

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Florida Power & Light Company (FPL) for authority to charge FPL rates to former City of Vero Beach customers and for approval of FPL's accounting treatment for City of Vero Beach transaction.

DOCKET NO. 20170235-EI

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

DOCKET NO. 20170236-EU

Submitted for filing: October 29, 2018

_____ /

CITY OF VERO BEACH POST-HEARING BRIEF

Pursuant to the Orders Establishing Procedure – PSC-2018-0370-PCO-EU, PSC -2018-0445-PCO-EU, and Order No. PSC-2018-0496-PCO-EU – and the Prehearing Order, Order No. PSC-2018-0494-PHO-EU, the City of Vero Beach (“COVB”) files it’s post-hearing brief including its statement of post-hearing positions in accordance with the rulings made at the hearing October 18, 2018 and states as follows:

I. INTRODUCTION

The COVB wants to exit the electric utility business by selling its electric utility system to Florida Power & Light Company (“FPL”). It took the COVB over ten years of negotiations with FPL, the Florida Municipal Power Agency (“FMPA”), its members cities, and the Orlando Utilities Commission (“OUC”) to get a deal done. This deal required the assent, cooperation, and recognition of mutual benefits to the transaction of all these parties. It is the only deal of its type in Florida’s history, that is, a mutually beneficial, arms-length deal for the parties and their respective customers. That is extraordinary by any commonly understood definition of that term.

It is only the second sale transaction between a municipal electric utility and an investor

owned utility to appear before the Florida Public Service Commission (“PSC” or the “Commission”), the last being over 25 years ago now. The circumstances then were different, the City of Sebring municipal electric utility system was nearly bankrupt by massive debt, and it had to sell before bankruptcy forced it out of the electric utility business. This cannot be the standard: As former Commissioner Deason explained, the COVB should not need to be on the verge of bankruptcy to exit the electric utility business. [Tr. 298]. Rather, the Commission has the opportunity to permit a mutually beneficial transaction for the parties and their customers to be consummated upon approval of the petitions in this docket. The COVB requests that the PSC approve these petitions so that it may close this transaction to the benefit of the COVB, FPL, and their respective customers.

II. ARGUMENT

The COVB residents had to want this deal. They did, twice approving referenda over several years approving the sale of the municipal electric utility. [Tr. 368; Exs. 31, 32]. The City also would not do this deal if it did not benefit the COVB, its residents, and its electric utility customers. It does; it will generate lower electric rates for its customers immediately and it will yield \$30 million to the COVB for its residents. [Tr. 370].

FPL would not do this deal if it did not benefit FPL and its electric utility customers. It does; it will provide FPL with immediate access to the revenues of approximately 35,000 additional customers, who over time will assist in paying the costs of this transaction and share in FPL’s costs to provide electric service to all its customers to a net benefit of \$135 million. [Tr. 250, 263, 273, 331, 341, 349]. That is, on a cumulative present value revenue requirements (“CPVRR”) basis, all of FPL’s customers will see \$135 million in benefits after compensation for the acquisition adjustment. [Tr. 106, 127, 331, 341]. This CPVRR analysis is the standard by

which the investor owned electric utilities and the Commission make decisions in Florida. [Tr. 264-66, 289, 315].

This deal took over 10 years to accomplish because winding down the COVB's electric utility business required as in other businesses the resolution of on-going contracts associated with the COVB electric utility business with OUC, FMPA, and ultimately the FMPA member cities. These other parties to the overarching sale transaction would not have agreed with the resolution of their contractual interests if they did not benefit from this deal too. [Tr. 152, 154-56, 171, 195; Ex. 33].

To get a signed deal in front of this Commission (1) the COVB had to want to sell its electric utility system; (2) it had to have continued support of its residents for the sale (here, over 10 years); (3) it had to have an interested purchaser (FPL), (4) who stayed interested in the transaction over this long time period, and (5) who assisted the COVB in negotiations with parties – OUC and FMPA -- with contractual interests with the COVB municipal electric utility; both (6) OUC and (7) FMPA had to be interested in terminating or otherwise resolving their contractual interests with the COVB municipal electric utility with the COVB and FPL, and (8) with respect to FMPA, each of its member cities had to approve FMPA's resolution of its contractual interests with the COVB; (9) then the COVB and FPL had to negotiate an arms-length, mutually beneficial transaction accomplishing all this and, lastly, (10) all conditions precedent to this transaction, including PSC approval of the petitions in this docket, have to be obtained. [Tr. 369-71; Ex. 31-33]. These circumstances are rare, they do not happen every year, or even every decade, indeed, to our knowledge this is the first such circumstance in Florida. This is the definition of an extraordinary circumstance.

