 all them -- to stand and raise your right hand.

15 (Whereupon, witnesses were sworn.)

16 CHAIRMAN GRAHAM: Thank you.

17 Staff, did I get all these witnesses?

18 MR. MURPHY: You did.

19 CHAIRMAN GRAHAM: Okay. So the first witness
20 is going to be -- well, I will let their attorney
21 call you up. But just to let you know that there
22 is no friendly cross. You will have three minutes
23 to summarize your testimony. Those of you that are
24 providing direct and rebuttal are going to be
25 allowed a little bit more time, just because your

1 BY MR. RUBIN:

2 Q Good morning, Mr. Forrest. Have you been
3 sworn?

4 A Yes, I have.

5 Q Please state your name and address for the
6 record.

7 A My name is Sam Forrest. My address is 700
8 Universe Boulevard in Juno Beach, Florida, 33408.

9 Q By whom are you employed, and in what
10 capacity?

11 A I am the Vice-President of Energy, Marketing
12 and Trading for Florida Power & Light.

13 Q Have you prepared and caused to be filed in
14 case 18 pages of direct prefiled testimony on
15 November 3rd of 2017?

16 A Yes, I have.

17 Q Do you have any changes or revisions to your
18 prefiled direct testimony?

19 A Not to my direct, no.

20 Q If I asked you the same questions contained in
21 your direct testimony, would your answers today be the
22 same?

23 A Yes, they would.

24 MR. RUBIN: Chairman Graham, I would ask that
25 Mr. Forrest's prefiled direct testimony be inserted

1 into the record as though read.

2 CHAIRMAN GRAHAM: We will insert Mr. Forrest's
3 prefiled direct testimony into the record as though
4 read.

5 (Whereupon, prefiled testimony was inserted.)

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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 what is your position?**

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. Please describe your educational background and professional**
11 **experience.**

12 A. I hold a Bachelor of Science in Electrical Engineering from Texas A&M
13 University and a Masters of Business Administration from the University of
14 Houston. Prior to being named Vice President of EMT for FPL in 2007, I was
15 employed by Constellation Energy Commodities Group as Vice President,
16 Origination. In this capacity, I was responsible for managing a team of power
17 originators marketing structured electric power products in Texas, the Western
18 United States, and Canada.

19

20 Before joining Constellation, from 2001 to 2004, I held a variety of energy
21 marketing and trading management positions at Duke Energy North America
22 (“DENA”). Prior to DENA, I was employed by Entergy Power Marketing
23 Corp. (“EPMC”) in several positions of increasing responsibility, including

1 Vice President – Power Marketing following EMPC’s entry into a joint
2 venture with Koch Energy Trading.

3

4 Prior to my entry into the energy sector, I was involved with a successful
5 start-up organization in the automotive industry from 1996 to 1998. From
6 1987 to 1996, I worked for AlliedSignal Aerospace at the Johnson Space
7 Center in Houston, Texas, in increasing roles of responsibility.

8 **Q. Please describe your duties and responsibilities in your current position.**

9 A. I am responsible for the overall direction and management of the EMT
10 Business Unit, which handles FPL’s short-term and long-term fuel
11 management and operations. These fuels include natural gas, residual and
12 distillate fuel oils, and coal. Additionally, EMT is responsible for FPL’s long-
13 term fuel transportation and storage contracts, power origination activities and
14 short-term power trading and operations. EMT is an active participant in the
15 short-term and long-term natural gas markets throughout the Southeastern
16 United States.

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

18 A. Yes. I am sponsoring the following exhibits, which are attached to my
19 testimony:

- 20 • SAF-1 – Asset Purchase and Sale Agreement
- 21 • SAF-2 – Power Purchase Agreement with OUC

1 **Q. What is the purpose of your testimony in this proceeding?**

2 A. The purpose of my testimony is to (i) provide an overview of FPL's
3 acquisition of the City of Vero Beach ("COVB" or the "City") electric utility
4 ("COVB Transaction") and to detail the various components of the Asset
5 Purchase and Sale Agreement ("PSA") executed between FPL and COVB on
6 October 24, 2017, (ii) outline the history of FPL's relationship with COVB
7 and discuss the process of negotiating the PSA, (iii) detail the purpose of the
8 Power Purchase Agreement ("PPA") with Orlando Utilities Commission
9 ("OUC") and how it interrelates with the acquisition, and (iv) discuss the
10 benefits of the COVB Transaction to both existing FPL customers and COVB
11 customers.

12 **Q. Please summarize FPL's position in this proceeding.**

13 A. The COVB Transaction will benefit both COVB customers and existing FPL
14 customers. It will provide rates among the lowest in Florida and best-in-class,
15 highly reliable service to current COVB customers, and it will benefit existing
16 FPL customers primarily through the growth in FPL's customer base,
17 resulting in substantial customer savings, which are estimated to be \$105
18 million cumulative present value of revenue requirements ("CPVRR"). The
19 negotiated terms in the acquisition also benefit COVB through the additional
20 revenues in support of the City's continuing, non-utility operations. In total,
21 the COVB Transaction is a "win-win" value proposition that FPL requests this
22 Commission approve.

1 **Q. Who will be testifying on FPL's behalf in this proceeding?**

2 A. In addition to me, the following witnesses testify as part of FPL's case:

- 3 • Keith Ferguson, FPL Controller, describes the accounting journal
4 entries, FPL's request for approval of an acquisition adjustment, and
5 cost recovery related to the OUC PPA;
- 6 • Scott Bores, Senior Director of Financial Planning and Analysis,
7 addresses the results of FPL's CPVRR analysis;
- 8 • Tiffany Cohen, Senior Manager of Rate Development , provides rate
9 comparisons between FPL and COVB,
- 10 • Terry Deason, Radey Law Firm, discusses the regulatory policy
11 considerations regarding acquisition adjustments; and
- 12 • David Herr, Duff & Phelps, LLC, provides the results of the fair value
13 analysis of the COVB electric system.

14 **Q. Please summarize your testimony.**

15 A. The acquisition of the COVB electric utility by FPL was primarily driven by
16 the strong desire of COVB customers to enjoy lower electric rates. Since
17 2009, the City and FPL have worked together to negotiate terms under which
18 FPL may acquire COVB's electric system at a fair value. Both parties agreed
19 early in the process to target two primary objectives: (1) existing FPL
20 customers would not subsidize the transaction through rates; and (2) COVB
21 customers would enjoy the same retail rates as existing FPL customers.

22

1 Throughout this process, one of the main needs for COVB has been to address
2 power contracts to which it is a party, including a 20-year wholesale services
3 agreement with OUC to provide supplementary power to COVB, due to
4 expire in 2023 (“Wholesale Services Agreement”); and a series of three
5 contracts for the City’s share of the Florida Municipal Power Agency
6 (“FMPA”) generation entitlements from certain power plants, namely St.
7 Lucie Unit 2 and Stanton Units 1 and 2. COVB has established a path
8 forward with both OUC and FMPA to terminate COVB’s Wholesale Services
9 Agreement, as well as COVB’s obligations to FMPA for the FMPA
10 generation entitlements, contemporaneous with the closing of the PSA. As
11 part of the overall proposal and to enable COVB to terminate its obligations
12 with OUC, FPL has negotiated a short-term PPA with OUC for capacity and
13 energy, commencing at the close of the COVB Transaction and extending
14 through 2020.

15
16 Upon constructing a settlement plan which extricates COVB from its
17 Wholesale Services Agreement and entitlement obligations, FPL and COVB
18 finalized their negotiations for the purchase and sale of the COVB electric
19 system. On October 24, 2017, the COVB City Council approved FPL’s
20 purchase of substantially all of the assets of the COVB electric utility for a
21 cash payment of approximately \$185 million, as well as additional
22 consideration which is more fully described later in my testimony.

23

II. OVERVIEW OF COVB TRANSACTION

1
2
3 **Q. Please describe the Vero Beach electric utility.**

4 A. The COVB electric utility is a municipally-owned electric provider to the
5 City, portions of Indian River County and the Town of Indian River Shores.
6 With a 2016 peak demand of approximately 180 MW, the COVB electric
7 utility serves approximately 34,000 customer accounts, of which
8 approximately 60 percent are geographically located outside of the City limits.
9 COVB is a member of FMPA, a wholesale power agency owned by a number
10 of municipal electric utilities.

11
12 To serve its load, COVB uses two separate sources of generation. To serve
13 base load needs, COVB owns, through FMPA, a share of FMPA's generation
14 entitlements in St. Lucie Unit 2 (COVB's share is 1.34 percent, approximately
15 11 MW), Stanton Unit 1 (COVB's share is 4.81 percent, approximately 21
16 MW) and Stanton Unit 2 (COVB's share is 3.83 percent, approximately 16
17 MW). St. Lucie Unit 2 is majority owned and operated by FPL, and both
18 Stanton units are majority owned and operated by OUC. Since 2010, COVB
19 has obtained supplementary power capacity and energy above its FMPA
20 generation entitlements under a Wholesale Services Agreement with OUC.
21 Prior to 2010, COVB was an active participant in FMPA's All Requirements
22 Project ("ARP"), a wholesale power supply project that currently services 13
23 cities within FMPA's membership.

1 The COVB electric utility consists of transmission and distribution assets that
2 include 10 substations, 44 miles of 138kV and 69kV transmission lines and
3 approximately 509 miles of 13.8kV or less of distribution assets. The COVB
4 electric utility employs approximately 60 employees.

5 **Q. How is the COVB electric utility governed?**

6 A. The COVB City Manager serves as the principal manager of the electric
7 utility, and governing authority rests with the COVB City Council.
8 Additionally, the City Council appoints volunteer members to the Utilities
9 Advisory Commission, whose charter is to advise the City Council on utility
10 matters. The COVB City Council has sole ratemaking authority for its
11 electric utility and adjusts rates as necessary to meet revenue requirements.

12 **Q. Please provide background on the series of events leading up to executing
13 the PSA with COVB.**

14 A. Historically, FPL has had lower electric rates for the typical residential
15 customer than COVB could provide, primarily due to their contracted
16 purchased power costs and a lack of economies of scale when compared to
17 larger providers such as FPL.

