

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

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In the Matter of:

DOCKET NO. 20170235-EI

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.

FILED 12/6/2018
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FPSC - COMMISSION CLERK

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DOCKET NO. 20170236-EU

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

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PROCEEDINGS: COMMISSION SPECIAL AGENDA

COMMISSIONERS
PARTICIPATING: COMMISSIONER JULIE I. BROWN
COMMISSIONER DONALD J. POLMANN
COMMISSIONER GARY F. CLARK
COMMISSIONER ANDREW G. FAY

DATE: Tuesday, November 27, 2018

TIME: Commenced: 9:30 a.m.
Concluded: 9:49 a.m.

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

REPORTED BY: ANDREA KOMARIDIS
Court Reporter and
Notary Public in and for
the State of Florida at Large

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P R O C E E D I N G S

COMMISSIONER BROWN: Good morning, everyone. If you could, please take your seats. Thank you so much. Today is November 27th. The time is 9:30. This is our special agenda conference for the FPL Vero acquisition adjustment and territorial agreement.

Before we get into the business of the day and call this meeting to order, I did want to recognize a notable Nole here on the bench who has just been anointed -- being called a notable Nole, too -- and he has, now, developed an affinity for the Gators.

So, just wanted to acknowledge Commissioner Fay.

COMMISSIONER FAY: Thank you, Madam Chairman. I -- we got our -- our butts kicked pretty good on Saturday. And so, I can appreciate this. I did think that when we entered into this mutual stipulation, that we had discussed one item. And I -- I'm struggling here because there -- seems like there's maybe three items up here, but -- fair enough. When -- when you lose, you lose; and when you win, you win.

So, congrats on the good win. And hopefully you've built up a lot of excitement after five

1 years of losing to -- to celebrate --

2 COMMISSIONER BROWN: Boom. Boom.

3 COMMISSIONER FAY: -- what a great game you
4 had on Saturday. So, thank you, Madam Chairman.

5 (Laughter.)

6 COMMISSIONER BROWN: Thank you. Thank you
7 very much.

8 We do have serious business to get to today.
9 So, I'd like to call this meeting to order and move
10 to the item directly with the introduction from
11 Ms. Cowdery.

12 MS. COWDERY: Good morning, Commissioners.
13 I'm Kathryn Cowdery, with the Office of General
14 Counsel.

15 The City of Vero Beach and FPL have petitioned
16 the Commission to terminate their territorial
17 agreement so that all the current customers of the
18 City of Vero Beach's electric utility will become
19 FPL's customers.

20 If the Commission approves termination of the
21 territorial agreement, the termination would be
22 effective upon the purchase and sale of the City's
23 electric utility by FPL.

24 Directly related to the petition to terminate
25 the territorial agreement, FPL is asking the

1 Commission to approve base-rate recovery of a
2 positive acquisition adjustment; second, to approve
3 recovery of costs associated with a short-term
4 power purchase agreement with the Orlando Utilities
5 Commission; and third, allow it to charge the City
6 customers the same rates it charges to the current
7 FPL customers.

8 There has only been one case where the
9 Commission has granted an electric utility a
10 positive acquisition adjustment above net book
11 value of a purchased electric utility system.

12 Under the analytical framework expressed in
13 that case, a positive acquisition adjustment may
14 not be considered unless the Commission finds that
15 there are extraordinary circumstances that would
16 support one.

17 The facts of this case are very unusual. The
18 hearing record shows that approximately 60 percent
19 of cust- -- of the City's customers reside outside
20 the City's limits.

21 In addition to the City, COVB's electric
22 utility serves portions of unin- -- Indian River
23 County and part of the town of Indian River Shores.
24 FPL serves the other part of Indian River Shores.

25 For more than a decade, customers living

1 outside the City have wanted to become FPL
2 customers. There were multiple attempts over the
3 years to address these customers' complaints
4 through legislation. Also, two voter referenda
5 were held that showed that the City customers
6 supported the sale of the electric utility to FPL.

