

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

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FILED: July 23, 2018

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

**PETITION PROTESTING PROPOSED AGENCY ACTION
AND REQUESTING EVIDENTIARY HEARING**

The Florida Industrial Power Users Group (FIPUG), by and through the its undersigned counsel, pursuant to Sections 120.57, 120.569, 366.06, and 366.076, Florida Statutes (F.S.), and Rules 25-22.029 and 28-106.201, Florida Administrative Code (F.A.C.), files this protest of the Florida Public Service Commission's (Commission) Order No. PSC-2018-0336-PAA-EU issued July 2, 2016, (PAA Order) and requests an evidentiary hearing. In the PAA Order, the Commission approved the petition of Florida Power and Light Company (FPL) for authority to charge FPL rates to former City of Vero Beach (COVB or City) customers and approved of FPL's accounting treatment for the COVB transaction. The Commission also approved the joint petition of FPL and COVB to terminate their territorial agreement. FIPUG states the following in support of its protest of the PAA Order and its petition:

1. The name and address of the agency affected and the agency's file or docket numbers:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
Docket No. 20170235-EU

2. FIPUG has members whose substantial interests are affected by the PAA Order because the PAA Order authorizes FPL to collect additional rates from FIPUG members and other FPL customers, including, but not limited to, increased rates resulting from the Commission's approval of FPL's requested acquisition adjustment of \$116.2 million dollars.

3. FIPUG is represented in this matter by the Moyle Law Firm, whose address and telephone number is set forth below. Copies of all pleadings, notices and other matters filed in this case should be sent to the following:

Jon Moyle
The Moyle Law Firm
The Perkins House
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone (850) 681-3828
jmoyle@moylelaw.com

4. FIPUG reviewed the PAA Order on the Commission's website on or about July 3, 2018.

5. At this time, the disputed issues of material fact, including a concise statement of the ultimate facts alleged, and those facts, or inferences drawn from certain facts, which FIPUG contends warrant reversal and/or modification of the PAA Order, are discussed below.

Background

6. The Commission has ordered FIPUG members and other FPL ratepayers to pay for FPL's business deal with COVB, specifically, the \$116.2 million premium that FPL paid above and beyond book value for the COVB utility system. The Commission also approved FPL's request to treat this \$116.2 million dollar premium, or "acquisition adjustment", as a regulatory asset. This means that FIPUG members and other FPL customers will pay an additional \$92.5 million to FPL

for profit (termed “return on equity”) on this Commission-approved accounting entry of a \$116.2 million acquisition adjustment. Thus, the Commission has authorized FPL ratepayers to pay more than \$200 million (\$208.7 million) to FPL for the acquisition adjustment premium that FPL paid to the COVB for its utility system. FIPUG respectfully submits that FPL shareholders or COVB ratepayers rather than FPL’s ratepayers should fund this acquisition adjustment premium. Put simply, the Commission should not burden FIPUG members and other FPL ratepayers with a rate increase to pay for the premium FPL intends to pay the COVB for its electric system.

7. Utility rate base should be set based on the depreciated costs of property used and useful to the ratepayers. Nearly every other state commission sets a regulated electric utility’s rate base on the depreciated original cost of property devoted to public service.

8. Here, the net book value of the COVB property is approximately \$69,000,000. This net book value sum is just over 1/3 (37.3%) of the total price that FPL will pay for the COVB electrical system, namely \$185,000,000. This Commission has infrequently had occasion to consider the question of whether to allow a utility to recover the premium, the amount above and beyond book value, from ratepayers of the acquiring utility (here, FPL’s existing customers) as compared to utility shareholders or existing ratepayers of the utility being sold. When the Commission has considered the matter, except in an extraordinary situation, the Commission has found that if the purchase price of the utility being acquired is greater than that utility’s net book value, it would be unfair to make the acquisition adjustment premium the responsibility of the acquiring electric company’s ratepayers. Stated differently, the Commission’s position is that the deal’s “premium costs” should not be passed along to the acquiring utility’s general body of ratepayers, absent extraordinary circumstances.¹

¹ The PAA Order references this as a Commission policy. However, the Commission, subject to statutory rulemaking, has not adopted this policy by rule as required and arguably such a policy should not be relied upon. Section 120.57(e)1, Florida Statutes, provides in pertinent part that,

Tellingly, this is consistent with legislative direction, which states in pertinent part that “The Commission shall investigate and determine the actual legitimate costs of the property of each utility company, actually used and useful in public service....” (Emphasis added). See section 366.06(1), Florida Statutes.

