RESOLUTION NO. 2020-07

RESOLUTION OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA; EXTENDING THE EMERGENCY DECLARATION SET FORTH IN RESOLUTION NOS. 2020-05 AND 2020-06 UNTIL FURTHER NOTICE; MODIFYING AND REDUCING THE FUEL & PURCHASE POWER COST ADJUSTMENT CLAUSE FACTOR; REVISING RESOLUTION NO. 2018-01, AS AMENDED; AMENDING A PORTION OF THE UTILITIES COMMISSION RULES OF PROCEDURE; PROVIDING FINDINGS; PROVIDING FOR RESCINDING CONFLICTING RESOLUTIONS OR PORTIONS THEREOF; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. FINDINGS AND INTENT. The Utilities Commission, City of New Smyrna Beach, Florida (the "Utilities Commission") makes the following findings and declares the following legislative intent:

(1) The Utilities Commission has the exclusive authority over the management, operations and control of all the City's utilities and the authority to prescribe rules and regulations governing the use of such facilities, wherever such are provided by the Utilities Commission and to make such changes from time to time in its rules and regulations as it deems necessary.

(2) The Utilities Commission has previously adopted as a part of its electric tariff a "FUEL AND PURCHASE POWER COST ADJUSTMENT CLAUSE," which is applicable to and is a part of all the Utilities Commission's retail rate schedules and all sales thereunder (hereafter "Fuel Adjustment Clause").

(3) The Fuel Adjustment Clause was last amended by Resolution No. 6-98 adopted on August 12, 1998, effective October 1, 1998.

(4) The Fuel Adjustment Clause contains a "Special Provision" that specifically permits the modification of the "FPPCAC," an adjustment factor in dollars per kWh, during a 12-month billing cycle if significant circumstances arise which warrant such change, and if approved by the Utilities Commission.

(5) Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza.

(6) On March 1, 2020, Ron DeSantis, Governor of the State of Florida, issued Executive Order No. 20-51, directing the Florida Department of Health to issue a Public Health Emergency.
(7) On March 1, 2020, the State Surgeon General and State Health Officer declared that a Public Health Emergency exists in the State of Florida as a result of COVID-19, as well as Commission employees.

(8) On March 9, 2020, Governor DeSantis declared that a state of emergency exists in the State of Florida as a result of the continued spread of COVID-19.

(9) COVID-19 has created or imminently threatens to create conditions that may severely affect the public health, safety, welfare and security of the citizens, residents and visitors of the City of New Smyrna Beach, Florida, as well as Utilities Commission employees.

(10) On March 17, 2020, the Mayor of the City Commission of the City of New Smyrna Beach (the "City") declared by Declaration Number 01-20 that a state of emergency exists within the boundaries of the City of New Smyrna Beach commencing on March 17, 2020, and continuing for a period of seven (7) days after the date of declaration and may be extended as necessary.

(11) COVID-19 is a direct threat to the public which may require expedient action to protect the health, safety and welfare of the community.

(12) Based upon this direct threat to the public health, safety, and welfare, the Utilities Commission previously adopted Resolution 2020-05 declaring an Emergency and authorizing the Chief Executive Officer to take all necessary actions to protect the customers, employees, and system entrusted to the Utilities Commission by the City and its inhabitants.

(13) The Utilities Commission also adopted Resolution 2020-06 to authorize the Chief Executive Officer to make provisions for electronic attendance by appointed officials at Utilities Commission meetings during period of a declared public health emergency.

(14) Since that time, the Governor has issued Executive Order No. 20-91, which restricts the size of gatherings or congregations of people, declares some businesses and services essential or non-essential, and in effect serves as a statewide stay at home order.

(15) In furtherance of Resolution 2020-05 and Resolution 2020-06, the Chief Executive Officer hereby recommends to the Utilities Commission to extend its emergency declaration until the State of Florida lifts its emergency declaration.