18

19 In late 2007, a grassroots movement by some COVB electric customers
20 proposed that the COVB City Council evaluate the divestiture of their electric
21 utility in order for customers to enjoy lower electric rates. In December 2009,
22 the City issued a letter to FPL, Progress Energy Florida, JEA, FMPA, Tampa
23 Electric Company, OUC and Gulf Power Company soliciting their interest in

1 exploring an acquisition of the COVB electric utility. Of the seven entities,
2 FPL was the only organization to respond with interest.

3
4 FPL has worked with COVB over the last several years to develop a path to
5 allow COVB's exit from the OUC Wholesale Services Agreement and FMPPA
6 generation entitlements. During that time, FPL has also conducted
7 preliminary due diligence on the feasibility of acquiring the COVB electric
8 utility. These efforts included records review, site visits, a series of meetings
9 and interviews with various COVB officials and electric utility employees,
10 and significant financial analysis. FPL's evaluation of acquiring COVB's
11 electric utility was guided by two fundamental objectives; (1) existing FPL
12 customers would not subsidize the transaction through rates; and (2) COVB
13 customers would enjoy the same retail rates as existing FPL customers, which
14 continue to be among the lowest in Florida for typical residential bills and for
15 commercial and industrial bills. In May 2017, FPL and COVB executed a
16 non-binding Letter of Intent ("LOI") that established the baseline offer terms,
17 including: (a) COVB customers will receive FPL's approved retail rates; and
18 (b) eligible COVB electric utility employees will receive offers of
19 employment from FPL. The LOI acknowledged that COVB was bound by
20 various contractual obligations that needed to be settled prior to the closing of
21 the acquisition, specifically, termination of the partial requirements Wholesale
22 Services Agreement with OUC and termination and release of all of COVB's
23 obligations and liabilities to FMPPA for the FMPPA generation entitlements.

1

2 On October 24, 2017, attorneys representing COVB in these negotiations
3 presented a final PSA to the City Council, which voted in favor of executing
4 the agreement.

5 **Q. Please describe the terms of the PSA.**

6 A. The PSA, as shown in Exhibit SAF-1, details all of the terms and conditions
7 associated with FPL's acquisition of the COVB electric utility. FPL and
8 COVB negotiated a cash payment of approximately \$185 million as well as
9 additional consideration in the form of lease payments for real estate and fiber
10 optic cable, a substation relocation, and various other minor agreements to
11 facilitate the transaction. All the aforementioned economic provisions as part
12 of the overall purchase agreement are captured in the CPVRR analysis as
13 described by FPL witness Bores. In consideration for the total purchase price,
14 COVB will transfer title to electric utility assets including all transmission,
15 distribution, customer service and streetlight assets, and assignable real
16 property interests. In accordance with Section 3.1 of the PSA, the COVB
17 Transaction will close when all conditions precedent to agreement have been
18 satisfied, but in no event later than December 31, 2018, at which point the
19 agreement terminates unless mutually extended by both parties.

20 **Q. Please describe how the purchase price will be applied.**

21 A. Of the \$185 million cash purchase price, a payment of up to \$108 million may
22 be transferred directly to FMPA, at COVB's direction, to satisfy COVB's
23 obligations and liabilities to FMPA under their respective agreements.

1 Additionally, up to \$20 million may be transferred directly to OUC, at
2 COVB's direction, to settle COVB's share of its termination obligations and
3 liabilities to OUC. An estimated \$20.4 million will be used by COVB to
4 debase the current outstanding COVB electric utility bonds. \$2 million of the
5 cash purchase price is designated for FPL's right to use the parcel of land on
6 which a new substation will be located. The remaining \$34.6 million will be
7 paid directly to COVB at their direction.

8 **Q. Are there any assets that are excluded from the PSA?**

9 A. Yes. Section 2.2 of the PSA outlines the excluded assets. Notable assets
10 specifically excluded are cash and cash equivalents, accounts receivables,
11 customer deposits, the fiber optic system jointly owned among COVB, Indian
12 River County, and the School District of Indian River County, and COVB's
13 pension plan assets. Also, COVB is retaining partial interests in various
14 easements in order to continue to operate its remaining municipal utility
15 services.

16 **Q. How did FPL determine the purchase price for the acquisition?**

17 A. The cash purchase price is the result of FPL's and COVB's negotiations,
18 subject to the constraint that FPL would not agree to any terms that would
19 result in existing FPL customers subsidizing the transaction. In addition to the
20 cash payment, COVB will receive various annual revenues from FPL,
21 including a dark fiber license (Exhibit L-1 of the PSA), substation and
22 warehouse leases at the COVB airport (Exhibits I-1A, I-1B and I-2 of the
23 PSA), franchise revenues associated with the franchise ordinance (Exhibit E

1 of the PSA), and property taxes on FPL's newly acquired and constructed real
2 and personal property.

3

4 **III. OUC POWER PURCHASE AGREEMENT**

5

6 **Q. Please describe why FPL negotiated the PPA with OUC.**

7 A. Obtaining COVB's release from its existing wholesale contract with OUC is a
8 necessary step to proceed with FPL's acquisition of the City's utility. OUC
9 stated they would not grant this release without additional compensation
10 beyond the \$20 million that COVB committed to pay from the proceeds of the
11 sale. As such, FPL found a way to bring additional value to OUC via a new
12 PPA and unlock the savings that FPL's existing customers stood to realize
13 from consummating the overall acquisition.

14 **Q. Please provide an overview of the PPA.**

15 A. The PPA, shown in Exhibit SAF-2, is a day-ahead call option for 85 MW
16 commencing at the close of the COVB Transaction, extending through the end
17 of 2020. The original Wholesale Services Agreement between OUC and
18 COVB was priced at OUC's actual fuel and fuel-related expenses necessary to
19 serve OUC load, as well as COVB's energy requirements, subject to monthly
20 true-ups. Rather than be subjected to an unknown energy price, FPL and
21 OUC negotiated a new PPA that is structured as a heat rate call option. This
22 PPA will effectively be exercised as a peaking option for FPL to use to cover
23 load during periods of high demand. In order to determine the impact to the

1 overall COVB transaction, FPL calculated the heat rate call option by using its
2 GenTrader model. When modeled over the approximately two-year period
3 from an avoided cost perspective, FPL estimates that FPL customers will
4 receive a total of approximately \$6.9 million in fuel savings, compared to the
5 total fixed costs of \$23.5 million. .

6
7 The impacts of the PPA are considered in both the CPVRR calculation
8 covered by FPL witness Bores and the accounting treatment and cost recovery
9 covered by FPL witness Ferguson. FPL proposes to recover these costs
10 through the Company's fuel and capacity clauses.

11

12 **IV. BENEFITS OF THE TRANSACTION**

13

14 **Q. How does the COVB Transaction benefit COVB customers?**

15 A. COVB's intent in selling its electric utility is to lower electric rates for its
16 customers and to relieve COVB government from the risks and burdens
17 associated with managing and operating an electric utility. Because FPL's
18 residential electric rates are among the lowest in Florida, and because the
19 service territories are adjacent, the COVB City Council and their electric
20 customers overwhelmingly supported the transaction. The testimony of FPL
21 witness Cohen addresses in more detail the favorable comparison between
22 FPL's and COVB's rates.

1 **Q. Will the COVB Transaction also provide quantifiable benefits to FPL's**
2 **existing customers?**

3 A. Yes. As discussed in the testimony of FPL witness Bores, FPL's existing
4 customers are projected to benefit from reduced responsibility for revenue
5 requirements over a thirty-year analysis period with a cumulative present
6 value benefit of \$105 million. This is largely due to the positive effect of
7 spreading FPL's fixed costs of operation over a larger total customer base
8 when the COVB customers are added, which more than offsets the costs of the
9 transaction and the costs of serving those new customers.

10 **Q. Is the COVB Transaction also consistent with the five factors the**
11 **Commission considers in determining whether to allow the inclusion of**
12 **an acquisition adjustment for ratemaking purposes?**

13 A. Yes. FPL witness Deason indicates that the Commission typically considers
14 five factors when determining whether to allow an acquisition adjustment for
15 ratemaking purposes. I list those factors below and provide a summary of
16 how the COVB Transaction should be viewed with regard to each factor:

17 • Increased Quality of Service – COVB customers will benefit from
18 excellent quality of service through FPL's award-winning reliability and
19 customer service. FPL continues to maintain 99.98 percent reliability
20 across our service territory with an increased focus on improving our
21 electric infrastructure through storm hardening, vegetation management
22 and rapid response time. In the event of an outage, COVB uses an on-call
23 system during off-hours where on-call employees are called on to respond

1 to the outage. FPL employees operate 24 hours per day to service customer
2 needs. In addition to service during an outage, COVB customers will
3 benefit from improved redundancy by virtue of being surrounded by FPL's
4 service territory and directly interconnecting to our system.

5
6 FPL will offer COVB customers a full-service customer care center that
7 also operates on a 24-hour schedule and a customer advocacy team
8 dedicated to resolving customer issues as needed. Larger commercial
9 customers may have a dedicated account manager available to service their
10 account and optimize any energy-related savings through various FPL
11 programs. FPL will offer some of the same billing payment options COVB
12 customers currently enjoy, such as paying online, by phone, by mail and
13 budget billing programs. COVB customers will also have the ability to
14 participate in FPL's conservation and demand side management programs.
15 Finally, as part of its transition to advanced metering technology, FPL
16 expects to deploy smart meters in COVB shortly after closing the
17 acquisition. As with existing FPL customers, COVB customers will enjoy
18 the advantages that smart meters bring in enhancing reliability,
19 predictability and energy management.

20 • Lower Operating Costs – As I mentioned previously, the value for FPL's
21 existing customers reflected in the CPVRR analysis sponsored by FPL
22 witness Bores is largely the result of being able to spread fixed operating &
23 maintenance and capital revenue requirements over a larger customer base,

1 which would include COVB customers. This results in lower operating
2 costs per FPL customer and contributes to comparatively lower FPL
3 customer rates, estimated to be \$105 million CPVRR as explained by FPL
4 witness Bores.