7 In addition, multiple petitions were filed
8 with the Commission as far back as 2009. The most-
9 recent petition was filed in 2016 by the town of
10 Indian River Shores and asked the Commission to
11 modify the territorial agreement so that all town
12 electric customers could be served by FPL.

13 The City at that time opposed the petition;
14 however, FPL and the City subsequently entered into
15 negotiations for the purchase and sale of the
16 City's electric utility. Because of this, Indian
17 River Shores and the City jointly requested that
18 the Commission hold the proceeding in abeyance,
19 pending negotiations on the sale of the utility.
20 For this reason, that docket is currently being
21 held in abeyance.

22 Staff recommends that the totality of these
23 unusual facts constitute extraordinary
24 circumstances that support consideration of a
25 positive acquisition adjustment.

1 Finally, the hearing record shows that
2 approval of the requested relief would have the
3 effect of allowing the parties to close on the
4 purchase and sale of the City's electric utility,
5 which would result in settlement of ongoing
6 disputes over the territorial agreement and would
7 be in the public interest.

8 Staff proposes the Commission discuss the
9 issues in the following order: Issue 1; then
10 Issue 7; then Issue 8; then Issues 9 and 15; then
11 Issues 11, 12, and 13; then Issue 6; then Issue 5,
12 then Issue 16; and finally, Issue 20.

13 Staff -- staff is available to introduce
14 individual issues, if requested by the Commission,
15 and to answer any questions.

16 COMMISSIONER BROWN: Thank you.

17 Commissioner Polmann?

18 COMMISSIONER POLMANN: Thank you, Madam
19 Chairman.

20 I appreciate staff's thoroughness in the
21 introduction. Thank you for laying that out for
22 us.

23 I would support the suggestion that we go
24 through these issues in the order that was just
25 presented. I -- I do believe there is an

1 opportunity for us to discuss this rather broadly,
2 but I think it -- it would be appropriate for us to
3 follow this. And I'd be happy to hear from other
4 Commissioners on that issue, but I'm comfortable
5 following the order that was suggested.

6 COMMISSIONER BROWN: Thank you, Commissioner
7 Polmann. I agree. I think it -- it's sensible
8 to -- and appreciate staff's guidance on this
9 issue.

10 So, we're just going to go ahead and do it
11 that -- that way, and we will open up the
12 discussion on Issue 1. If there are any questions
13 with -- regarding the legal authority on
14 Question 1, from staff -- if not, we can be ripe
15 right now for a motion on Issue 1.

16 COMMISSIONER POLMANN: Madam Chairman, I -- I
17 would concur with staff recommendation. The -- the
18 issue of the acquisition adjustment does affect
19 customer rates. The -- the new customers, I -- I
20 think will be benefited coming into the FPL
21 jurisdiction.

22 Long-term, the existing customers may have an
23 impact, but that won't occur until -- until a
24 further rate case, but in -- in -- overall, we have
25 jurisdiction over customer rates. And it's clear

1 to me that -- that this comes within our
2 jurisdiction. We have authority.

3 I would move approval of Issue No. 1.

4 COMMISSIONER BROWN: Thank you.

5 Is there a second?

6 COMMISSIONER CLARK: Second.

7 COMMISSIONER BROWN: All those in favor, say
8 aye.

9 (Chorus of ayes.)

10 COMMISSIONER BROWN: All right. It pass- --
11 passes unanimously.

12 On to the big issue -- one of the big issues,
13 Issue 7, regarding extraordinary circumstances.

14 COMMISSIONER CLARK: Madam Chair.

15 COMMISSIONER BROWN: Sure. Commissioner
16 Clark.

17 COMMISSIONER CLARK: Thank you, Madam Chair.

18 I want to, first of all, commend all of the
19 parties and the staff and all of the public that
20 assisted in doing such a deep inquiry on the
21 circumstances that surrounded this transaction.

22 We heard a lot of testimony and a lot of
23 arguments of the parties. And it's clear that --
24 to me, that extraordinary circumstances do exist in
25 this case.