(16) Furthermore, based upon the results of the Utilities Commission's staff analysis, the Chief Executive Officer recommends to the Utilities Commission that the FPPCAC be modified from $22.68 to $00.00 per 1,000 kWh for a two-month period, effective with the first billing cycle in May 2020 through June 2020, which equates to approximately 22% temporary decrease per month in an average residential customer's monthly electric bill using 1,000 kWhs per month.

(17) Since its inception in 1965, the Utilities Commission has adopted, maintained, and modified rules establishing its own procedures.
(18) Variously named "Rules of Procedure," "Rules and Regulations for the Conduct of Meetings and the Operation of Business," and "Rules and Regulations for the Conduct of Public Hearings," these rules have been modified fourteen (14) times since the creation of the original "Rules of Procedure" adopted September 1, 1965.

(19) The Utilities Commission now wishes to modify those rules to permit reductions or modifications in the FPPCAC without the need for prior notice so long as the reduction and modification is approved by the Utilities Commission in a public meeting.

SECTION 2. EXTENSION OF EMERGENCY DECLARATION AND RESOLUTIONS 2020-05 & 2020-06. The Utilities Commission previously declared by Resolution 2020-05 a state of emergency on March 23, 2020 for all of the service territory of the Commission. That delegation was set to expire on April 27, 2020, but in recognition of the findings set forth in Section 1 of this Resolution, the Utilities Commission hereby extends its Declaration of Emergency until such time as the State of Florida rescinds its state of emergency unless sooner terminated by the Utilities Commission during a public meeting. All provisions of Resolutions 2020-05 and 2020-06 are hereby extended and declared to be in full force and effect.

SECTION 3. APPROVAL OF MODIFICATION OF FUEL & PURCHASE POWER COST ADJUSTMENT CLAUSE FACTOR. The Utilities Commission has previously adopted as a part of its electric tariff a Fuel Adjustment Clause which is applicable to and is a part of all the Utilities Commission's retail rate schedules and all sales thereunder (hereafter "Fuel Adjustment Clause"). The Fuel Adjustment Clause was last amended by Resolution No. 6-98 adopted on August 12, 1998, effective October 1, 1998. The Fuel Adjustment Clause contains a "Special Provision" that specifically permits the modification of the "FPPCAC," an adjustment factor in dollars per kWh, during a 12-month billing cycle if significant circumstances arise which warrant such change, and if approved by the Utilities Commission. Based upon the results of the Utilities Commission's staff analysis, the Utilities Commission that the FPPCAC be modified from $22.68 to $00.00 per 1,000 kWh for a two-month period, effective with the first billing cycle in May 2020 through June 2020, which equates to approximately 22% temporary decrease per month in an average residential customer's monthly electric bill using 1,000 kWhs per month.

SECTION 4. AMENDMENT TO UTILITIES COMMISSION RULES OF PROCEDURE. Section 6 of the Utilities Commission Rules of Procedure is amended as follows:

"SECTION 6. PUBLIC HEARINGS. Public hearings shall be conducted by the Utilities Commission in accordance with the following:

(1) Location. All meetings of the Utilities Commission shall be held month at the offices of the Commission located at 200 Canal Street, New Smyrna Beach, Florida, unless the Utilities Commission indicates another location, and shall be open to the public as required by law.
(2) Notice of Public Hearings on Rates, Fees, and Charges. Unless otherwise provided by law, no rates, fees, charges or improvement assessments, hereinafter referred to as rates, fees, and charges, shall be fixed until after public hearings at which the users of the facilities provided by the Utilities Commission and owners, tenants and occupants of properties served, or to be served thereby, and others interested shall have an opportunity to be heard concerning the proposed rates, fees, and charges. The proposed changes to, or the fixing of rates, fees and charges may be read by title only or in full, at the preliminary hearing and again at the final hearing. Notice of the hour, date, and place of the preliminary and the final public hearings setting forth the intent to fix the schedule of rates, fees and charges shall be given by one publication in a newspaper of general circulation in the City of New Smyrna Beach, Florida, at least ten days before the date fixed in said notice for the preliminary hearing, which said hearing may be recessed from time to time to a date and time certain. Said notice shall advise that interested parties may appear and be heard at the public hearings and when and where they may inspect the proposed rates, fees and charges. The notice will be set in six-point type, set solid and under headlines in six-point type boldface, specifying the nature of the publication. Notice of the public hearing shall also be posted in the lobby of the Utilities Commission offices and notice thereof shall be furnished to the City Commission for posting in the City Commission Hall lobby. A copy of the adopted preliminary schedule of rates, fees and charges shall be kept on file with the recording secretary in the Utilities Commission office for inspection by interested parties. After the second public hearing, the preliminary schedule either as originally adopted or as modified or amended shall be finally adopted and put into effect and thereupon the resolution providing the rates, fees, and charges will be effective on the date specified. The Utilities Commission shall also comply with the provisions of § 180.136, Fla. Stat. "Water or sewer utilities; notice.