- 5 • Increased ability to attract capital for improvements – Because the
6 acquisition of COVB’s assets is small in comparison to FPL’s total rate
7 base, there is essentially no effect on FPL’s strong ability to attract capital
8 for improvements.
- 9 • Lower overall cost of capital – Because the acquisition of COVB’s assets is
10 small in comparison to FPL’s total rate base, there is essentially no effect
11 on FPL’s overall cost of capital.
- 12 • More professional and experienced managerial, financial, technical and
13 operational resources – As the largest electric utility in Florida, FPL brings
14 highly experienced management in transmission, distribution, power
15 generation and customer service. FPL’s management of nearly 5 million
16 customer accounts with 99.98 percent reliability and award winning
17 customer service provides COVB customers significant professional
18 resources available to handle a multitude of issues. Further, once
19 integrated into the FPL system, COVB will have access to one of the most
20 fuel efficient, low-cost, and cleanest generating fleets in the U.S. – which
21 are substantial contributing factors to FPL’s low electric rates. Combined,
22 COVB customers will enjoy wider access to experienced, professional
23 expertise in all aspects of the electric industry.

1 These factors taken as a whole demonstrate significant benefits for FPL
2 customers and for COVB customers, supporting approval of FPL's requests in
3 this proceeding.

4 **Q. Does this conclude your testimony?**

5 A. Yes.

1 BY MR. RUBIN:

2 Q Mr. Forrest, do you have exhibits that were
3 identified as SAF-1 and SAF-2 attached to your prefiled
4 direct testimony?

5 A I have S -- well, I have part of the PSA, but,
6 yes, I do.

7 Q Okay. And were those exhibits prepared or
8 compiled under your direction, supervision or control?

9 A Yes, they were.

10 MR. RUBIN: Chairman Graham, I would note that
11 the Exhibits SAF-1 and 2 have been identified in
12 staff's comprehensive exhibit list as Exhibits 2
13 and 3.

14 CHAIRMAN GRAHAM: Duly noted.

15 BY MR. RUBIN:

16 Q Have you also prepared and caused to be filed
17 seven pages of prefiled rebuttal testimony in this
18 proceeding on September 24th, 2018?

19 A Yes, I have.

20 Q On September 26th, 2018, FPL filed an errata
21 sheet for your rebuttal testimony. Are you familiar
22 with that errata?

23 A Yes, I am.

24 Q And are you familiar with the fact that the
25 document that includes the errata to your rebuttal

1 testimony also includes errata to the supplemental
2 direct testimony and exhibits and the rebuttal testimony
3 of FPL Witness Scott Bores, whose testimony and exhibits
4 have been stipulated and who has been excused from this
5 hearing by the Commission?

6 A Yes.

7 Q Are you also familiar with the fact that the
8 errata to your rebuttal testimony includes errata to the
9 supplemental direct testimony of FPL Witness Tiffany
10 Cohen, whose testimony and exhibits have also been
11 stipulated and who has also been excused from this
12 hearing by the commission?

13 A Yes, I am.

14 Q Beyond those filed errata to your rebuttal
15 testimony, do you have any further changes or revisions
16 to your prefiled rebuttal testimony?

17 A No, I do not.

18 Q Would those changes, if I asked you the
19 questions contained in your prefiled rebuttal testimony,
20 would your answers today be the same?

21 A Yes, they would.

22 MR. RUBIN: Chairman, I would ask that Mr.
23 Forrest's prefiled rebuttal testimony be inserted
24 into the record as though read.

25 CHAIRMAN GRAHAM: We will insert Mr. Forrest's

1 prefiled rebuttal testimony into the record as
2 though read.

3 (Whereupon, prefiled testimony was inserted.)

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REBUTTAL TESTIMONY

WITNESS: SAM FORREST

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
5	14	Change "99" to "135"

WITNESS: SCOTT R. BORES

<u>PAGE #</u>	<u>LINE #</u>	<u>CHANGE</u>
7	6	Change "60" to "96"
7	10	Change "cost" to "benefit"
7	10	Remove "less than"
7	10	Change "5" to "31"
7	11	Remove "essentially be held"
7	12	Change "harmless" to "benefit"
12	10	Change "98.6" to "135"

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

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IV. CONCLUSION

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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 BY MR. RUBIN:

2 Q Have you prepared a summary of your direct and
3 rebuttal testimony?

4 A Yes.

5 Q Would you please provide that combined summary
6 to the Commission?

7 A Yes.

8 Good morning, Mr. Chairman, Commissioners.

9 As FPL's lead witness in this docket
10 pertaining to the acquisition of the Vero Beach utility,
11 I would like to provide some remarks as you make your
12 consideration for approval.

13 While the purchase and sale agreement in front
14 of you was signed in October of 2017, the history behind
15 the transaction is nearly 10 years in the making.

16 The City first approached FPL in 2009, driven
17 by their constituents vocalizing a desire to enjoy the
18 benefits of FPL's low rates. While those discussions
19 progressed in fits and spurts, there were ultimately
20 obstacles that couldn't initially be overcome pertaining
21 to other third-party approvals.

22 Fast forward to 2016, the City of Vero Beach
23 maintained its commitment, and all the necessary third
24 parties were actively engaged in finding a solution.

25 The resulting agreement was heavily negotiated as each

1 stakeholder fought to protect their own interests while
2 still I finding ways to make accommodations to satisfy
3 competing agendas. For FPL, our first priority was
4 ensuring that, at the end of the day, a successful
5 acquisition of Vero's utility would not negatively
6 impact our customers in any way.

7 After 10 years of negotiations between FPL,
8 the City of Vero Beach and other essential parties, I am
9 pleased to say that not only did FPL meet that
10 criterion, but vastly exceeded it by negotiating a
11 series of agreements that will provide savings of
12 approximately \$135 million over the following 30 years.

13 It's important to note FPL was acutely aware
14 of binary nature of possible outcomes and realized that
15 it would take some sacrifices in order to get all
16 parties to yes rather than forego the tremendous
17 customer value entirely. As such, the negotiated
18 purchase price and associated agreements had to provide
19 Vero enough net proceeds to supplement the loss of the
20 annual revenue stream from its utility, make the Florida
21 Municipal Power Agency whole on the obligations it was
22 absorbing on Vero's behalf upon their exit, and
23 facilitate the Orlando Utility Commission's release of
24 Vero from an existing wholesale contract.

25 This is a textbook example of how the fair

1 value for an asset is derived, sophisticated parties
2 reaching an agreement to transact at arm's-length, much
3 like a prospective home buyer does not base their offer
4 to purchase a house on a seller's cost to build or what
5 they would have paid previously, FPL similarly focused
6 on what it could pay to consummate the transaction while
7 still maximizing the benefits provided to existing
8 customers and not Vero's historical accounting records
9 of cost basis.

10 As it stands, this transaction bridges the
11 thresholds each party had to cross, and I trust you
12 appreciate the work and delicate balance required for
13 all parties to get to yes. However, in striking that
14 balance, any ripple affect resulting from a change to
15 the transaction as proposed may prevent a party from
16 ultimately closing.

17 Further, the request to recover the
18 corresponding acquisition adjustment is not a function
19 of FPL being acquiring entity or the transaction
20 structure, but is simply driven by need for full cost
21 recovery, much like many other petitions placed in front
22 of this commission where FPL is making an investment for
23 the benefit of customer.

24 FPL is proud to present this petition that
25 provides for bringing it's low rates and award winning

1 service to a new group of customers while simultaneously
2 yes unlocking remarkable value for its existing base. I
3 am confident the transaction described in FPL's petition
4 and the deal structure in particular still provides the
5 best outcome for all parties involved if approved by
6 this commission.

7 And this conclude my summary. Thank you.

8 MR. RUBIN: Thank you, Chairman Graham.

9 We tender Mr. Forrest for cross-examination.

10 MR. REHWINKEL: Mr. Chairman, before Public
11 Counsel stipulated not to cross. I have a purely
12 housekeeping mechanical question to ask.

13 Mr -- I think it was Mr. Rubin went through
14 the errata. There is an exhibit here, and maybe I
15 missed something, that has multiple witnesses'
16 errata on it. But we admitted -- or you admitted
17 rebuttal testimony that is changed by this errata
18 but the errata not part of the record, and I just
19 don't know medically how that should be addressed.
20 It seems like the testimony that was admitted
21 should be admitted along with this so it is that is
22 the rebuttal that is admitted into the record.

23 CHAIRMAN GRAHAM: That is correct. We did
24 just admit just the rebuttal. We didn't do it
25 including the errata sheet.

1 MR. REHWINKEL: Yeah.

2 CHAIRMAN GRAHAM: Is there any opposition to
3 that?

4 MR. RUBIN: Chairman Graham, I intended to
5 offer that into the record at the conclusion of Mr.
6 Forrest's cross-examination, along with his other
7 exhibits.

8 CHAIRMAN GRAHAM: I think we will just go
9 ahead and include the errata sheet now, because
10 that's more of the rebuttal testimony, and then we
11 will do the exhibits afterwards.

12 MR. RUBIN: Great. Okay. Thank you.

13 CHAIRMAN GRAHAM: So we will enter that into
14 the record.

15 MR. REHWINKEL: Thank you.

16 CHAIRMAN GRAHAM: Mr. Forrest, welcome back.

17 THE WITNESS: Thank you.

18 CHAIRMAN GRAHAM: Ms. Larkin.

19 MS. LARKIN: Thank you.

20 EXAMINATION

21 BY MS. LARKIN:

22 Q Good morning, Mr. Forrest.

23 A Good morning.

24 Q In regard to your direct testimony, you said
25 on page five, line six, that you were outlining the

1 history of the FPL and the City of Vero Beach meetings
2 their one purpose was their relationship with the City
3 to discuss negotiating the PSA. What benefits did you
4 analyze for the City of Vero Beach customers? Was it
5 just the rates?

6 A That was our primary concern, was trying to
7 provide FPL's rates to the City of Vero Beach customers,
8 but we also discussed, you know, customer service. We
9 discussed other things as well. But the primary concern
10 was around rates because that's the reason that the City
11 brought us in in the first place.

12 Q Yeah, rates were the major thing?

13 A Correct.

14 Q Did you analyze how efficient the City of Vero
15 Beach was compared to FPL? I know you are very proud of
16 FPL's service, but did you compare what type of service
17 the City provides?

18 A Specifically you mentioned efficient -- can
19 you provide some detail behind that?

20 Q Well, I just wondered if there was any
21 analysis done, or are you just confident that FPL is
22 better?

23 A I am fairly confident that there our customer
24 service and power delivery teams deliver exceptional
25 service. They have won numerous awards throughout the

1 industry, and we stand by that.

2 We typically, from the power delivery
3 perspective, tend to measure sort of -- we have
4 different metrics than the municipal rule in terms of
5 things that we present to this commission, where the
6 municipals do not. But I, you know, any analysis that
7 would have been done would have been years ago, and
8 would have been done by other groups.