1 I also think that this determination is also
2 very spec- -- fact-specific. I agree with the
3 staff recommendation that we did not rely on CPVRR
4 to find the extraordinary circumstances in this
5 particular case, but I also want to make certain
6 that we do not tie the hands of future commissions
7 when it comes to the CPVRR calculation.

8 We've got a chance to do something really good
9 here for the citizens of the State of Florida, for
10 businesses, for the consumers. And I support the
11 recommendation with the qualification that we do
12 not limit extraordinary-circumstance analysis by
13 future commissions.

14 And I would move so, Mr. Chair -- Madam
15 Chairman.

16 COMMISSIONER BROWN: Thank you.

17 We have a motion. And I would also agree as
18 well with those comments that you made.

19 Is there a second?

20 COMMISSIONER FAY: Second.

21 COMMISSIONER BROWN: All right. Further
22 discussion?

23 COMMISSIONER POLMANN: Yes. Thank you, Madam
24 Chairman.

25 I -- I support the issue and I -- I would like

1 to reflect on Commissioner Clark's comments. I --
2 I don't need to repeat the staff analysis. I -- I
3 would simply point to the staff's analysis. I
4 think it's very thorough. I think there's a lot of
5 explanation in here and it -- its thoroughness in
6 laying out the basis of the extraordinary
7 circumstances in the sense of what -- what it
8 includes and what it does not include.

9 There are policy issues in here that are --
10 make this a unique type of situation, in that,
11 extraordinary circumstances are applied and should
12 be applied by this Commission on a case-by-case
13 basis.

14 We -- we're not looking at this having any
15 precedential value. And going forward, that would
16 be, I believe, this Commission's position that, you
17 know, this is done as -- as the facts present
18 themselves.

19 And with the Commission's support, I believe
20 that's the way this will be looked at in the
21 future. Every case stands on its own. And I
22 believe that's what -- what the staff is saying
23 within -- within their writing.

24 So, I -- I would support it, with that
25 understanding.

1 COMMISSIONER BROWN: Thank you.

2 Any further discussion?

3 Just to be clear, we have a motion to the
4 floor, and I believe that motion strikes the
5 language regarding whether the Commission may deem
6 the CPVRR-analysis language. That is to be
7 stricken on Page 12, correct?

8 COMMISSIONER CLARK: Yes.

9 COMMISSIONER BROWN: Okay. So, that's our
10 motion. Any further discussion before we take a
11 vote?

12 All those in favor, say aye?

13 (Chorus of ayes.)

14 COMMISSIONER BROWN: All right. The motion
15 passes unanimously.

16 Is staff clear on that?

17 MS. COWDERY: I would like a little -- a
18 little more clarity, if you're just talking about
19 once sentence or a paragraph -- what -- or a
20 portion of the sentence or just --

21 COMMISSIONER BROWN: Commissioner?

22 COMMISSIONER CLARK: It would be the last
23 sentence in the --

24 COMMISSIONER BROWN: Mic.

25 COMMISSIONER CLARK: I'm sorry. Last sentence

1 in the fourth full paragraph: Staff recommends the
2 projected revenue requirements for the FPL
3 customers, which is the limited scope of CPVRR
4 analysis, not an extraordinary circumstance that
5 can support consideration of an acquisition
6 adjustment.

7 MS. COWDERY: Thank you.

8 COMMISSIONER BROWN: Excellent. Thank you.

9 We will move to Issue 8 now discussing the
10 alternatives. Are there any question -- questions?
11 This is a very straightforward issue. If not,
12 we're ready for a motion on Issue 8.

13 Commissioner Clark.

14 COMMISSIONER CLARK: Move staff, Madam Chair.

15 COMMISSIONER BROWN: Is there a second?

16 COMMISSIONER FAY: Second.

17 COMMISSIONER BROWN: Any further discussion?

18 All those in favor, say aye.

19 (Chorus of ayes.)

