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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 100459-EI

PETITION FOR AUTHORITY TO IMPLEMENT
A DEMONSTRATION PROJECT CONSISTING
OF PROPOSED TIME-OF-USE AND
INTERRUPTIBLE RATE SCHEDULES AND
CORRESPONDING FUEL RATES IN THE
NORTHWEST DIVISION ON AN EXPERIMENTAL
BASIS AND REQUEST FOR EXPEDITED
TREATMENT, BY FLORIDA PUBLIC
UTILITIES COMPANY.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 3

COMMISSIONERS
PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, January 24, 2012

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

REPORTED BY: LINDA BOLES, RPR, CRR
Official FPSC Reporter
(850) 413-6734

P R O C E E D I N G S

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3 **CHAIRMAN BRISÉ:** Now we are moving to Item 3,
4 which is looking at Docket Number 100459-EI, and
5 Ms. Bennett is going to tee this up for us.

6 **MS. BENNETT:** Good morning, Commissioners.
7 Lisa Bennett for the General Counsel's office.

8 Item 3 involves FPUC's motion to dismiss
9 Marianna's formal protest of the Commission's
10 February 11th order approving FPUC's experimental time
11 of use and interruptible service rates. The Commission
12 previously dismissed Marianna's protest because the
13 Commission found that it would -- that the City of
14 Marianna did not demonstrate that it would suffer an
15 injury in fact of sufficient immediacy to entitle it to
16 an administrative hearing.

17 Issue 1 is a request for an oral argument.
18 Both parties have requested an oral argument. Staff
19 recommends that at the Commission's discretion it can
20 hear oral argument. We recommend five, have recommended
21 in the recommendation five minutes. The City of
22 Marianna has requested ten minutes per side.

23 Issue 2 is Staff's recommendation to dismiss
24 Marianna's protest. We believe this one should be
25 dismissed with prejudice. This is the second time that

1 the City has come before the Commission.

2 **CHAIRMAN BRISÉ:** Okay. We're going to go
3 ahead and grant oral arguments at this time, and we're
4 going to do five minutes per side. And we're going to
5 follow the same path as last time, so we're going to ask
6 Ms. Keating to go first.

7 **MS. KEATING:** Thank you, Commissioners. In
8 the interest of time, FPUC agrees with your Staff's
9 recommendation. If I may, I'd like to reserve the
10 remainder of my time to respond to the City's arguments.

11 **CHAIRMAN BRISÉ:** Thank you.

12 Mr. Wright.

13 **MR. WRIGHT:** Thank you, Mr. Chairman. Again,
14 obviously the City disagrees with the Staff's
15 recommendation and respectfully requests that you deny
16 the recommendation, deny the motion to dismiss, and set
17 this matter for a full evidentiary hearing on the
18 numerous disputed issues of material fact identified in
19 the City's petition and discussed further in our
20 response to the motion to dismiss.

21 We disagree with the Staff's conclusion that
22 the City lacks standing because the City is a
23 substantial customer of FPUC with more than 110 accounts
24 and one of the largest customers on FPUC's northwest
25 division system. The City's interest, its substantial

1 interest in having fair, just, and reasonable rates will
2 be directly determined and adversely affected by
3 approval of FPUC's time of use and interruptible rates
4 as filed because the City will be deprived of access to
5 fair, just, and reasonable time of use and interruptible
6 rates which are not fair, just, and reasonable because,
7 as we have specifically alleged in our petition, they
8 are not cost-based and are not appropriately designed to
9 promote energy conservation or efficiency.

10 As a customer, the City is entitled to fair,
11 just, and reasonable rates, but we'd be deprived of
12 access to such rates, and FPUC is continuing to try to
13 prevent us from even having a hearing on this. We want,
14 all we want is a hearing in which FPUC will be forced to
15 carry its burden of proving that its rate proposals are
16 fair, just, and reasonable. There's no exception for
17 experimental rates not being fair, just, and reasonable.
18 366.03 applies to, applies to all rates. And its burden
19 of proving that even if you're evaluating them under
20 366.075, that they're appropriately, appropriately
21 designed. Evaluating an experiment on the front end as
22 to whether it's appropriately designed is fully
23 appropriate, Commissioners.