The Civic Association of Indian River County (“CAIRC”) protested this transaction for the first time at the eleventh hour. In fact, in the seven (7) years the COVB corporate representative James O’Connor has been the COVB City Manager -- where nearly every public hearing before the COVB City Council and its advisory Utilities and Finance Commissions has involved the issue of, or issues related to, the sale of the COVB electric utility -- not once does he recall anyone from CAIRC or its counsel, Lynne Larkin, being present or speaking out on this issue. [Tr. 426-27]. Yet, as CAIRC elicited, there were many avenues to obtain information regarding the sale even beyond these publicly noticed meetings (which CAIRC and Ms. Larkin did not attend), including the City Clerk’s Office, the COVB Finance Director, the COVB Electric Utility Director, the City Attorney, or the City Manager. [Tr. 407-08]. But, as Mr. O’Connor succinctly put it, “if they asked no questions, they would have no answers.” [Tr. 408]. Had CAIRC taken the many opportunities available within the City to ask the questions its witnesses and counsel raised at the PSC hearing there would have been no need for a hearing.

CAIRC witnesses questioned the disenfranchisement of COVB customers outside the City by referencing their involvement in the Utilities Commission and elections. Yet, it is undisputed the Utilities Commission is advisory only and CAIRC elicited at the hearing that while the COVB did not ignore the Utilities Commission advice, the COVB City Council did not always follow it. [TR. 364-65, 383; Ex. 29]. CAIRC further elicited the common sense notion that a City Council that listened to and cared about customers was no substitute for the right to vote. [Tr. 376, 383].

CAIRC witnesses questioned use of a “letter of interest” as opposed to a formal request for proposal and the alleged limited reach of the COVB’s “letter of interest” to interested utilities. CAIRC learned “letters of interest” were used before for other projects, consistent with

their purpose here to determine the level of interest in the purchase; that they were sent to every investor owned electric utility in Florida, the largest municipal electric utilities, and the power agency for Florida municipal electric utilities; and that the COVB had discussions with OUC, Tampa Electric Company, and FPL with only FPL expressing formal interest in purchasing the COVB electric utility. [Tr. 3365-66, 386-88; Ex. 30].

CAIRC witnesses questioned the legality of the referenda on the sale of the COVB electric utility only to learn that they were discussed at public City Council meetings without protest, discussed in individual calls with the City Manager, and reviewed and approved by the COVB City Attorney. [Tr. 366-67, 400-403]. They were not legally challenged by anyone, including CAIRC. [Tr. 366]. They didn't have the price, the details, or how much rates would be lower because their purpose was for the COVB to "find out if the citizens within the corporate limits of the City of Vero Beach endorsed a sale of the electric utility." [Tr. 405]. Over 60 percent of the COVB residents voted yes to that question. [Tr. 368, 405 ; Exs. 31, 32].

Finally, CAIRC witnesses questioned whether there were actual negotiations on behalf of the COVB with FPL, whether the terms and conditions of the transaction were available publicly and to the advisory commissions, and whether the COVB had analyzed the financial and budget impacts of selling the COVB electric utility to FPL under the transaction agreement. [Tr. 368-69, 422]. CAIRC found out that there were negotiations conducted by COVB staff and outside counsel, that the transaction agreement was made available as was the counsel who negotiated it to City Council and City commission members, and the COVB did prepare a plan based on selling the municipal electric utility to FPL that was presented to the finance commission and provided a five to seven year path to meet the COVB's obligations after the sale. [Tr. 368-69, 418-19, 422-23].

All of these CAIRC issues are, of course, local issues, and should have been addressed before the COVB City Council, the COVB City Council advisory commissions, and/or the COVB Staff, where the opportunity to obtain information about, and participate in, the discussions regarding the sale of the COVB electric utility to FPL was provided to all, including CAIRC, its counsel, and its witnesses. Had CAIRC done so there would have been no need for a PSC hearing.

III. ISSUES AND POSITIONS¹

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

COVB Position:

The COVB joins FPL’s position on Issue 1.

