

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint petition for approval of gas transportation agreement between Florida Public Utilities Company and City of Lake Worth, and request for expedited treatment.

DOCKET NO. 030363-GU  
ORDER NO. PSC-03-0846-PAA-GU  
ISSUED: July 21, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman  
J. TERRY DEASON  
BRAULIO L. BAEZ  
RUDOLPH "RUDY" BRADLEY  
CHARLES M. DAVIDSON

NOTICE OF PROPOSED AGENCY ACTION  
ORDER APPROVING JOINT PETITION FOR APPROVAL  
OF GAS TRANSPORTATION AGREEMENT

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

On July 21, 2000, Florida Public Utilities Company (FPUC or the Company) entered into a Gas Transportation Agreement with Lake Worth Generation (LWG) that was approved by Commission Order No. PSC-00-1002-PAA-GU, issued October 16, 2000. The Gas Transportation Agreement provided for (1) the construction of a natural gas pipeline and related facilities by FPUC to a power generation project being developed by LWG and the City of Lake Worth (CLW); (2) the transportation of natural gas to the Lake Worth Project and the CLW via the Lake Worth lateral; and (3) LWG's

DOCUMENT NUMBER-DATE

06505 JUL 21 8

FPSC-COMMISSION CLERK

commitment to pay certain charges for the natural gas transportation services provided by FPUC over a 30 year period.

The charges for natural gas transportation services were set at an amount that would permit the Company to recover a return of 11.17% on its undepreciated investment in the construction of the Lake Worth Lateral, plus a recovery of its operation and maintenance (O&M) expenses. LWG's obligation to pay for the natural gas transportation services was secured by an irrevocable letter of credit issued on July 6, 2001, provided to the Company in the amount of the initial estimated cost of construction of \$5,490,449. Construction of the Lake Worth Lateral was completed in June 2002, at a cost of \$5,895,594, and FPUC thereafter initiated service to the Lake Worth project. The gas transportation agreement required monthly payments by LWG in the amount of \$109,423.28 for the first year of service, adjusted annually thereafter to account for depreciation of the Lake Worth lateral and adjustments to the O&M expenses. The gas transportation agreement also required LWG to increase the amount of the letter of credit to cover the actual cost of construction of the lateral, once the actual cost was confirmed.

In the fourth quarter of 2002, LWG notified FPUC that, due to financial difficulties encountered by LWG and its contractors in connection with the Lake Worth project, LWG would not be able to increase the letter of credit, or to make monthly payments prospectively beginning in December 2002. FPUC, LWG and CLW subsequently entered into a Forbearance Agreement dated December 31, 2002, and an amended Forbearance Agreement, dated February 19, 2003. The objective of the Forbearance Agreement was to provide FPUC and CLW with an opportunity to attempt to negotiate a new gas transportation agreement that would enable CLW to proceed with the development of the LWG project, notwithstanding LWG's inability to perform its obligations to FPUC under the gas transportation agreement. On April 22, 2003, FPUC and CLW filed a joint petition for approval of a Gas Transportation Agreement as a special contract under Rule 25-9.034(1), Florida Administrative Code.

We are vested with jurisdiction over this matter by several provisions of Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.06, Florida Statutes.

GAS TRANSPORTATION AGREEMENT

On March 31, 2003, FPUC and CLW entered into a new gas transportation agreement providing for natural gas transportation service on the Lake Worth lateral to the CLW. Consistent with FPUC's obligations under the previously approved gas transportation agreement, FPUC would receive CLW's natural gas at the gate station interconnected with the Florida Gas Transmission system (FGT) near the intersection of Lake Worth Road and the Florida Turnpike in Palm Beach County, Florida, and redeliver such gas to the site of the Lake Worth project. In the event CLW terminates the agreement for any reason other than FPUC's failure to perform due to any event of force majeure that continues for a period of six months or more, CLW must pay FPUC the full amount of FPUC's remaining undepreciated investment in the construction cost of the Lake Worth lateral.

FPUC conducted a cost of service study to calculate the actual construction cost and investment to own and operate the lateral main, as well as FPUC's portion of the cost of the gate station. The cost of service was designed to recover FPUC's investment made to construct the lateral main and gate station, provide a 8.77% rate of return on that investment, and recover the costs of operating and maintaining the dedicated facility. In addition, CLW shall pay to FPUC the actual delivered cost, plus 25%, for the cost of odorant for the Lake Worth lateral. FPUC will invoice the CLW after each delivery.