9 Q Okay. Thank you.

10 On that same page five, line 19, you refer to
11 the benefit to the City of Vero Beach as a win-win, and
12 through, really through additional revenues in support
13 of nonutility operations. Did you do a financial
14 analysis of the City budget and how it would operate in
15 the next year, or five years, or 10 years after this
16 transaction closes?

17 A I personally did not, but -- and I am assuming
18 that when Mr. O'Connor is on the stand, he can address
19 the City's budget.

20 What I am aware of is just in terms of
21 incremental property taxes, you know, franchise fees,
22 dark fiber lease, leases for property, it totals
23 somewhere in the neighborhood about \$4 million in annual
24 transfer from the transaction itself. So if we were to
25 close the transaction, about \$4 million of income out of

1 revenues from the City, I think we are trying to replace
2 somewhere in the neighbor of 5.6 million that gets
3 transferred from the electric utility to the general
4 fund of the City of Vero Beach. And again, Mr. O'Connor
5 can give you the specific details on all of that.

6 At the end of the day, the City is going to
7 have a, you know, significant amount of cash resulting
8 from this transaction should also help out make for some
9 of that shortfall as well. And again, he can tell you
10 specifically how much is left in the coffers of the
11 City.

12 **Q So this wasn't your personal analysis, you**
13 **were relying on others?**

14 A No, ma'am, it's not.

15 **Q Okay. On page six, in line 15 of your**
16 **testimony. You said the deal is driven by a strong**
17 **desire of City of Vero Beach customers. And in your**
18 **summary, you said that the City citizens approached FPL.**
19 **It was the citizens that approached FPL to do a sale?**

20 A There were initial discussions with some
21 citizens, but ultimately we were invited by the City
22 Council itself.

23 **Q Which citizens approached you?**

24 A This was 10 years ago. I don't recall
25 specifically.

1 Q Weren't you involved then?

2 A I was involved. I was not involved from a
3 political perspective. I was the commercial lead, so
4 once we were invited in, then my responsibilities were
5 then to try and figure out the best transaction to work
6 for everybody.

7 Q Okay. So you don't remember which citizens
8 approached you? If I mentioned, say, Glen Heron or
9 Steve --

10 A Certainly Glen Heron and Dr. Faherty were
11 certainly involved.

12 Q Okay. Thank you.

13 So on page six, line 15 -- let's see, we are
14 through with that. Oh, no, and you stated that they
15 would enjoy lower rates. FPL's ads on those referenda
16 did mention over and over again lower rates, even
17 though, really, for most of the time of those 10 years,
18 you didn't have the negotiations done, and you didn't
19 have the final numbers.

20 So I don't know if you were working in public
21 relation or not, but did you pass that along to public
22 relations, that you were going to guarantee that there
23 would be a referenda on these lower rates?

24 MR. RUBIN: Let me just object. I am not sure
25 where the question was there.

1 MS. LARKIN: Okay. Let me try and reframe.

2 CHAIRMAN GRAHAM: Sure.

3 BY MS. LARKIN:

4 Q You said originally in your testimony that the
5 deal was driven by a strong desire of the City customers
6 to enjoy lower rates. And of course, in the FPL ads
7 during their referenda and afterwards mentioned lower
8 rates. Would FPL stop negotiating if you couldn't get
9 lower rates?

10 A I am not quite sure where you are going. What
11 I can -- what I will address is, you know, over the
12 course of the nine plus years that we have been in
13 discussions with the City of Vero Beach, our rate
14 structure, our retail rates have been lower than the
15 City's throughout that entire period. If this
16 transaction was to close, 2019 rates somewhere in the
17 neighborhood, including the franchise fee that would be
18 ads in to the tune of about \$20 million to the citizens
19 of the City of Vero Beach municipal electric -- that are
20 served by the City of Vero Beach municipal electric
21 system --

22 Q Yeah, I'm not --

23 A -- I am not involved -- I am not involved in
24 any of our marketing and communications efforts. I was
25 not involved in any of the referenda, so --

1 Q No, I bring that up just to point out what
2 FPL's public statements have been --

3 A Sure.

4 Q -- about what's going to happen, and I just
5 wondered, did you know, would FPL, if they could not,
6 you know, for some reason, bring lower rates to the City
7 of Vero Beach customers, and everybody else, would that
8 have stopped the negotiation? Were you --

9 A Without speaking on behalf of the City, I
10 would imagine that they would have stopped the
11 negotiations had we not offered lower rates.

12 Q Well, my question was would FPL do that?

13 A If the City was still interested in
14 transacting, we absolutely would have continued to
15 pursue it --

16 Q Right.

17 A -- at the wishes of the City.

18 CHAIRMAN GRAHAM: Ms. Larkin, for your
19 edification, since this is your first time here.
20 The way we do things is you are allowed to ask the
21 question. They can answer yes or no, and give a
22 brief answer to that. You could let them
23 editorialize as long as you want, but if you want
24 just to ask a question, stop and move on, it's
25 within your right to did that.

1 MS. LARKIN: Thank you. I didn't want to be
2 rude.

3 CHAIRMAN GRAHAM: You are not being rude.

4 BY MS. LARKIN:

5 Q Again, on page six of your testimony, you said
6 on line 17, that it since 2009, you have been working to
7 negotiate. I assume you, yourself, have been involved
8 since 2009?

9 A Yes, me and members of my time team.

10 Q Right.

11 And have you found that all throughout those
12 years, have all the City Council members been on the
13 same page, wanting a sale?

14 A Not to my recollection, no.

15 Q There were some that disagreed?

16 A Yes.

17 Q And they brought up problems regarding those
18 issues, whatever they were?

19 A I assume so, yes.

20 Q You assume so, but you were involved in those
21 negotiations, right?

22 A Yes, ma'am. I negotiated with outside counsel
23 and members of the City, but, you know, my attendance at
24 City Council meetings where those discussions would have
25 been were few and far between. I didn't attend a lot of

1 the City Council meetings to know exactly what was said
2 by which members.

3 Q Okay. So you don't know how many questions
4 were brought up about the final numbers being offered by
5 FPL and being accepted?

6 A Specifically, no, I do not.

7 Q Okay. On page seven and line six of your
8 testimony, the City has separate agreements with FMPA,
9 OUC on terminating their contracts. Are you aware of
10 all the details of how those contracts terminate?

11 A At a high level I am, yes.

12 Q A high level, but not a deep level?

13 A Those contracts are between the City of Vero
14 Beach and FMPA.

15 Q Right. But part of the agreement concerns the
16 numbers, and certainly concerns how much money is spent
17 for the deal. In other words, that money is part of
18 what the total amount is going to be for making the
19 entire deal, right?

20 A Yes. There was negotiation with FMPA to
21 determine a termination payment for them to basically
22 accept those assets back into their constituency on
23 their other 20 members.

24 Q Right.

25 And that money comes out of the deal, and do

1 you know how then that's taken care of by the City, or
2 is that not something that's part of the details that
3 you know?

4 A It is -- part of the purchase and sale
5 agreement allows for a direct testimony from FPL to FMFA
6 to resolve that issue.

7 Q Right.

8 Let's see, on page nine, line six, you
9 described the City Manager and the Council and the
10 Utility Commissions governing the utility for the City
11 of Vero Beach, and that the City Finance Commission, or
12 really the City Council has this sole rate-making
13 authority for the utility.

14 Is this based on your even knowledge, or did
15 you get this information elsewhere?

16 A Well, it's available on their website, but I
17 would say you are probably better off taking up the --

18 Q I'm asking you personally.

19 A Yeah, just --

20 Q It's your assertion in your testimony, so I am
21 checking to see if you got that from somewhere else, or
22 is that something that you looked into?

23 A I think over the course of the last nine plus
24 years, we've learned a little bit along the way.

25 Q Do you know of any limitations on the rates

1 over the lifetime of the service? Has there been any
2 limitations that the City has put on rates? A lot was
3 discussed about rate-making, and do you know if the City
4 has ever gone past a certain amount, or had any
5 complaints from the City up until your involvement in
6 this case?

7 MR. RUBIN: Mr. Chairman, I object. I heard
8 at least three or four questions there. I am not
9 sure which she wants him to answer.

10 CHAIRMAN GRAHAM: Ms. Larkin, if you could
11 break them up.

12 MS. LARKIN: I will try and break them up.

13 BY MS. LARKIN:

14 Q So as background, you know about the City
15 rate-making authority?

16 A Correct. Yes.

17 Q Okay. And do you know of any limitations that
18 have been placed on the rates by the City Councils, or
19 have they always fluctuated greatly?

20 A There has been some fluctuation. I don't know
21 about greatly, and I don't know what limitations you are
22 referring to.

23 Q I am just wondering if you do.

24 A No, ma'am.

25 Q Okay. And you mentioned before, how many

1 meetings have you attended? Do you know a number over
2 these years?

3 A I would guess somewhere in the neighborhood of
4 six, give or take. That's a bit of a guess.

5 Q Any where they have discussed rates, budget
6 hearings?

7 A I don't believe I ever attended a budget
8 hearing so to speak, but my attendance at any City
9 Council meeting would have been specific to this
10 transaction, not the rates of the City itself.

11 Q Right, okay.

12 Did you attend any meetings where Mr. Kramer
13 was on the diocese or -- Jay Kramer, who gave testimony?

14 A Yes.

15 Q You did, okay.

16 I will go back a little bit. This is also on
17 page nine, and line 19. You describe the City of Vero
18 Beach coming to FPL again and saying it was a grassroots
19 movement by electric customers.

20 And again, other than Mr. Heron and Mr.
21 Faherty, there is nobody else that you can think of that
22 came you to regarding the rates?

23 A Well, to be specific, they didn't come to me
24 directly.

25 Q Not you, yeah.

1 A I am sure there are others, but I'm not aware
2 of who they are.

3 Q So they didn't come to you specifically, so I
4 was relying on your testimony, you know from other
5 sources that these people came?

6 A That's correct, yes.

7 Q Do you know who could tell me who the people
8 were?

9 A People in our External Affairs Department
10 would have been the ones interfacing with anybody within
11 the City.

12 Q Anybody here?

13 A Nobody that is testifying, no.

14 Q Oh, okay.

15 On line 15, on page 15, line 17, when you
16 again talk about the benefits to the City, you talk
17 about rapid response time, and I wondered if you knew
18 these numbers, or again, is this something that you
19 analyzed?

