

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of recognition of a regulatory asset and associated amortization schedule by Florida Public Utilities Company.

DOCKET NO. 120227-EI
ORDER NO. PSC-12-0600-PAA-EI
ISSUED: November 5, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING REGULATORY ASSET

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Through its petition filed August 27, 2012, Florida Public Utilities Company (FPUC or Company) sought Commission approval, pursuant to Section 366.079, Florida Statutes (F.S.), to establish a regulatory asset to defer the litigation expenses associated with ongoing litigation with the City of Marianna (City) and amortize it over a 5-year period beginning January 2013. The litigation concerns a dispute in which the City alleges that FPUC's implemented Time-of-Use (TOU) and Interruptible Service (IS) rates do not meet the terms of their franchise agreement. FPUC's proposal is revenue neutral and the Company has not requested any rate adjustment.

We have jurisdiction pursuant to Sections 366.04, 366.06, and 366.07, F.S.

DOCUMENT NUMBER-DATE

07470 NOV-5 2012

FPSC-COMMISSION CLERK

DECISION

According to FPUC's petition, the litigation expenses are associated with ongoing litigation filed in circuit court¹ (Court) by the City alleging that the Company is not meeting the terms of their franchise agreement. In particular, the City maintains that FPUC's implementation of the Commission-approved TOU and IS rates² is not in compliance with their franchise agreement. It should be noted that the City has a Notice of Appeal of our decision regarding the TOU and IS rates pending before the Florida Supreme Court.³

The amount of litigation expenses incurred in this matter in 2011 was \$536,151. An additional \$445,867 has been incurred for 2012 through June 30, 2012. FPUC has estimated that legal costs will be approximately \$200,000 for the remainder of 2012. For 2011 and 2012, the litigation expenses total \$1,182,018. The Company anticipates that it will incur some additional costs through the first quarter of 2013 that are not included in the \$1,182,018 total for 2011 and 2012. FPUC has requested recovery of only those costs in excess of any attorneys' fees that might be awarded by the Court at the conclusion of the proceedings.

FPUC contends that these expenses exceed the typical annual legal expenses necessary to support its regulated business that have been included in its base rates. In addition, FPUC states it did not initiate the action that has caused it to incur these costs. The Company has requested the establishment of a regulatory asset to lessen the detrimental impact on its earnings and to try to avoid having to seek more significant relief, such as a rate case, at a later date. The estimated effects of including the litigation expenses in earnings for 2011 and 2012 would reduce the achieved return on equity (ROE) by 184 basis points and 222 basis points, respectively. The reported achieved ROE was 5.38 percent for 2011 and 3.46 percent for the 12 months ended June 30, 2012. FPUC's authorized ROE midpoint is 11.00 percent.

FPUC has requested that the regulatory asset be amortized over the remaining life of its Generation Services Agreement (PPA) with Gulf Power Company, which would be a 5-year period from January 1, 2013 through December 31, 2017. The Company contends that this is a reasonable basis for determining the amortization period because Amendment 1 to the PPA provided a significant basis for the development of the TOU and IS rates. We note that the City has a Notice of Appeal of our decision⁴ approving Amendment 1 pending before the Florida Supreme Court.⁵

¹ Circuit Court of the Fourteenth Judicial Circuit in and for Jackson County, Florida, Civil Case No. 11-198CA.

² See Order No. PSC-11-0112-TRF-EI, issued February 11, 2011, in Docket No. 100459-EI, In re: 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.

³ City of Marianna, Fla. v. Art Graham, et al., Case No. SC12-649 (Fla. filed March 20, 2012).

⁴ See Order No. PSC-11-0269-PAA-EI, issued June 21, 2011, in Docket No. 110041-EI, In re: Petition for approval of Amendment No. 1 to generation services agreement with Gulf Power Company, by Florida Public Utilities Company.

⁵ City of Marianna, Fla. v. Art Graham, et al., Case No. SC12-569 (Fla. filed March 20, 2012).

Based on the significant nature of the unanticipated litigation expenses, we agree that it is appropriate to establish a regulatory asset and to amortize those expenses over future periods to mitigate the effects on earnings. Therefore, we find that the otherwise unrecouped litigation expenses shall be recorded as a regulatory asset in Account 182.3, Other Regulatory Assets, and be amortized to Account 407.3, Regulatory Debits, over a 5-year period beginning January 2013. Further, we find that the approval to record the regulatory asset for accounting purposes does not limit our ability to review the amounts for reasonableness in future proceedings in which the regulatory asset is included. This treatment is revenue neutral and will not have any impact on rates unless recovery is sought in a future proceeding.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Public Utilities Company shall be permitted to establish a regulatory asset to defer the litigation expenses associated with ongoing litigation with the City of Marianna as set forth in the body of this order. It is further

ORDERED that the otherwise unrecouped litigation expenses shall be recorded as a regulatory asset in Account 182.3, Other Regulatory Assets, and be amortized to Account 407.3, Regulatory Debits. It is further

ORDERED that the regulatory asset shall be amortized over a 5-year period from January 1, 2013 through December 31, 2017. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 5th day of November, 2012.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

CMK

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 26, 2012.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.