20 COMMISSIONER BROWN: Motion passes.

21 All right. Moving on to Issue -- we're going
22 to take up Issue 9 first, followed by 15.

23 Issue 9 -- are there questions to staff on
24 Issue 9? Any discussion? If not, we're ready for
25 a motion.

1 COMMISSIONER FAY: Madam Chairman.

2 COMMISSIONER BROWN: Yes.

3 COMMISSIONER FAY: I have a quick question.

4 COMMISSIONER BROWN: Sure. Commissioner Fay.

5 COMMISSIONER FAY: I think -- Ms. Cowdery,
6 within the analysis, it talks about the de minimis
7 impact. And my -- I guess my specific question is:
8 Is there some context within case law or precedent
9 that -- that talks about that component or that
10 analysis? And it could be in order or, more
11 importantly, cases that have spoken to it.

12 MS. COWDERY: Yes, Commissioner. The concept
13 of looking at de minimis impacts in the context of
14 a territorial-agreement proceeding has been
15 addressed by the Florida Supreme Court in several
16 cases. It's in the context of a territorial
17 dispute that's been appealed. And the Court is
18 looking at cost issues. And they have recognized
19 the concept of the doctrine of de minimis and
20 applied it to those cases.

21 So, yes, I think there is --

22 COMMISSIONER FAY: Okay. That's perfect.

23 That's all I needed. I just wanted to make sure
24 there was some legal basis -- some legal precedent
25 to make that determination, and the Florida Supreme

1 Court is always a good one to do that. So, I
2 appreciate it.

3 Thank you.

4 COMMISSIONER BROWN: Thank you.

5 Any other questions? All right. Ready for a
6 motion.

7 COMMISSIONER FAY: Madam Chair, I would motion
8 staff recommendation on Item 9.

9 COMMISSIONER BROWN: Great.

10 Is there a second?

11 COMMISSIONER CLARK: Second.

12 COMMISSIONER POLMANN: Second.

13 COMMISSIONER BROWN: Any further discussion?
14 Would you like to consider approving Issues 9 and
15 15 together?

16 COMMISSIONER FAY: Yeah, I'm comfortable with
17 that. So, Madam Chair, I would move staff
18 recommendation on Items 9 and 15.

19 COMMISSIONER BROWN: Second? Is there a
20 second?

21 COMMISSIONER CLARK: Second.

22 COMMISSIONER BROWN: All those in favor on
23 approving Issues 9 and 15, say aye.

24 (Chorus of ayes.)

25 COMMISSIONER BROWN: Motion passes

1 unanimously.

2 Moving on to Issues 11, 12, and 13, which will
3 be taken up together. If there are any questions
4 on any of these issues regarding the amount and
5 accounting treatment, now is the time to make them.

6 Yes, Commissioner Clark.

7 COMMISSIONER CLARK: Madam Chair, I would
8 staff recommendation on Issues 11, 12, and 13.

9 COMMISSIONER BROWN: Is there a second?

10 COMMISSIONER FAY: I'll second.

11 COMMISSIONER BROWN: Any further discuss- --
12 any discussion or questions on those issues?

13 Seeing none, all those in favor, say aye.

14 (Chorus of ayes.)

15 COMMISSIONER BROWN: Motion passes.

16 Moving to Issue 6, regarding the termination
17 of the territorial agreement -- any questions?

18 Can I get a motion?

19 COMMISSIONER CLARK: Madam Chair, I would move
20 staff recommendation on Item 6.

21 COMMISSIONER BROWN: Is there a second?

22 COMMISSIONER POLMANN: Second.

23 COMMISSIONER BROWN: All -- all those in
24 favor, say aye.

25 (Chorus of ayes.)

1 COMMISSIONER BROWN: Motion passes.

2 Issue 5, regarding the charge -- Vero
3 customers paying the current FPL rates.

4 Commissioner Clark.

5 COMMISSIONER CLARK: Motion --

6 COMMISSIONER BROWN: Yeah.

7 COMMISSIONER CLARK: Madam Chair, I would move
8 staff recommendation on Issue 5.

9 COMMISSIONER POLMANN: Second.

10 COMMISSIONER BROWN: Any discussion or
11 questions?

12 All those in favor, say aye.

13 (Chorus of ayes.)