20 A No, ma'am, I did not. I received it from
21 our -- actually I believe from our Marketing
22 Communications Department.

23 Q Okay. I am talking about our rapid response
24 time, the City -- ours, the City rapid response time.

25 A No, I do not have those numbers.

1 Q Okay. As far as an on-call system for people
2 who live in the City, did you compare on-call -- what
3 our on-call version is to what the FPL version is? This
4 is from your testimony, so...

5 A Right, I did not, no, personally.

6 Q Okay. Did you do any study of the City
7 services and how they rate among city customers here in
8 Vero Beach?

9 A Me personally, no, I did not.

10 Q Okay. Or do you know of anybody at FPL that
11 did do that?

12 A I know there has been a lot of attention paid
13 to the metrics of our power delivery team versus
14 customer service, but I don't have those specific
15 numbers.

16 Q Okay. So there was maybe a study?

17 A I am sorry, you keep referring to a study. I
18 don't --

19 Q Well, an analysis?

20 A I am sure there is some analysis done, yes,
21 but I do not have that.

22 Q Would you know who might have that analysis
23 comparing --

24 A No.

25 Q -- the service --

1 A Not at this time, no, I do not.

2 Q So that would kind of go with my next
3 question, it's basically on the same thing. You say
4 that our people aren't experienced or professional?

5 A I don't believe I ever said that.

6 Q It says on line 22 that your people would be
7 experienced and professional replacements. So that
8 means that you are implying that the City couldn't or
9 doesn't have experienced professionals?

10 MR. RUBIN: Objection, asked and answered.

11 THE WITNESS: Yeah, I also don't see that on
12 line 22 either, but --

13 CHAIRMAN GRAHAM: I was going to say, what
14 page are we on?

15 MS. LARKIN: I am sorry, line -- page 17, line
16 22. Did I give the wrong page number? I am sorry.

17 CHAIRMAN GRAHAM: You are fine. We weren't on
18 the right page.

19 THE WITNESS: I am not at all implying that
20 the City of Vero Beach employees are not
21 professional. I am specifically saying that the
22 City of Vero Beach customers will have access to a
23 wider range or wider access. We have a much larger
24 organization of experienced professionals.

25 BY MS. LARKIN:

1 Q That's okay. Yeah, I understand that, but I
2 am just trying to clarify your statement there.

3 A In no way am I implying that. No.

4 Q Okay. Are you aware that we used to have
5 several professionals, including one specific head of
6 the utility's department who was an expert?

7 A Yes, I am aware.

8 Q Okay. You state also that on that same area
9 that our intentions, the City of Vero -- the Civic
10 Association is trying to kill the deal, in your
11 supplemental testimony.

12 A Can you point me to that?

13 Q I don't have the page number on that. Where
14 is it? I think it's on page five.

15 A I did not file a supplemental.

16 Q Oh, that's why. Never mind. That's why it's
17 not got a page and number.

18 Great. No, I think that's it. Thank you.

19 A Okay.

20 CHAIRMAN GRAHAM: OPC, you said you have no?

21 MS. MORSE: No questions.

22 CHAIRMAN GRAHAM: And anybody over here?

23 MR. RUBIN: No redirect.

24 CHAIRMAN GRAHAM: Staff. We will come back to
25 you after.

1 MR. MURPHY: Staff wanted to clarify, you had
2 suggested you were going to move in the exhibits.
3 They have all been moved in under the comprehensive
4 exhibit list, 2 through 58.

5 MR. RUBIN: The only other item was the errata
6 filed September 26th, which I think the next
7 number --

8 CHAIRMAN GRAHAM: We put the errata in.

9 MR. RUBIN: Would that be No. 62, Chairman?

10 CHAIRMAN GRAHAM: We will come back to that.

11 MR. RUBIN: Okay.

12 CHAIRMAN GRAHAM: Staff, do you have
13 questions?

14 MR. MURPHY: No questions.

15 CHAIRMAN GRAHAM: Commissioners?

16 Mr. Forrest, I have a question for you.

17 THE WITNESS: Yes, sir.

18 CHAIRMAN GRAHAM: How much will the average
19 Vero Beach customer save monthly with this deal?

20 THE WITNESS: Witness Cohen, who is not here
21 today, but in her testimony, she lays out sort of a
22 different -- for different rate classes. If you
23 just look at a typical residential customers using
24 1,000 kilowatt hours, they are going to save
25 roughly \$196 a year.

1 CHAIRMAN GRAHAM: They are going to save \$196
2 a year?

3 THE WITNESS: Yes.

4 CHAIRMAN GRAHAM: Okay. So -- now, I
5 understand the -- during the settlement, part of
6 the obligation was to settle the -- part of the
7 deal was to settle the obligation with FMPA.

8 THE WITNESS: Correct.

9 CHAIRMAN GRAHAM: I understand that, and I
10 understand, as you said earlier, that Florida Power
11 & Light has got superior service. Their efficiency
12 is second to none. So why is it that the City Vero
13 Beach is saving that much money each individual
14 customer and getting an extra 30 some odd million
15 dollars on top of the deal? Why was that staged
16 that way?

17 THE WITNESS: I am sorry, ask that piece
18 again. I thought you were going to different
19 direction, sorry.

20 CHAIRMAN GRAHAM: The total package, the total
21 deal, some of that is actually coming back, netting
22 back to Vero Beach.

23 THE WITNESS: Correct.

24 CHAIRMAN GRAHAM: Approximately how much is
25 that?

1 THE WITNESS: Mr. O'Connor maybe will help you
2 with the very specific number, but essentially it's
3 around \$30 million cash that will reside with the
4 City in addition to resolving some pension issues
5 and diffusing debt, but the cash remaining is
6 probably in the 30 million plus range.

7 CHAIRMAN GRAHAM: So Vero Beach is walking
8 away with way less rates and \$30 million in their
9 pocket, but yet your accounting treatment is for
10 somebody else to pay that burden?

11 THE WITNESS: Well, so as it's structured
12 there, the -- kind of walking through all the
13 different steps of this process. You have got the
14 diffusement of their debt. You have got the
15 resolution of their pension issues. You have got
16 the cash that will remain. You had to resolve the
17 FMPA issues, and then ultimately OUC. So that kind
18 of made up, you know, along with the net book value
19 kind of this total purchase price.

20 What we are asking for is recovery of that
21 entire purchase price. This is kind of a package
22 where the City Vero Beach customers will wind up
23 with FPL's rates, our customers will have a
24 tremendous benefit because you are spreading our
25 fixed costs across a wider number of customers and

1 then ultimately, you know, resolving all the issues
2 that remain.

3 CHAIRMAN GRAHAM: Now, I understand you want
4 the total package, and I understand specifically
5 some of the other obligations that they had, but
6 what I am trying to understand is why are all the
7 other Florida Power & Light customers paying that
8 \$30 million that Vero Beach gets to put in their
9 pocket?

10 THE WITNESS: Again, that was -- you know, the
11 purchase price itself, the \$185 million was
12 ultimately the, you know, the end result of a long
13 negotiation that took, you know, like we mentioned
14 several times, almost 10 years at this point. This
15 is no different than us investing in a power plant
16 that brings tremendous value to our customer base.

17 We are investing \$185 million, which is
18 basically unlocking this value for our customers.
19 So in addition to the, you know, basically the
20 recovery of the acquisition adjustment which is
21 accounted for in that \$135 million, our customers,
22 you know, net benefit to this is \$135 million in a
23 projected basis.

24 CHAIRMAN GRAHAM: So you are paying 180, your
25 net benefit is 135, there is a gap there.

1 THE WITNESS: Well, it's in addition to. So
2 that \$185 million is being recovered. On top of
3 that recovery, there is \$135 million of benefit.
4 It's not a net basis.

5 CHAIRMAN GRAHAM: But not according to OPC's
6 witness.

7 THE WITNESS: Yeah.

8 CHAIRMAN GRAHAM: Fair enough.

9 Okay. Rebuttal -- I am sorry. Commissioner
10 Brown.

11 COMMISSIONER BROWN: Thank you.

12 Follow-up to Mr. Chairman's earlier question
13 regarding the savings that I think Witness Cohen
14 has in her prefiled testimony.

15 THE WITNESS: Yes.

16 COMMISSIONER BROWN: You gave a number that
17 was different than opening statements, which
18 provided about \$330 per year savings to an average
19 customer. I just wanted clarification.

20 THE WITNESS: Yeah, I was speaking
21 specifically to her direct testimony. If the
22 numbers were updated, then I apologize.

23 COMMISSIONER BROWN: Because in opening
24 statement, counsel said that Vero Beach customers
25 will save 20 percent, or 330 per year. And you

1 gave a number to the Chairman that was half of
2 that.

3 THE WITNESS: Half of that. Again, if the
4 number was updated, I apologize, I didn't --

5 COMMISSIONER BROWN: Did you specify
6 residential?

7 CHAIRMAN GRAHAM: He said specifically
8 residential.

9 THE WITNESS: Yes.

10 COMMISSIONER BROWN: Then I wonder --

11 THE WITNESS: Yeah, it was a 1,000 kilowatt
12 hour residential customer.

13 COMMISSIONER BROWN: Thank you.

14 THE WITNESS: So I don't know if there was
15 some discrepancy on the customer he was referring
16 to.

17 COMMISSIONER BROWN: So I am curious what
18 counsel, then, is referring to when he says \$330
19 per year.

20 MR. RUBIN: Commissioner Brown, I think Mr.
21 Forrest was referring to the direct testimony of
22 Ms. Cohen. In her supplemental testimony, which is
23 also in the record, the rates had changed, and the
24 calculations had changed. It's \$330 per year for
25 the typical residential customer pursuant to the

1 supplemental testimony, which was the comparison of
2 the latest rates.

3 CHAIRMAN GRAHAM: Okay, got it. Thank you.

4 THE WITNESS: I apologize for that. I didn't
5 know.

6 COMMISSIONER BROWN: No, sounds good. Thanks.

7 CHAIRMAN GRAHAM: Commissioner Fay.

8 COMMISSIONER FAY: Thank you, Mr. Chairman.

9 CHAIRMAN GRAHAM: Microphone.

10 COMMISSIONER FAY: Can I hear me now?

11 Mr. Forrest, could you turn to page 16, line
12 11 of your testimony? You state, FPL will offer
13 some of the same billing payment options, and it
14 goes on to basically say, by phone, mail or budget
15 billing programs. I will let you get there.