9. FIPUG contends that its members and other FPL ratepayers should not be saddled by FPL and the Commission with the total \$208 million deal premium expense/rate increase for intangible property that is hardly “property” used and useful by FPL’s ratepayers. By having to pay this additional \$116.2 million in increased rates, which the PAA Order permits when it states that FPL is authorized “to record a positive acquisition adjustment in the amount of \$116.2 million on its books ... and to amortize this amount over the requested 30 year period”, FIPUG members are substantially affected adversely, as are the interests of other FPL customers. Thus, FIPUG challenges and protests the PAA Order in all material respects and requests an evidentiary hearing. The challenge includes, but is not limited to the following matters and disputed issues of fact, and any fallout issues resulting therefrom:

Statement of Disputed Facts and Issues

Disputed Issues of Law

Issue 1. Do sections 366.01, 366.041, 366.06, and 366.07, Florida Statutes, permit the Commission to place into rate base an acquisition adjustment premium cost of \$116.2 million paid by FPL to the COVB?

Disputed Issues of Fact

Issue 2. Do extraordinary circumstances exist such that FIPUG members and other FPL customers, rather than FPL shareholders, should pay higher rates for the \$116.2 million acquisition adjustment premium cost to acquire the COVB utility?

An agency ... may not base agency action that determines the substantial interests of party on an unadopted rule or a rule that is an invalid exercise of delegated legislative authority.

- Issue 3. Is approval of recovery of the \$116.2 million acquisition adjustment premium in the public interest of all FPL ratepayers?
- Issue 4. Is it fair, just and reasonable to recovery the \$116.2 million acquisition adjustment premium from current FPL ratepayers?
- Issue 5. Does the \$116.2 million acquisition adjustment premium cover existing customers' cost of the premium?
- Issue 6. If the acquisition adjustment premium is approved, should it be recovered only from COVB customers?
- Issue 7. If the acquisition adjustment premium is approved, should any return on equity associated with it be recovered only from COVB customers?
- Issue 8. Should FPL's proposed accounting treatment related to the acquisition of the assets of the COVB, the acquisition adjustment, and the Commission's Order approving same, be rejected or otherwise modified?
- Issue 9. What is the Commission's policy when considering a purchased power agreement that is above avoided costs?
- Issue 10. Is the OUC purchase power agreement needed for the reliability of the FPL electric system?
- Issue 11. Is the OUC purchase power agreement required to serve current FPL customers?
- Issue 12. Should any portion of the purchase power agreement that the COVB has in place with OUC be approved for cost recovery?
- Issue 13. Should FIPUG members and other FPL ratepayers be charged increased rates for a COVB purchase power agreement that is not needed by FPL?
- Issue 14. What risk, if any, is associated with a regulatory asset of \$116.2 million that represents an acquisition adjustment premium cost?
- Issue 15. If the risk associated with a regulatory asset of \$116.2 million is negligible, should the allowed return on equity for this regulatory asset be adjusted downward to reflect the negligible risk of the acquisition adjustment premium cost?
- Issue 16. If a premium acquisition adjustment is permitted, how should such accounting adjustment be amortized and recovered?
- Issue 17. Should the existing territorial agreement between FPL and COVB be terminated?

- Issue 18. What costs or savings, besides the \$116.2 cost of the acquisition adjustment, will FIPUG members and FPL ratepayers bear as a result of the proposed acquisition by FPL of the COVB electrical assets?
- Issue 19. Should FPL be required to track the costs or savings associated with the proposed acquisition by FPL of the COVB electrical assets, and if savings are not realized as FPL projects, should FPL refund certain monies to customers?

Statement of the Ultimate Facts Alleged

10. The ultimate facts from each of the issues discussed above will vary depending upon the testimony, documents and discovery put forward in this hearing; however, the ultimate fact is that the \$116.2 million acquisition adjustment premium should not be approved because it results in unfair and unjust rates.

11. Pursuant to sections 366.041, 366.06 and 366.07, F.S., the Commission has the authority and duty to prescribe and fix just and reasonable rates and charges. Pursuant to these statutes, adjustments should be made to the rates and charges approved by the PAA Order being challenged herein.