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

COVB Position:

Yes. The COVB joins FPL’s position on Issue 5. Authorizing FPL to charge COVB customers FPL rates advances the public interest by allowing COVB customers to enjoy significantly lower electric bills, which is an indispensable component of the COVB Transaction. Without this approval, the COVB Transaction will not close.

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

COVB Position:

Yes. The COVB joins FPL’s position on Issue 6. Both the COVB and FPL petitioned the Commission to terminate the territorial agreement because termination is an essential component of the COVB Transaction.

¹ Issues 2, 3, 4, 10, 14, 18 and 19 were not accepted by the Commission as issues in this proceeding. The remaining issues have not been renumbered. Prehearing Order at 10.

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

COVB Position:

The COVB joins FPL's position on Issue 7.

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

COVB Position:

No. The COVB joins FPL's position on Issue 8.

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

COVB Position:

Yes. The COVB joins FPL's position on Issue 9.

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

COVB Position:

The COVB joins FPL's position on Issue 11.

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

COVB Position:

The COVB joins FPL's position on Issue 12.

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

COVB Position:

No. The COVB joins FPL's position on Issue 13.

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

COVB Position:

Yes. The COVB joins FPL's position on Issue 15.

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

COVB Position:

Yes. The COVB joins FPL's position on Issue 16.

ISSUE 20: Should this docket be closed?

COVB: *Yes. The COVB joins FPL's position on Issue 20. Upon issuance of an Order approving FPL and COVB's petition to terminate their territorial agreement and approving FPL's requested accounting treatment with regard to the COVB Transaction, these dockets should be closed.*

IV. CONCLUSION

For all these reasons, the COVB requests that the Commission grant (1) FPL's Petition for Authority to Charge FPL Rates to Former City of Vero Beach Customers and for Approval of FPL's Accounting Treatment for City of Vero Beach Transaction and (2) the Joint Petition to Terminate Territorial Agreement, by FPL and the City of Vero Beach.

Respectfully submitted,

/s/ James Michael Walls _____

James Michael Walls
Florida Bar No. 706272
CARLTON FIELDS JORDEN BURT, P.A.
4221 W. Boy Scout Boulevard
Tampa, FL 33607-5780
Telephone: (813) 223-7000
Facsimile: (813) 229-4133
mwalls@carltonfields.com
jcostello@carltonfields.com
Attorneys for City of Vero Beach

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing CITY OF VERO BEACH POST-HEARING BRIEF has been served by electronic mail on this 29th day of October, 2018 to all counsel of record as listed below.

/s/ James Michael Walls
James Michael Walls

COUNSEL OF RECORD

<p>Kathryn G.W. Cowdery Jennifer Crawford Charles W. Murphy Suzanne Brownless Senior Attorney, Office of the General Counsel FLORIDA PUBLIC SERVICE COMMISSION 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 cmurphy@PSC.STATE.FL.US STATE>FL>US">SBrownle@PSC>STATE>FL>US kcowdery@psc.state.fl/us jcrawford@psc.state.fl.us</p>	<p>Ken Hoffman FLORIDA POWER & LIGHT 215 South Monroe Street, Ste. 810 Tallahassee, FL 32301 Ken.hoffman@fpl.com</p>
<p>J.R. Kelly Stephanie Morse Charles Rehwinkel OFFICE OF PUBLIC COUNSEL 111 W. Madison Street, Ste. 812 Tallahassee, FL 32399 Kelly.jr@leg.state.fl.us Morse.stephanie@leg.state.fl.us Rehwinkel.charles@leg.state.fl.us</p>	<p>Bryan S. Anderson Ken Rubin 700 Universe Boulevard Juno Beach, FL 33408 Bryan.anderson@fpl.com Ken.rubin@fpl.com</p>
<p>D. Bruce May, Jr. Holland & Knight, LLP 315 South Calhoun Street, Ste. 600 Tallahassee, FL 32301 bruce.may@hkllaw.com</p>	<p>Lynne A. Larkin CIVIC ASSOCIATION OF INDIAN RIVER COUNTY, INC. 5690 HWY A1A, #101 Vero Beach, FL 32963 lynnelarkin@bellsouth.net</p>

Brian T. Heady 406 19 th Street Vero Beach, FL 32960 brianheady@msn.com	Michael Moran P.O. Box 650222 Vero Beach, FL 32965 mmoran@veronet.net
Dylan Reingold County Attorney Indian River County 1801 27 th Street Vero Beach, FL 32960 dreingold@ircgov.com	