
From: Susan Clark <sclark@radeylaw.com>
Sent: Thursday, October 10, 2019 5:38 PM
To: Vinyard, Herschel T. - Chief Administrative Officer; Weissman, Andrew D.
Subject: FW: Potential Acquisition Filing with PSC

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As promised, here are some thoughts Terry put together on possible aspects of the transaction that might be part of a filing with the PSC. I noticed he did cast some of his points in terms of the PSC approving or saying grace over the transaction...this is not to infer the PSC has authority to approve the transaction which we all agree is not the case. But there likely will be somethings a buyer will want to have the PSC's blessing on before the transaction is closed. Also Terry's thoughts on some aspects listed are from the view of an existing Florida utility as the buyer, which may not be the case.

From: Terry Deason <tdeason@radeylaw.com>
Sent: Monday, October 7, 2019 3:49 PM
To: Tom Crabb <tcrabb@radeylaw.com>
Cc: Susan Clark <sclark@radeylaw.com>
Subject: Potential Acquisition Filing with PSC

Tom,

You and Susan asked me to give you my thoughts on what filing requirements would potentially be required should there be an acquisition of the JEA electric system by another entity. The potential filings and their specific contents would, of course, depend on the nature of the acquiring entity and the facts underlying the acquisition. For purposes of this email, I am assuming that the acquiring entity is an investor-owned utility (IOU) that already has rates and a customer base within Florida.

The potential filings would need to address either singularly or in conjunction, three main areas:

1. Territorial Matters
2. Rates & Tariffs
3. Acquisition Adjustment

In addition to these three main areas, there would need to be an over-arching showing that the acquisition is in the public interest, consistent with the way the Commission has historically made such determinations. To that end, the standard is usually one of causing no harm to the public generally, to the customers of the entity being acquired, and to the existing customers of the acquiring entity. However, sometimes the "do no harm standard" has been extended to either require (or prefer) a showing that there are actual net benefits to all customers.

With regard to Territorial Matters, the PSC has primary responsibility for and jurisdiction over the setting of territorial boundaries, usually through accepting territorial agreements or settling territorial disputes. Certainly, the resulting service area of the acquiring utility has to be presented to the PSC for a determination. This could take a couple of forms. First, whatever existing territorial agreement that may exist between JEA and the acquiring utility could simply be terminated, with the understanding that the territory of JEA will become the territory of the acquiring utility and be

added to its already existing territory. This is what was done for the acquisition of Vero Beach by FPL in 2017. Second, there could be an amendment to the existing territorial agreement to clearly establish the new territory being served after the acquisition is completed. This may be a preferred approach, since it is contemplated that JEA would still be providing service for the term of its contract to obtain power from the Vogtle nuclear units in Georgia. In the event that the acquiring entity plans to establish a new stand-alone utility and not incorporate JEA into its existing operations, I believe that a new territorial agreement would again be preferred, if not required.

With regard to Rates & Tariffs, the acquiring entity would need to file its rates & tariffs consistent with Rule 25-9.044 F.A.C. The presumption of the Rule is that the existing rates and tariffs of the acquired utility would continue unless there is a filing with the PSC to have different rates. If rates are to be different, there is an implied burden on the acquiring utility to demonstrate that the rates are fair, reasonable, and ultimately in the public interest. To make this showing, I believe the acquiring utility has two basic options. First, it could propose that its existing rates and tariffs be expanded to cover the acquired territory and applied on a uniform, nondiscriminatory basis to all of the existing customers of JEA. This is what was done for FPL's acquisition of Vero Beach. Another alternative, though probably not a preferred alternative, is to continue JEA's existing rates and tariffs until there could be a complete rate filing (rate case) to establish rates based on the cost to provide service to the former JEA customers by the acquiring utility. However, this would potentially negate some of the underlying efficiencies of the acquisition and could cause additional costs in terms of separate rate filings, separate accounting systems, and separate regulatory compliance requirements. This could also cause some anxiety on the PSC's part, given that the rates would not be currently known and only ascertainable after a full rate case.

There also is a question concerning the rates (and associated tariff) to enable JEA to charge customers for the Vogtle nuclear generation. I believe that it would be JEA's responsibility to file this tariff for PSC review. It is arguable, and perhaps correct, that the level of the rate would not be under PSC jurisdiction. However, given that the PSC will eventually have to "say grace" over this entire transaction, I would be hesitant to make that assertion (at least initially). There is also a peripheral issue as to how the acquiring entity is to be compensated by JEA for use of the acquired transmission and distribution assets to enable the Vogtle nuclear power to be delivered to customers. While this could be presented to the PSC as a tariff filing, I do not believe it would be required, because it is not a typical service that is available to all customers. Rather it is more akin to a contractual relationship between two corporate entities, in this case JEA and the acquiring utility. Having said that, I believe that there would be a requirement to make a filing with the PSC to show the costs of providing the transmission and distribution services and that the rates charged are compensatory.

As to the Acquisition Adjustment, there will be a need to file with the PSC all relevant information, to include but not necessarily limited to:

1. Identification of all acquired assets;
2. The original cost and accumulated depreciation (net book value) of the acquired assets;
3. The purchase price of the entire system and any associated liabilities that are being assumed;
4. Justification that the purchase price is reasonable;
5. A demonstration that the acquisition adjustment will not cause economic harm or adversely affect the creditworthiness of the acquiring utility;
6. If the acquisition is to be recovered in rates at some point, a demonstration that the acquisition is in the public interest and should not result in unfair rates or have negative consequences on the existing customers of the acquiring utility; and
7. A complete explanation as to how the acquisition adjustment is to be recorded and amortized on the books of the acquiring utility.

There will also be the need for testimony to accompany filings with the PSC. The direct testimony filed by FPL in the Vero acquisition would be a good template to follow. In that case, FPL had witnesses to address:

1. An overview and history of the transaction along with the Asset Purchase and Sale Agreement;

2. A statement as to how the acquisition is in the public interest, including impacts on quality of service, operating costs, quality of management, and any impacts on creditworthiness and the acquiring utility's ability to attract capital on reasonable terms;
3. The tariffs to be charged and how the proposed rates compare to the existing (JEA) rates;
4. An estimate and accompanying explanation of the fair value of the acquired system;
5. Acquisition Adjustment policy testimony; and
6. An explanation as to how the acquisition does not harm (and preferably benefits) the acquiring utility's existing customers. (FPL did this through an analysis of the Cumulative Present Value of Revenue Requirements over a 30-year time horizon)

Of course, there could be a need for other information or justification as the transaction proceeds. However, it all comes down to what the PSC determines to be the public interest. And while the PSC will look to past cases, the Commission has great discretion in how it exercises its jurisdiction and has shown a tendency to craft new, perhaps unique, solutions to achieve the public interest.

Thanks for the opportunity to share my thoughts,
Terry