16 THE WITNESS: One second. Page 16 line?

17 COMMISSIONER FAY: Line -- starting on line
18 11.

19 THE WITNESS: Okay.

20 COMMISSIONER FAY: Can you elaborate a little
21 bit on that? It sounds like from that language,
22 there is a comparison done to the City Vero Beach's
23 services and what billing services are provided by
24 FPL.

25 THE WITNESS: Yes, sir.

1 So, again, I have not been involved in the
2 day-to-day sort of view of, you know, what's going
3 to happen in Vero Beach. Again, my role has really
4 kind of been more on the commercial side.

5 But we have spent a tremendous amount of time
6 in the City of Vero Beach analyzing what they
7 currently have, and working with both their
8 employees, as well as employees of the City itself,
9 to try and ensure that the service they receive
10 today is in line with what they are going to
11 receive going forward, you know, maintaining points
12 of locations within the City that they will be able
13 to pay their bills, that kind of thing.

14 But in addition to that, they will have access
15 to, you know, our award winning app that, you know,
16 they can go on their phone and pay their bills, or
17 see their bills, those kind of things. So there is
18 some incremental benefits that they will have on
19 day one that they don't have today.

20 But, yeah, we certainly have spent a
21 tremendous amount of time to try to understand
22 their system today, both from a customer service
23 perspective, a power delivery perspective, and so
24 on. So that's members of my team and other people
25 from around the company have been, you know, deeply

1 engaged in that.

2 COMMISSIONER FAY: Follow-up, Chair?

3 CHAIRMAN GRAHAM: Sure.

4 COMMISSIONER FAY: And so what would be an
5 example of a budget billing program that you offer?

6 THE WITNESS: You are going to get me way out
7 over my skis. I am not a customer service rep, so
8 I am not sure entirely what our different billing
9 options are, in all honesty.

10 COMMISSIONER FAY: Okay. Thank you.

11 CHAIRMAN GRAHAM: Redirect? I am sorry.

12 Excuse me.

13 Commissioner Clark.

14 COMMISSIONER CLARK: I have just two quick
15 questions that kind of came up as this --

16 Do you know what the -- is the system load
17 factor of Vero higher than or lower than the
18 average system load factor for FPL?

19 THE WITNESS: Subject to check, I think it's
20 just a little bit higher.

21 COMMISSIONER CLARK: Their load factor is
22 higher?

23 THE WITNESS: I think just a little bit
24 higher; and again, subject to check.

25 COMMISSIONER CLARK: Higher load factor when

1 integrated with FPL's system, what does that do to
2 average cost per kilowatt hour produced?

3 THE WITNESS: You are going to see a very
4 incremental increase in the fuel cost, but that is
5 more than offset by the -- by spreading the fixed
6 costs over those 30 --

7 COMMISSIONER CLARK: Larger number of kilowatt
8 hours.

9 THE WITNESS: Yes.

10 COMMISSIONER CLARK: Thank you.

11 THE WITNESS: And that in line, basically
12 that's the math, right? You are going to see about
13 \$135 million of net benefit over time, the math
14 being, you know, having spread that fixed cost over
15 a larger number of customers, less the, what I will
16 call de minimis increase in fuel costs.

17 COMMISSIONER CLARK: How does their coincident
18 peak compare to FPL's peak?

19 THE WITNESS: I am not sure. I imagine, given
20 that our system is surrounding their system almost
21 in its entirety, with the exception of what's on
22 the water, that it looks very similar, but subject
23 to check, I would -- I don't have that.

24 COMMISSIONER CLARK: Okay. Thank you.

25 THE WITNESS: Yes.

1 CHAIRMAN GRAHAM: Rebuttal?

2 MR. RUBIN: No redirect.

3 CHAIRMAN GRAHAM: Okay. Exhibits.

4 MR. RUBIN: I believe counsel has indicated
5 that SAF-1 and 2 have already been included into
6 the record -- admitted in into the record.

7 So the only other exhibit would be the FPL
8 errata, dated September 26th, which I think the
9 next number would be 62, Chairman.

10 CHAIRMAN GRAHAM: I don't think it's necessary
11 to give the errata an exhibit number. We've
12 already put that in, though.

13 MR. RUBIN: Okay. Thank you, sir.

14 MR. REHWINKEL: Mr. Chairman, if I could be
15 heard on this, this is from a mechanical
16 standpoint. You have admitted the errata in but
17 it's not tethered to anything.

18 CHAIRMAN GRAHAM: It's tethered to the
19 rebuttal.

20 MR. REHWINKEL: But what's on the errata is
21 not in the record right now, and I think -- I think
22 what Mr. Rubin is trying do is the right thing do,
23 which is to admit this, and that way his testimony
24 has been admitted and the errata are together his
25 testimony.

1 CHAIRMAN GRAHAM: Normally when we put -- when
2 there is an errata or a correction to go along with
3 it direct testimony or rebuttal testimony, we
4 include both the direct testimony and the errata
5 sheet together, and that's pretty much what I am
6 trying to do now. We didn't do it initially, but
7 we are just adding it to that rebuttal.

8 MR. REHWINKEL: It's just not been identified.
9 It doesn't have a place in the record, is my point.
10 He just said he did one, but he didn't go through
11 what was in it. I think the document itself has to
12 be in the record for the record to be complete.

13 CHAIRMAN GRAHAM: So what you want for him to
14 do is go through what's in the errata sheet?

15 MR. REHWINKEL: I think all you need to do is
16 admit this, and then it will cover the next
17 witnesses that come as well. It will match
18 everything up, but it will certainly connect what
19 the changes to his testimony were with his
20 testimony and make his testimony complete.
21 That's -- I just think that's the cleanest way do
22 it.

23 CHAIRMAN GRAHAM: I understand what you are
24 saying. That's not what I think is normal, but if
25 it's -- for expediency, we will go ahead and give

1 BY MR. RUBIN:

2 Q Good morning, Mr. Ferguson. Have you been
3 sworn?

4 A Good morning. I have.

5 Q You would please state your name and business
6 address for the record?

7 A Yes. It's Keith Ferguson, 700 Universe
8 Boulevard, Juno Beach, Florida, 33408.

9 Q By whom are you employed, and in what
10 capacity?

11 A Florida Power & Light Company. I am the
12 Vice-President Accounting and Comptroller.

13 Q Have you prepared and caused to be filed 15
14 pages of prefiled direct testimony in this proceeding on
15 November 3rd, 2017?

16 A Yes.

17 Q Do you have any changes or revisions to your
18 prepared direct testimony?

19 A No.

20 Q If I asked you the questions contained in your
21 direct testimony, would your answers be the same today?

22 A Yes.

23 MR. RUBIN: Chairman Graham, I would ask that
24 Mr. Ferguson's prefiled direct testimony be
25 inserted into the record as though read.

1 CHAIRMAN GRAHAM: We will insert Mr.
2 Ferguson's prefiled direct testimony into the
3 record as though read.

4 (Whereupon, prefiled testimony was inserted.)

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I. INTRODUCTION

Q. Please state your name and business address.

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

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

A. I am employed by Florida Power & Light Company (“FPL” or the “Company”) as Controller.

Q. Please describe your duties and responsibilities in that position.

A. I am responsible for financial accounting, as well as internal and external reporting, for FPL. As a part of these responsibilities, I ensure that the Company’s financial reporting complies with requirements of Generally Accepted Accounting Principles (“GAAP”) and multi-jurisdictional regulatory accounting requirements.

Q. Please describe your educational background and professional experience.

A. I graduated from the University of Florida in 1999 with a Bachelor of Science Degree in Accounting and earned a Master of Accounting degree from the University of Florida in 2000. Beginning in 2000, I was employed by Arthur Andersen in their energy audit practice in Atlanta, Georgia. From 2002 to 2005, I worked for Deloitte & Touche in their national energy practice. From 2005 to 2011, I worked for Mirant Corporation, which was an independent power producer in Atlanta, Georgia. During my tenure there, I held various accounting and management roles. Most recently and prior to joining FPL in

1 September 2011, I was Mirant’s Director of SEC Reporting and Accounting
2 Research. I am a Certified Public Accountant (“CPA”) licensed in the State of
3 Georgia and a member of the American Institute of CPAs. I testified before
4 the Florida Public Service Commission (“Commission”) on depreciation,
5 dismantlement and other accounting matters in the Company’s 2016 base rate
6 case and filed testimony most recently in the SJRPP Transaction, Docket No.
7 20170123-EI and the Environmental Cost Recovery Clause (“ECRC”),
8 Docket No. 20170007-EI.

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

10 A. Yes. I am sponsoring the following exhibits:

- 11 • KF-1 – COVB Preliminary Acquisition Journal Entries
- 12 • KF-2 – OUC Power Purchase Agreement Journal Entries

13 **Q. What is the purpose of your testimony?**

14 A. The purpose of my testimony is to present to the Commission the appropriate
15 accounting under both GAAP and the Federal Energy Regulatory Commission
16 (“FERC”) Uniform System of Accounts (“USOA”) requirements that have
17 been adopted by this Commission, and regulatory reporting and ratemaking
18 associated with FPL’s proposed acquisition of certain electric assets from the
19 City of Vero Beach (“COVB”), a municipal corporation (referred to as the
20 “COVB Transaction”). Specifically, my testimony addresses the following:

- 21 1. Purchase accounting for the COVB Transaction; and
- 22 2. Regulatory reporting and ratemaking treatment associated with the
23 COVB Transaction and the Power Purchase Agreement (“PPA”)

1 that FPL has negotiated with the Orlando Utilities Commission
2 ("OUC") as part of the acquisition.

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

4 A. I provide the required journal entries which FPL intends to record as a result
5 of the COVB Transaction in order to comply with GAAP and the FERC
6 USOA. In addition, I describe the regulatory reporting and ratemaking for all
7 costs associated with the COVB Transaction and the PPA that FPL has
8 negotiated with the OUC as part of the acquisition. As described by other
9 FPL witnesses, FPL has demonstrated the benefits of the COVB Transaction
10 to both FPL and COVB customers and, therefore, the proposed accounting
11 and regulatory treatment for this acquisition should be approved by the
12 Commission.