14 COMMISSIONER BROWN: Motion passes.

15 Issue 16, regarding the public interest. And
16 I -- I just want to say, getting into this issue, I
17 voted for this during the PAA. My belief was only
18 solidified even further after an evidentiary
19 hearing, hearing the voluminous amount of benefits
20 to the public, to the FPL customers, the City of
21 Vero Beach, also removing the long-standing
22 disenfranchisement of those outside the City
23 limits.

24 Again, it -- this -- happy this record was
25 developed very thoroughly and I'm glad we could

1 finally bring some closure here to the issue before
2 us, before the end of the year. And I --
3 obviously, there are plenty of public benefits
4 here.

5 And with that, I'm ready for a motion.

6 COMMISSIONER CLARK: Madam Chairman, I would
7 move approval of rec- -- staff's recommendation on
8 Issue No. 16.

9 COMMISSIONER BROWN: Is there a second?

10 COMMISSIONER FAY: I'll second, Madam Chair.

11 COMMISSIONER BROWN: Thank you.

12 Any comments? Now is the time to make them
13 before we get to close the docket.

14 Commissioner Polmann.

15 COMMISSIONER POLMANN: Thank you, Madam Chair.

16 The -- I think the issue here in Item 16 is
17 viewed in -- in its totality here. The item speaks
18 to the relief requested. And that is in regards,
19 as I understand it, in the overall context of the
20 territorial agreement, the acquisition adjustment,
21 the -- the combination of, you know, bringing FPL
22 to provide service to the new customers, the -- the
23 issue that -- that Commissioner Fay raised a minute
24 ago with potential changes in -- in rates for the
25 existing base -- those -- those customers -- the

1 existing customers would all see an immediate
2 change in rates. That may or may not occur in the
3 future, under a future rate case, which will come
4 back to this Commission.

5 As you've indicated, there are many benefits.
6 And I think, overall, when we look at this case in
7 its totality, it -- it certainly does present
8 itself to be in the public interest. And I -- I
9 believe it's most appropriate because of the many
10 different aspects of this that have been viewed
11 that way. And I would certainly support it.

12 I just think when you look at the -- at the
13 big picture, there's no -- no issue here other than
14 to view it in the public interest, so I -- I
15 appreciate the moment to be able to speak to that.
16 Thank you.

17 COMMISSIONER BROWN: Thank you.

18 Commissioner Clark, any comments?

19 COMMISSIONER CLARK: No, ma'am.

20 COMMISSIONER BROWN: Okay. Commissioner Fay?

21 So, we have a motion and a second on this
22 item.

23 All those in favor, signify by saying aye.

24 (Chorus of ayes.)

25 COMMISSIONER BROWN: The motion passes

1 unanimous- -- unanimously.

2 The last item is to close the dockets on
3 Issue 20. Can I please get a motion on this?

4 COMMISSIONER POLMANN: Move approval.

5 COMMISSIONER BROWN: Is there a second?

6 COMMISSIONER CLARK: Second.

7 COMMISSIONER BROWN: All those in favor, say
8 aye.

9 (Chorus of ayes.)

10 COMMISSIONER BROWN: Thank you. The motion
11 passes. That concludes the special agenda on this
12 item.

13 And at this time, before we adjourn, I do want
14 to announce that we have a -- a hearing coming up.
15 We're going to take about a 15-minute break. Let's
16 say that we will start at 10:05 in this room.

17 And with that, there are no other matters to
18 discuss. This meeting is adjourned. Thank you so
19 much for being here.

20 (Whereupon, proceedings concluded at 9:49
21 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
COUNTY OF LEON)

I, ANDREA KOMARIDIS, 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 6th day of December, 2018.



ANDREA KOMARIDIS
NOTARY PUBLIC
COMMISSION #GG060963
EXPIRES February 9, 2021