

RESOLUTION NO. 2023-01

A RESOLUTION OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA; DECLARING THE COMMISSION'S INTENTION WITH REGARD TO THE REQUIREMENTS OF THE PUBLIC UTILITIES REGULATORY POLICIES ACT (PURPA), SUPPLEMENTING NSBU RESOLUTION NOS. 2-08 AND 1-09; RESCINDING ALL RESOLUTIONS, OR PORTIONS THEREOF, IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE NEW SMYRNA BEACH UTILITIES, AS FOLLOWS:

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

- (1) The NSBU is a public authority, political subdivision, and part of the government of the City possessed of powers granted by Special Acts of the Florida Legislature, to wit, Chapter 67-1754, Laws of Florida (1967), as amended by Chapter 85-503, Laws of Florida (1985), which shall be collectively referred to as the "Special Acts."
- (2) The NSBU has the exclusive authority over the management, operations and control of all the NSBU's utilities and the authority to prescribe rules and regulations governing the use of such facilities, wherever such are provided by the NSBU and to make such changes from time to time in its rules and regulations as it deems necessary.
- (3) The Special Acts have granted the NSBU the full and exclusive power and authority to prescribe rules, rates, and regulations governing the sale and use of any city utilities, including the right to acquire or condemn various utility systems and facilities for such purposes.
- (4) The Public Utilities Regulatory Policies Act ("PURPA") became law in 1978 and municipal utilities were considered non-regulated utilities and therefore must independently consider adoption of the PURPA standards.
- (5) The NSBU previously considered and adopted Resolution Nos. 2-08 and 1-09 formally declaring the NSBU's direction with regard to the PURPA standards during that time period.
- (6) Two additional standards, adopted under the Infrastructure Investment and Jobs Act (IIJA), have since been added to PURPA that now must also be considered – (1) Demand Response and Demand Flexibility, and (2) Electric Vehicle Charging Programs.

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SECTION 1. FINDINGS AND INTENT. (cont.)

(7) Two public hearings have been approved for scheduling and will be duly noticed and held on January 23, 2023 (preliminary) and on February 27, 2023 (final) for the public consideration of these two new standards.

(8) The NSBU staff recommends that the NSBU is not required to and should not adopt the new standards.

(9) Based upon the testimony and other competent, substantial evidence adduced in the two public hearings, the NSBU has considered the adoption of these two new standards.

SECTION 2. CONSIDERATION AND EXERCISE OF OPTION OF EXCLUSION.

As the NSBU is not listed as a PURPA entity, not exceeding the PURPA threshold for 2020 calendar year sales, it is hereby declared NSBU will continue to exercise its option of exclusion from the respective PURPA standards.

SECTION 3. ENACTMENT OF VOLUNTARY MEASURES.

NSBU will, when appropriate, continue to enact voluntary measures that provide benefit for all our customers and our system, and additionally will include the consideration of PURPA's purposes, as set forth in Exhibit A attached to and incorporated in this Resolution.

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 5. REPEAL OF INCONSISTENT RESOLUTIONS.


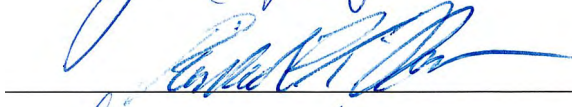
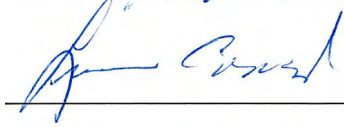

This Resolution is supplemental to NSBU Resolution Nos. 2-08 and 1-09. All other resolutions, or portions thereof, in conflict herewith are hereby rescinded and superseded.

SECTION 6. EFFECTIVE DATE.

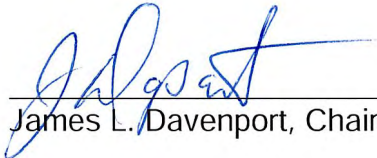
This Resolution shall take effect immediately upon its passage by the NSBU Commission.

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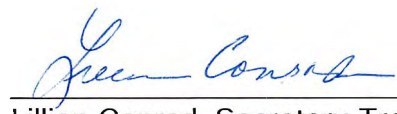
THIS RESOLUTION was introduced at a regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held this 27th day of February 2023, by Commissioner Hawes who moved for its adoption, which motion was seconded by Commissioner Conrad, and upon roll call vote of the Commission was **DULY ADOPTED** as follows:

CHAIRMAN	<u></u>	<u>yes</u>
VICE CHAIRMAN	<u></u>	<u>yes</u>
SECY.-TREAS.	<u></u>	<u>Yes</u>
ASST. SECY.-TREAS.	<u></u>	<u>yes</u>
COMMISSIONER	<u>Lawrence Kelly</u>	<u>(ABSENT)</u>

APPROVED:


James L. Davenport, Chairman

ATTEST:


Lillian Conrad, Secretary-Treasurer

APPROVED AS TO FORM & LEGALITY:

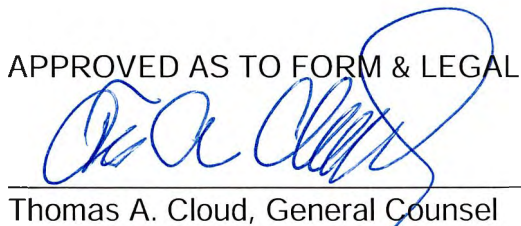

Thomas A. Cloud, General Counsel

EXHIBIT A – NSBU RESOLUTION NO. 2023-01

New Smyrna Beach Utilities previously detailed and considered in July 2008 nine standards which amended the Public Utility Regulatory Policies Act of 1978 (PURPA). The relevant standards were five new standards under The Energy Policy Act of 2005 and the four new standards under the Energy Independence and Security Act of 2007 (detailed in U.C. Resolution No. 2-08, Exhibit A). Measures voluntarily adopted previously included energy conservation and efficiency measures, along with the adoption of NSBU's Interim Net Metering Rider.