13

14 **II. PROPOSED ACCOUNTING AND RATEMAKING**

15

16 **Q. Please provide an overview of the COVB Transaction from an accounting**
17 **perspective.**

18 A. As described by FPL witness Forrest, FPL is acquiring the COVB electric
19 utility which allows COVB customers to benefit from lower electric rates
20 without FPL's existing customers subsidizing the transaction. In addition,
21 FPL has negotiated a PPA with OUC effective upon the closing of the COVB
22 Transaction through December 31, 2020.

1 **Q. Please provide an overview of the required accounting for the COVB**
2 **Transaction.**

3 A. The COVB Transaction meets the definition of a business acquisition as
4 defined by GAAP. Under Accounting Standards Codification 805 – Business
5 Combinations (“ASC 805”), the acquirer in a business acquisition is required
6 to recognize all assets and liabilities at fair value as of the acquisition date.
7 The USOA requires that acquired property plant and equipment previously
8 dedicated to utility service be recorded at net book value (Electric Plant
9 Instruction 5, *Electric Plant Purchased or Sold*, in 18 Code of Federal
10 Regulations (“C.F.R”) Part 101). Acquired utility electric plant assets are
11 typically recorded at net book value for both GAAP and regulatory purposes
12 because future recovery of historical cost plus a return in rates would typically
13 equal the discounted cash flows. In addition, for GAAP purposes, a valuation
14 of the acquired electric plant assets along with other acquired assets and
15 assumed liabilities is typically performed in order to support the
16 reasonableness of the overall purchase price.

17 **Q. Has a third party performed that valuation?**

18 A. Yes. Duff & Phelps, LLC (“D&P”) performed an enterprise valuation of the
19 COVB electric utility. FPL witness Herr’s testimony describes that valuation,
20 and a copy of the valuation report is attached as an exhibit to his testimony.
21 Furthermore, he provides testimony which confirms the purchase price of
22 approximately \$185 million for the COVB Transaction is a reasonable
23 estimate of fair value.

1 **Q. Please describe the journal entries that FPL plans to record as a result of**
2 **the acquisition of the COVB electric utility.**

3 A. Exhibit KF-1 provides the estimated journal entries to be recorded by FPL that
4 will be required upon the purchase of the COVB electric utility. The amounts
5 reflected in the journal entries represent projections assuming an acquisition
6 date of October 1, 2018 based on the COVB's audited financial statements for
7 their fiscal year ending September 30, 2016 (the most recent available).

8 **Q. Will the Commission have the opportunity to review the final acquisition**
9 **journal entries?**

10 A. Yes. FPL will make a filing with the Commission no later than six months
11 after the acquisition's closing that will confirm the actual amounts of the
12 transaction. At that time, FPL will provide any necessary adjustments to the
13 currently estimated amounts reflected on Exhibit KF-1.

14 **Q. Please describe the assets and liabilities FPL will record as a result of the**
15 **COVB Transaction.**

16 A. As a regulated entity, FPL will record the acquired electric assets at COVB's
17 net book value as of the acquisition date in the proper plant account (i.e.,
18 distribution, transmission, and general) in accordance with the FERC USOA.
19 These assets will be depreciated using FPL's currently approved depreciation
20 rates, which were approved by the Commission in Order No. PSC-2016-0560-
21 AS-EI, Docket Nos. 20160021-EI and 20160062-EI, and should be considered
22 a reasonable proxy for the proper depreciation rates until FPL completes its
23 next depreciation study, which would include these assets. The acquired

1 assets and associated depreciation will be included in FPL's retail base
2 ratemaking and earnings surveillance reporting.

3

4 Apart from the electric utility assets, FPL will also acquire materials and
5 supplies inventory. Additionally, under ASC 805, each of the contracts
6 acquired or negotiated by FPL as part of the acquisition will have to be
7 analyzed to determine if the rights or obligations inherent in those agreements
8 represent current market prices for those products and services. FPL does not
9 expect, at this point in time, that the amount above or below market for any of
10 these contracts will be material.

11 **Q. Please describe the accounting for the land on which the new substation**
12 **will be constructed by FPL.**

13 A. One of COVB's substations is located at the site of the Vero Beach Power
14 Plant. As part of the COVB Transaction, FPL has agreed to dismantle the
15 substation and construct a new substation on a nearby parcel of land. The
16 approximate \$185 million purchase price includes \$2 million designated for
17 the right to use the parcel of land on which the new substation will be
18 constructed for a perpetual term. This amount approximates the market value
19 for the land.

20 **Q. Please describe the accounting associated with the transmission right-of-**
21 **way FPL plans to record.**

22 A. COVB currently owns and operates 13 miles of transmission assets on land
23 owned by the Indian River Farms Water Control District (the "District"),

1 referred to as the Substation 20 Transmission Right-of-Way in the Asset
2 Purchase and Sale Agreement. COVB routinely executes agreements with the
3 District for the right to use the land for that portion of its transmission system.
4 The District has stated that it will only execute an easement of the land with a
5 municipality. As such, COVB must continue to maintain its agreement with
6 the District and will execute a sublicense with FPL for the right to use the
7 land. FPL will pay COVB an annual amount of approximately \$23 thousand
8 for the three year term of the contract. Separately, COVB will continue to
9 execute the land agreements with the District and reassign the use of the
10 easement to FPL.

11 **Q. What other assets or liabilities must be recognized on day one of the**
12 **COVB Transaction?**

13 A. In addition to the electric utility assets, FPL will also acquire materials and
14 supplies inventory related to its transmission and distribution assets with a
15 current book value of approximately \$4 million, which is also included in the
16 approximately \$185 million purchase price. As discussed above, FPL has
17 agreed to pay for the dismantlement of the substation located at the Vero
18 Beach Power Plant site as part of the transaction. Therefore, FPL must
19 recognize a liability for the cost of the dismantlement, which is estimated to
20 be approximately \$0.5 million. The dismantlement liability will be offset by a
21 regulatory asset which will be amortized over the remaining life of the
22 substation. FPL will also assume a liability for unused or unpaid vacation of
23 each transferred employee within the limits of FPL's employee policy and will

1 record an offsetting regulatory asset, which is estimated to be approximately
2 \$0.3 million. The journal entries for these estimated amounts are reflected on
3 Exhibit KF-1.

4 **Q. Please describe the asset acquisition adjustment arising from the COVB**
5 **Transaction.**

6 A. In accordance with the USOA for Account 114 – Electric Plant Acquisition
7 Adjustments (18 C.F.R. 101), FPL is required to reflect a positive acquisition
8 adjustment if the cost of the acquired system is greater than original cost less
9 accumulated depreciation (*i.e.*, net book value). As reflected on Exhibit KF-1,
10 FPL estimates an acquisition adjustment of approximately \$116.2 million,
11 which reflects the excess of the amount FPL paid to COVB over the net value
12 of the amount purchased (with assets at net book value).

13 **Q. Did FPL obtain an independent valuation of the assets it plans to**
14 **purchase from COVB?**

15 A. Yes. FPL witness Herr conducted a fair value evaluation of the COVB
16 electric utility. FPL used this evaluation to confirm that the purchase price of
17 the COVB Transaction was reasonable. This valuation also provides evidence
18 that the amount paid by FPL to acquire the COVB system is higher than the
19 net book value of the system, thereby establishing the basis, from a regulatory
20 perspective, for proper recovery of the acquisition adjustment from customers.

21 **Q. What was the result of the fair value evaluation?**

22 A. As reflected in the testimony of FPL witness Herr, the fair value of the
23 acquired electric utility plant assets is approximately \$185 million. This

1 estimated fair value demonstrates that the total compensation to COVB of
2 approximately \$185 million discussed in the testimony of FPL witness Forrest
3 is not in excess of fair value for the COVB assets.

4 **Q. Is FPL requesting regulatory approval for the recovery of the acquisition**
5 **adjustment?**

6 A. Yes. The COVB Transaction, taken as a whole, provides multiple benefits for
7 FPL customers, as demonstrated by FPL witness Forrest; therefore, the
8 recovery of the acquisition adjustment should be approved and included in
9 FPL's retail base ratemaking and earnings surveillance reporting.

10 **Q. Is there a Commission standard or precedent regarding the establishment**
11 **and recovery of a positive acquisition adjustment?**

12 A. Yes. The Commission typically reviews the request for the approval of a
13 positive acquisition adjustment on an individual case-by-case basis. The
14 Commission determines whether extraordinary circumstances exist by
15 applying a set of factors addressing such items as lower and more stable rates
16 and improved quality of service for the acquired customers. If the company
17 can demonstrate that its existing and acquired customers will derive certain
18 potential or actual qualitative and quantitative benefits attributable to the
19 acquisition, and the Commission finds these conditions exist, then the
20 Commission typically approves the acquisition, including the recovery of a
21 positive acquisition adjustment over an appropriate period of time as being in
22 the public interest. Further discussion of Commission precedent on
23 acquisition adjustments is provided in FPL witness Deason's testimony.

1 **Q. Is FPL's request associated with the acquisition of the COVB utility**
2 **system consistent with this Commission precedent?**

3 A. Yes. As described by FPL witness Forrest, FPL has demonstrated the unique
4 and extraordinary circumstances of this transaction and the benefits it will
5 provide to all customers and should therefore be allowed recovery of these
6 assets in rates as requested. Moreover, FPL witness Bores quantifies a
7 substantial economic benefit to FPL's existing customers and FPL witness
8 Cohen also documents that current COVB customers will begin receiving
9 immediate savings on their electric bills once they begin to take service from
10 FPL.

11 **Q. How does FPL propose to account for the acquisition adjustment?**

12 A. FPL proposes to record the acquisition adjustment to FERC Account 114 –
13 Electric Plant Acquisition Adjustments, and record amortization to FERC
14 Account 406 – Amortization of Electric Plant Acquisition Adjustments over a
15 30 year period, which is approximately equivalent to the average remaining
16 estimated useful life of the acquired distribution assets since the primary
17 purpose of the transaction is to serve COVB's retail customers. In addition,
18 for ratemaking and earnings surveillance reporting purposes, FPL proposes to
19 include the unamortized acquisition adjustment in rate base and include the
20 related amortization in net operating income.