24 The standard of review for a motion to dismiss
25 is taking all facts pled in the petition as true. The

1 petition states its claim sufficient to proceed. We
2 assert that we have alleged sufficient facts. We're an
3 actual customer, we're taking service under one of the
4 rates, we're eligible to take service under all but the
5 residential time of use rates, and we're affected by the
6 experiment as a non-participating customer. We allege
7 that the rates are not cost-based and, therefore, not
8 fair, just, and reasonable. We have alleged as a matter
9 of disputed, a disputed issue of material fact that the
10 purported experiment is not appropriately designed to
11 achieve its goals.

12 To cut this short, at the bottom line,
13 Commissioners, the notion that a customer taking service
14 under a rate, eligible for rates, and otherwise affected
15 by rates in this experimental case does not have
16 standing to have a hearing where that customer
17 specifically alleges that the rates are not cost-based
18 and that they are not fair, just, and reasonable for
19 that reason, and that the purported experiment is not
20 appropriately designed to achieve the specific goal of
21 Section 366.075, that they be designed to encourage
22 energy conservation or to encourage energy efficiency is
23 frankly unfathomable. Standing is standing; customers
24 have standings to challenge rates.

25 **CHAIRMAN BRISÉ:** You have about a minute.

1 **MR. WRIGHT:** Thank you, sir.

2 Relative to the *Sanlando* case cited in the
3 Staff's recommendation, if you substitute wrong rates,
4 which is our assertion -- we assert the rates are wrong
5 because they're not cost-based and therefore not fair,
6 just, and reasonable -- if you substitute wrong rates
7 for higher rates, as that phrase is used in the *Sanlando*
8 case, it would be clear that we satisfy the, satisfy the
9 standing requirements articulated there.

10 Commissioners, customers have standing to
11 challenge rates, you know. And if, if you don't agree
12 today, that's fine, and we will let the appellate court
13 sort this out.

14 Thank you very much.

15 **CHAIRMAN BRISÉ:** Thank you. Thank you,
16 Mr. Wright.

17 Ms. Keating.

18 **MS. KEATING:** Thank you, Commissioners.

19 Commissioners, the City has really raised no
20 new arguments from the last time that you heard this
21 discussion. The mere allegation that the time of use
22 and interruptible service rates aren't fair, just, and
23 reasonable, even if accepted as true, fails to identify
24 any harm to the City, much less one of immediacy that
25 would justify setting this matter for hearing.

1 The fact of the matter is, is this program has
2 been offered as an experimental program. The City does
3 not have to take service under this program. And the
4 Commission has recognized time and again that the
5 purpose of experimental programs is to test ideas in the
6 field to see if they work, to see if they're
7 cost-effective. That is how this program has come
8 before you, and we'd ask that you dismiss the City's
9 protest. Thank you.

10 **CHAIRMAN BRISÉ:** Thank you.

11 Commissioners, if there are questions,
12 comments at this time.

13 Commissioner Balbis.

14 **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.
15 I just want to make a few comments, and if we're in a
16 position to make a motion, would do so.

17 You know, I agree with Staff's recommendation,
18 and I did not hear any new information that would cause
19 me to change my decision that we made previously. This
20 is, again, an experimental program, it's voluntary. So
21 obviously those who do not choose to participate cannot
22 be harmed by it. And that we even modified the program
23 so that it expires after four years to provide further
24 flexibility. You know, we encourage the City and the
25 utility to work towards implementing this program. And

1 at the end of the period if there's something that might
2 be better, encourage you to work with them to develop
3 something that may work better.

4 But, again, this is an experimental program
5 that I can't see where there would be any harm to
6 someone who does not participate.

7 So with that, I move Staff's recommendation on
8 all issues.

9 **CHAIRMAN BRISÉ:** Is there a second?

10 **COMMISSIONER EDGAR:** Second.

11 **COMMISSIONER GRAHAM:** Second.

12 **CHAIRMAN BRISÉ:** All right. We have two
13 seconds. All in favor, say aye.

14 (Affirmative response.)

15 Any opposed?

16 (No response.)

17 Very good. This item is carried as described
18 by Staff, as proposed by Staff.

19 With that, we are ready to adjourn. So at
20 this time Commissioner Balbis moves that we adjourn.

21 (Agenda Conference adjourned at 9:57 a.m.)

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1 STATE OF FLORIDA)
 : CERTIFICATE OF REPORTER
 2 COUNTY OF LEON)

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I, LINDA BOLES, RPR, CRR, Official Commission 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' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 27th day of January, 2012.

Linda Boles
 LINDA BOLES, RPR, CRR
 FPSC Official Commission Reporter
 (850) 413-6734