(3) Public Hearings on Miscellaneous Matters. Unless otherwise provided by law, the Utilities Commission may conduct public hearings pertaining to matters other than changes in rates, fees, charges or improvement assessments by a single hearing which shall be final. The requirements on publication of notice shall otherwise be the same as set forth above.

(4) Appeals and Record of Proceedings. Pursuant to § 286.0105, Fla. Stat., or as otherwise provided by law, if an individual decides to appeal any decision made by the Utilities Commission, City of New Smyrna Beach, Florida, with respect to any matter considered at a meeting or hearing, that individual will need a record of the proceedings, and will need to ensure that a verbatim record of the proceedings is made. The transcription of such a verbatim will be provided an individual at a cost to be determined by the Utilities Commission in accordance with the full cost to prepare and reproduce such transcriptions and copies.

(5) Modifications to Fuel & Purchase Power Cost Adjustment Clause Factor. The Utilities Commission has previously adopted as a part of its electric tariff a Fuel Adjustment Clause which is applicable to and is a part of all the Utilities Commission’s retail rate schedules and all sales thereunder (hereafter "Fuel Adjustment Clause"). The Fuel Adjustment Clause was last amended by Resolution No. 6-98 adopted on August 12, 1998,
effective October 1, 1998. The Fuel Adjustment Clause contains a "Special Provision" that specifically permits the modification of the "FPPCAC," an adjustment factor in dollars per kWh, during a 12-month billing cycle if significant circumstances arise which warrant such change, and if approved by the Utilities Commission. The Utilities Commission may grant such approvals without advanced notice publication as required under Subsection (2) hereunder so long as the approval is granted in an open public meeting of the Utilities Commission."

SECTION 5. SEVERABILITY. If any provision or portion of this Resolution is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Resolution shall remain in full force and effect.

SECTION 6. REPEAL OF INCONSISTENT RESOLUTIONS. All resolutions and portions of resolutions in conflict herewith are hereby repealed, including but not limited to Resolution Nos. 9-65, 35-75, 3-83, 1-84, 4-89, 2-94, 3-96, 27-96, 42-96, 8-03, 15-04, 16-04, 8-05, 2-09 and 2018-01. Resolution Nos. 2020-05 and 2020-06 are continued in effect until further notice.

SECTION 7. EFFECTIVE DATE. This Resolution shall take effect immediately upon its passage by the Utilities Commission.

THIS RESOLUTION was introduced at a regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held this 27th day of April, 2020, by Commissioner -- Davenport ---- who moved for its adoption, which motion was seconded by Commissioner -- Griffith ----, and upon roll call vote of the Commission was DULY ADOPTED as follows:

CHAIRMAN
VICE CHAIRMAN
SECY.-TREAS.
ASST. SECY.-TREAS.
COMMISSIONER

APPROVED: William E. Biedenbach, Chairman
APPROVED AS TO FORM & LEGALITY: Thomas A. Cloud, General Counsel
ATTEST: Lillian Conrad, Secretary-Treasurer