12. In the broadest terms, FIPUG's ultimate factual allegation is that the PAA Order's rates and charges are unfair, unjust, unreasonable, excessive, and unfairly discriminatory. The disputed issues of material fact delineated in and by FIPUG's protest should be interpreted broadly in order to effectuate full discovery on the disputed issues, thereby allowing the parties to adequately determine the scope of the issues for consideration and determination. FIPUG's protest encompasses any additional issues logically arising from the specifically identified areas, including related issues that may arise during the process of discovery. Further, FIPUG reserves the right to fully participate in the hearing process, take positions and file testimony on any additional issues raised by any other party, if procedurally appropriate, and resolve any issues which come to light during the pendency of this docket.

13. FIPUG is entitled to and seeks a *de novo* proceeding on the disputed issues of material fact raised in its protest of the Commission's PAA Order. FPL has the burden of proof in all aspects of the requested evidentiary hearing pursuant to Section 120.57(1), F.S., and if the burden of proof is not satisfied, the disputed issues of material fact must be resolved in the favor of FIPUG and other FPL ratepayers.

14. By Order No. PSC-2018-0336-PAA-EU, protests of the PAA Order shall be filed with the Office of Commission Clerk no later than the close of business on July 23, 2018. This Petition has therefore been timely filed.

15. Sections 366.041, 366.06, and 366.07 are the specific statutes that require reversal or modification of the PAA Order.

16. FIPUG requests that the Commission take the following actions with respect to this protest and objection to the PAA Order, Order No. PSC-2018-0336-PAA-EU:

- a) Establish a hearing schedule to resolve the disputed issues of material fact as described above, including any additional issues properly raised by a party and any issues which come to light during the pendency of this docket.
- b) Establish just and reasonable base rates and charges for FIPUG members and other FPL customers so that such customers are not paying for an unwarranted premium acquisition adjustment of more than \$200 million dollars for FPL's purchase of the COVB electric utility system, and a purchase power agreement that is above avoided costs and otherwise not needed to serve FPL's firm load.

WHEREFORE, FIPUG hereby protests and objects to Commission Order No. PSC-2018-0336-PAA-EU, as provided above, and respectfully petitions the Commission to conduct a formal evidentiary hearing, as required under the provisions of Sections 120.57(1) 120.569, F.S.

Respectfully Submitted,

/s/ Jon C. Moyle

Jon C. Moyle, Jr.
Karen A. Putnal
Moyle Law Firm, P.A.
118 North Gadsden Street
Tallahassee, Florida 32301
Telephone: (850)681-3828
Facsimile: (850)681-8788
jmoyle@moylelaw.com
kputnal@moylelaw.com

Attorneys for Florida Industrial Power Users Group

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that a true and correct copy of FIPUG's Petition Requesting Evidentiary Hearing on the Protested Portions of the Proposed Agency has been furnished by electronic mail to the following parties on this 23rd day July, 2018.

Keith Hetrick, Esq.
Kathryn Cowdery, Esq.
Florida Public Service Commission
Betty Easley Conference Center
2540 Shumard Oak Blvd., Room 110
Tallahassee, FL 32399-0850
khetrick@psc.state.fl.us

Ken.hoffman@fpl.com

Bryan S. Anderson
Florida Power & Light
700 Universe Blvd.
Juno Beach, FL 33408
Bryan.anderson@fpl.com
Ken.rubin@fpl.com

J.R. Kelly, Esq.
Charles J. Rehwinkel
Stephanie Morse
Office of Public Counsel
111 West Madison Street, room 812
Tallahassee, FL 32301
kelly.jr@leg.state.fl.us
rehwinkel.charles@leg.state.fl.us
morse.stephanie@leg.state.fl.us

James O'Connor
Wayne R. Coment
Lange Sykes
City of Vero Beach
P.O. Box 1389
Vero Beach, FL 32961
citymgr@covb.org

Ken Hoffman
Florida Power & Light
215 South Monroe Street, Suite 810
Tallahassee, FL 32301
Lynne A. Larkin
Civic Association of Indian River County, Inc.
5690 Hwy. A1A, #101

J. Michael Walls
4221 Boy Scout Blvd., Ste. 1000
Tampa FL 33607
813-2294133

Vero Beach, FL 32963
lynnelarkin@bellsouth.net

/s/ Jon C. Moyle
Jon C. Moyle, Jr.