21 **Q. Please describe the PPA that FPL has negotiated with OUC.**

22 A. As described by FPL witness Forrest, FPL has negotiated an agreement to
23 purchase power from OUC effective upon closing of the COVB Transaction

1 through December 2020. Over the term of the PPA, FPL will be required to
2 make annual capacity payments of approximately \$10 million. When FPL
3 receives power from OUC, the related energy cost of the actual purchased
4 power received would be recovered through FPL's Fuel and Purchased Power
5 Cost Recovery ("FCR") Clause. Any projected energy costs associated with
6 purchases from OUC will be estimated and included in FPL's FCR Clause
7 projection filings for each of the respective years. Thus, the treatment of
8 purchased energy costs mirrors that of any other purchased power contract
9 that FPL currently holds.

10 **Q. How does FPL intend to recover the annual capacity payments to OUC**
11 **each year?**

12 A. FPL requests the Commission's approval to recover the annual capacity
13 payments of approximately \$10 million through FPL's Capacity Cost
14 Recovery ("CCR") Clause in the same fashion it recovers other purchased
15 power capacity payments with third parties. If approved, FPL would include
16 the annual capacity payments as an expense in its CCR Clause filings for each
17 of the respective years.

18 **Q. Please describe the accounting entries that FPL will record for the PPA.**

19 A. The PPA is considered a derivative under ASC 815. As such, FPL is required
20 to mark-to-market the PPA for reporting purposes. In order to comply with
21 ASC 805 and ASC 815, FPL is required to record the liability associated with
22 the unfavorable portion of the PPA obligation at its fair value as of the
23 acquisition date. If the PPA had been priced at market, no obligation would

1 have been recorded at acquisition date. However, FPL had to commit to pay
2 an amount in excess of market for the capacity in order to facilitate the COVB
3 Transaction. That unfavorable portion must be recorded as a liability at
4 closing of the COVB Transaction. FPL has estimated the unfavorable portion
5 of the PPA obligation to be the difference between the value of the annual
6 capacity payments less the estimated value of FPL's fuel savings resulting
7 from the purchases under the PPA (the "at market" estimate). The excess of
8 the value for the capacity payments over the fuel savings represents the
9 unfavorable portion of the PPA, which is approximately \$17.5 million based
10 on projected market prices, assuming an acquisition date of October 1, 2018.
11 The journal entries FPL plans to record associated with the capacity payments
12 are reflected on Exhibit KF-2.

13

14 FPL proposes that a regulatory asset be recorded for the estimated unfavorable
15 portion of the PPA in recognition of the recovery of that specific cost in future
16 rates. The unfavorable portion is recorded as a debit to a regulatory asset
17 (FERC Account 182.3 – Other Regulatory Assets) and a credit, for the same
18 amount, to a derivative liability (FERC Account 244 – Derivative Instrument
19 Liabilities).

20 **Q. Does the establishment of the regulatory asset and derivative liability**
21 **impact FPL's base rate working capital?**

22 A. No. FPL will adjust the regulatory asset at the same rate as the derivative
23 liability, based on the change in market value, over the life of the PPA. This

1 neutralizes any impact on FPL's working capital. Similarly, there would be no
2 impact on FPL's base rate revenue requirements.

3 **Q. Does the establishment of the regulatory asset and derivative liability**
4 **impact the total amount FPL will expense through its CCR Clause for the**
5 **PPA?**

6 A. No. FPL would charge the actual amount of the capacity payments made to
7 OUC during the term of the contract to expense to be recovered through its
8 CCR Clause, which is approximately \$10 million each year. The estimated
9 total capacity payments through 2020 of \$23.5 million are reflected on Exhibit
10 KF-2.

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

12 A. Yes.

1 BY MR. RUBIN:

2 Q Mr. Ferguson, do you have exhibits that were
3 identified as KF-1 and KF-2 attached to your prefiled
4 direct testimony?

5 A Yes.

6 Q Were those prepared or compiled under your
7 direction, supervision or control?

8 A Yes.

9 MR. RUBIN: Chairman Graham, I would note that
10 these have been identified on staff's comprehensive
11 exhibit list as Exhibits 7 and 8.

12 CHAIRMAN GRAHAM: Duly noted.

13 BY MR. RUBIN:

14 Q Mr. Ferguson, have you also prepared and
15 caused to be filed eight pages of prefiled rebuttal
16 testimony in this proceeding on September 24, 2018?

17 A Yes.

18 Q Do you have any changes or revisions to your
19 prefiled rebuttal testimony?

20 A No.

21 Q If I asked you the questions contained in your
22 prefiled rebuttal testimony would your answers today be
23 the same?

24 A Yes.

25 MR. RUBIN: Chairman, I would ask that Mr.

1 Ferguson's prefiled rebuttal testimony be inserted
2 into the record as though read.

3 CHAIRMAN GRAHAM: We will insert Mr.
4 Ferguson's prefiled rebuttal testimony into the
5 record as though read.

6 (Whereupon, prefiled testimony was inserted.)

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I. INTRODUCTION

1

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 BY MR. RUBIN:

2 Q Have you prepared a summary of your direct and
3 rebuttal testimony?

4 A Yes, I have.

5 Q Would you please provide that combined summary
6 to the Commission?

7 A Good morning, Chairman, Commissioners.

8 My direct and rebuttal testimony support the
9 appropriate accounting under both Generally Accepted
10 Accounting Principals, or GAAP, and FERC Uniform System
11 of Accounts, or USOA, as well as the appropriate
12 regulatory reporting and rate-making associated with
13 FPL's proposed acquisition of certain electric assets
14 from the City Vero Beach and the power purchase
15 agreement that FPL has negotiated with the Orlando
16 Utilities Commission, or OUC.

17 As stated in my direct testimony, FPL will
18 record the acquired electric assets at Vero Beach's net
19 book value as of the acquisition date in the proper
20 plant accounts in accordance with the FERC USOA.

21 Under GAAP, the acquirer in a business
22 acquisition is required to recognize all assets and
23 liabilities at fair value as of the acquisition date.
24 Duff & Phelps, as represented by FPL Witness Herr,
25 performed an enterprise valuation of the Vero Beach

1 electric utility, which confirms that the purchase price
2 of approximately 185 million for the Vero Beach
3 transaction is a reasonable estimate of fair value.

4 In accordance with Account 114, electric plant
5 acquisition adjustments of the FERC USOA, FPL is
6 required to reflect a positive acquisition adjustment if
7 the cost of the acquired system is greater than net book
8 value. FPL estimates an acquisition adjustment of
9 approximately 114 million, and proposals to amortize the
10 acquisition adjustment over a 30-year period.

11 My rebuttal testimony addresses OPC Witness
12 Kollen's incorrect assertions that FPL's proposal to
13 recover the acquisition premium would change the
14 historic depreciated original cost of plant rate-making
15 paradigm to a fair value rate-making paradigm. Contrary
16 to Witness Kollen's testimony, FPL is proposing to
17 account for acquired utility electric plant assets at
18 net book value. However, the FPSC has recognized that
19 when extraordinary circumstances exist, recovery of an
20 acquisition adjustment equal to the amount paid for the
21 fair value of acquired assets above net book value is
22 appropriate. In fact, the FPSC has relied on fair value
23 studies similar to the one prepared by Duff & Phelps on
24 several occasions to support the reasonableness of
25 acquisition adjustments.

1 Q Just a few quick questions, actually.

2 When you are talking on page six, line 18 -- I
3 will let you get there.

4 A Of my direct?

5 Q Yes, your direct.

6 A Okay.

7 Q You talk about your third-party evaluation.
8 And I wonder, did you work with, or did your hired
9 evaluator, did they work with the City of Vero Beach on
10 that valuation?

11 A No, I do not believe they did.

12 Q Okay. And so FPL, to your knowledge, you
13 don't know, then, whether they conducted their own
14 valuation, or compared it to yours?

15 A I am sorry, whether the City of Vero Beach?

16 Q The City itself did its own evaluation and
17 compared it to yours?

18 A No, I am not aware of whether they did or not.

19 Q You are not aware, okay.

20 Okay. And then on line 12 --

21 A Of the same page?

22 Q I think so. Page 10, line 12. Let me make
23 sure.

24 Well, you just mentioned it. So in your
25 summary, I can say, that you talk about FPL is

1 recovering the 20 million that it's paying for OUC via
2 the capacity cost recovery.

3 A The \$10 million annual --

4 Q Yes.

5 A -- is that what you are talking about?

6 Q It recovers 20 million and 10 million
7 annually.

8 A Yes.

9 Q And you added via the capacity cost recovery,
10 meaning you are adding it to bills, just like fuel
11 adjustment and such?

12 A Yes. It's -- I mean, it will be a component
13 of our clause recoveries.

14 Q Okay. Forgive me, I am not an expert in
15 accounting, so...

16 The capacity cost recovery, then, gets added
17 to all bills? This again is spread all over, or is this
18 just the capacity cost recovery because it's an OUC City
19 contract, it only goes on to the City customer bills?

20 A Just as a clarification, we entered into -- or
21 we are going to be entering into, effective upon
22 closing, a contract directly between FPL and OUC. So it
23 will be a cost borne by all customers.

24 Q All customers?

25 A Yes.

1 Q Thank you. Yeah, that wasn't clear in the --
2 Okay. And that's it. Thank you.

3 CHAIRMAN GRAHAM: No unfriendly cross?
4 Staff.

5 MR. MURPHY: No questions.

6 CHAIRMAN GRAHAM: Commissioners?
7 Redirect?

8 MR. RUBIN: No redirect.

9 CHAIRMAN GRAHAM: Okay. Exhibits. I take it
10 we have already put in Exhibits 7 and 8?

11 MR. RUBIN: 7 and 8 I think have already been
12 moved no the record.

13 CHAIRMAN GRAHAM: Okay.

14 MR. RUBIN: We have no other exhibits. And
15 with the Commission's permission, we would like to
16 have our witness excused.

17 CHAIRMAN GRAHAM: Sure.

18 Sir, thank you for coming.

19 THE WITNESS: Thank you.

20 (Witness excused.)

21 (Transcript continues in sequence in Volume
22 2.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, DEBRA KRICK, Court Reporter, do hereby
certify that the foregoing proceeding was heard at the
time and place herein stated.

IT IS FURTHER CERTIFIED that I
stenographically reported the said proceedings; that the
same has been transcribed under my direct supervision;
and that this transcript constitutes a true
transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative,
employee, attorney or counsel of any of the parties, nor
am I a relative or employee of any of the parties'
attorney or counsel connected with the action, nor am I
financially interested in the action.

DATED this 19th day of October, 2018.



DEBRA R. KRICK
NOTARY PUBLIC
COMMISSION #GG015952
EXPIRES JULY 27, 2020