The Energy Independence and Security Act of 2007 additionally contained a standard for states and non-regulated utilities to consider that is not an amendment to PURPA. While some of the provisions for consideration are similar to the PURPA standards, this standard had distinctive requirements written as part of the standard's statutory language and did not specify a minimum threshold for application. This fifth non-PURPA standard was adopted as: "SEC. 374. ADDITIONAL INCENTIVES FOR RECOVERY, USE, AND PREVENTION OF INDUSTRIAL WASTE ENERGY". The focus of that standard was to encourage "waste energy recovery" projects that generate "net excess power." There remain very few businesses classified as industrial in the NSBU's service territory, with no known entities producing waste heat byproducts from their processes or any that have continuous waste heat which is able to be processed into a beneficial use.

The new PURPA standards under consideration now, adopted under the Infrastructure Investment and Jobs Act (IIJA) in 2022 include: (1) Demand Response and Demand Flexibility, and (2) Electric Vehicle Charging Programs:

Demand Response and Demand Flexibility

"(A) IN GENERAL – Each electric utility shall promote the use of demand-response and demand flexibility practices by commercial, residential, and industrial consumers to reduce electricity consumption during periods of unusually high demand."

"(B) Rate recovery–

- (I) IN GENERAL – Each State regulatory authority shall consider establishing rate mechanisms allowing an electric utility with respect to which the State regulatory authority has ratemaking authority to timely recover the costs of promoting demand- response and demand flexibility practices in accordance with sub-paragraph (A).
- (II) NONREGULATED ELECTRIC UTILITIES – A non-regulated electric utility may establish rate mechanisms for the timely recovery of the costs of promoting demand-response and demand flexibility practices in accordance with subparagraph (A)."

Electric Vehicle Charging Programs

"Each State shall consider measures to promote greater electrification of the transportation sector, including the establishment of rates that --

- (A) promote affordable and equitable electric vehicle charging options for residential, commercial, and public electric vehicle charging infrastructure;
- (B) improve the customer experience associated with electric vehicle charging, including by reducing charging times for light-, medium-, and heavy-duty vehicles;
- (C) accelerate third-party investment in electric vehicle charging for light-, medium-, and heavy-duty vehicles; and cover the marginal costs of delivering electricity to electric vehicles and electric vehicle charging infrastructure."

EXHIBIT A – NSBU RESOLUTION NO. 2023-01 (cont.):

PURPA requires each jurisdictional utility to "consider" these standards to make a "determination" on whether it is appropriate to implement each standard within certain time deadlines and taking into consideration PURPA's purposes, which include: (1) conservation of energy supplied by electric utilities; (2) optimal efficiency of electric utility facilities and resources; and (3) equitable rates for electric consumers. The utility's consideration "shall be made after public notice and hearing," and the "determination" must be in writing and made available to the public. Adoption of each standard is entirely discretionary. Non-regulated utility requirements contained in PURPA apply only to utilities with total annual retail sales greater than 500 million kWh.

Based on assessment of the PURPA rules, supported by advice from FMPA/FMEA legal counsel, and NSBU's Calendar Year 2020 total retail sales, NSBU is not required to comply with the stated provisions under PURPA. Based on NSBU's relative size, potential impacts to electric system and requirements under Resolution No. 2020-02 (Master Bond Resolution), as well as the NSBU's Charter, implementation of these measures will continue to be voluntary. Final implementation considerations will remain beneficial to and in the best interests of our customers and system.

While staff is recommending NSBU to continue to exercise its option of exclusion from formal implementation of the two new PURPA standards adopted under IJJA, NSBU has commenced with voluntary measures specific to and supporting these two new PURPA standards.

The first new standard, Demand Response and Demand Flexibility, will be under further consideration by NSBU subsequent to the completion of the approved AMI Project and installation of smart meter technology throughout the NSBU's electric system (currently planned for FY's 2023-2024). Additional electric rate considerations, to reduce electricity consumption, will then be supported by this new technology.

The second new standard, Electric Vehicle Charging Programs, NSBU currently has an approved Pilot Program for a total of ten (10) level 2 chargers to be installed on five public charging sites within NSBU's service territory. Initial site, to be completed in January 2023, at our local hospital location (Advent Health), and the remaining four sites, jointly selected with the City of New Smyrna Beach, are expected to be completed by the second quarter of 2023. NSBU additionally enacted an initial charging rate for these sites. Associated operational and system data obtained through this pilot program will assist NSBU with future determinations of our electric vehicle charging program. NSBU's initial consultant study for E.V. charging included E.V. fleet considerations as well as vehicle to grid power transfer.