Under the terms of the agreement, a volumetric transportation rate per therm will not be applied. Instead, the CLW will be responsible for the cost of service through a transportation charge. The transportation charge for year one is \$791,208, or \$65,934 per month, which will be adjusted annually for O&M index changes and reduced depreciation expenses, and is intended to recover FPUC's costs of providing dedicated transportation services to the Lake Worth Project along with FPUC's investment in the construction of dedicated facilities (net depreciated plant).

As part of its calculation of the charges in the transportation agreement, FPUC employed a return on equity (ROE) of 12.40%. By Order No. PSC-95-0518-FOF-GU, issued April 26, 1995, in Docket No. 940620-GU, we authorized a mid-point ROE of 11.40% for

FPUC. The Company recognizes a range of plus or minus 100 basis points around the mid-point ROE for surveillance purposes. Therefore, we find that the 12.40% ROE is reasonable for purposes of the transportation agreement.

We note that a letter of credit provided security for FPUC's investment under the original transportation agreement between FPUC and LWG. The security for this new transportation agreement is as follows: if the CLW's bond rating falls below BBB+ as determined by Standard and Poor's, then CLW will have to post a letter of credit in the amount of FPUC's undepreciated investment plus \$37,900. CLW currently has insured bonds that are rated AAA. We find that this form of security is acceptable. Based on this analysis, the Gas Transportation Agreement between FPUC and CLW is hereby approved, effective April 1, 2003.

#### EXCESS EARNINGS AND ENVIRONMENTAL RESERVES

FPUC has received a \$1.5 million early contract termination fee as a result of the new Gas Transportation Agreement with the CLW. The \$1.5 million will be included in regular operating revenues and will substantially increase FPUC's earnings for calendar year 2003. In fact, FPUC expects that the inclusion of this amount as operating revenue will result in its achieving excess earnings for calendar year 2003. FPUC is seeking approval to offset its potential excess earnings for calendar year 2003 by accruing up to a maximum of \$2 million to its environmental reserves.

FPUC has stated that the current estimate for future environmental costs indicates at least a \$2 million reserve shortfall in the amount necessary for projected environmental clean-up expenditures. By Order No. 24094, issued February 12, 1991, in Docket No. 900151-GU, we authorized FPUC to record a 10-year accrual of \$240,000 per year for expenses associated with the environmental clean-up of manufactured gas plant sites. This accrual and its 10-year duration was subsequently affirmed by Order No. PSC-95-0518-FOF-GU, issued April 26, 1995, in Docket No. 940620-GU. The 10-year accrual period has expired and FPUC has ceased making accruals to its environmental reserves.

ORDER NO. PSC-03-0846-PAA-GU

DOCKET NO. 030363-GU

PAGE 5

We find that FPUC's proposal is a reasonable solution to address both the potential excess earnings for calendar year 2003 and, to some degree, the projected shortfall in the environmental clean-up reserves. Therefore, FPUC's proposal is hereby approved. Although FPUC's proposal gives us jurisdiction over all excess earnings for calendar year 2003, the disposition of any excess earnings not offset by accruals to the environmental reserves shall be determined in a separate forum. We shall retain jurisdiction over the environmental reserve for the ultimate disposition of any excess accruals which may exist in that fund.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Gas Transportation Agreement between Florida Public Utilities Company and the City of Lake Worth, effective April 1, 2003. It is further

ORDERED that this Commission shall have jurisdiction over any excess earnings for calendar year 2003, and Florida Public Utilities Company shall accrue up to a maximum of \$2 million in its environmental reserves for calendar year 2003. It is further


ORDERED that this Commission shall retain jurisdiction over the environmental reserve for the ultimate disposition of any excess accruals which may exist in that fund.

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 Director, Division of the Commission Clerk and Administrative Services, 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 if a protest is filed by a person whose substantial interests are affected within 21 days of the Commission Order approving this agreement, the agreement shall remain in effect pending resolution of the protest. If no protest is filed, this docket shall be closed upon the issuance of a Consummating Order.

ORDER NO. PSC-03-0846-PAA-GU  
DOCKET NO. 030363-GU  
PAGE 6

By ORDER of the Florida Public Service Commission this 21st  
Day of July, 2003.

  
\_\_\_\_\_  
BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

( S E A L )

JSB

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

ORDER NO. PSC-03-0846-PAA-GU  
DOCKET NO. 030363-GU  
PAGE 7

Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on August 11, 2003.

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.