

Diamond Williams

110041-EI

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Friday, February 11, 2011 3:50 PM
To: Beth Keating; J.R. Kelly; Cecilia Bradley; Filings@psc.state.fl.us; Katherine Fleming; Schef Wright
Subject: Electronic Filing - Docket 110041-EI
Attachments: 110041.Marianna.Pet2Intervene.2-11-11.pdf

a. Person responsible for this electronic filing:

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b. 110041-EI

In Re: Petition for approval of Amendment No. 1 to Generation Services Agreement with Gulf Power Company, by Florida Public Utilities Company.

c. Document being filed on behalf of the City of Marianna, Florida.

d. There are a total of 7 pages.

e. The document attached for electronic filing is the Petition to Intervene of the City of Marianna, Florida.

(see attached file: 110041.Marianna.Pet2Intervene.2-11-11.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
 Secretary to Schef Wright
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Parties added 2-11-11

DOCUMENT NUMBER DATE

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FPSC-COMMISSION OFFICE

2/11/2011

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Approval of Amendment No. 1 to)
Generation Services Agreement with Gulf Power)
Company, by Florida Public Utilities Company.)
_____)

DOCKET NO. 110041-EI
Filed: February 11, 2011

PETITION TO INTERVENE OF THE CITY OF MARIANNA, FLORIDA

The City of Marianna, Florida ("Marianna" or "City"), pursuant to Rules 28-106.205 and 25-22.039, Florida Administrative Code ("F.A.C."), hereby petitions for leave to intervene in the above-styled docket. In summary, the City of Marianna is a political subdivision of the State of Florida, a customer of Florida Public Utilities Company ("FPU"), and a substantial customer of FPU. Accordingly, the City's substantial interests will be affected and determined by the Commission's actions in this docket, and the City is therefore entitled to intervene as a matter of right.

PRODEDURAL BACKGROUND

1. The name, address, and telephone number of the Petitioner are as follows:

The City of Marianna, Florida
City Hall
2898 Green Street
Marianna, Florida 32446
Telephone: (850) 482-4353
Facsimile: (850)

2. All pleadings, orders, and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright, Attorney at Law
John T. LaVia, III, Attorney at Law
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
Telephone: (850) 222-7206
Facsimile: (850) 561-6834

3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

FACTUAL BACKGROUND

4. The City of Marianna, Florida is a political subdivision of the State of Florida, with a population of approximately 6,200 persons. The City operates police and fire departments, water, wastewater, and natural gas utility systems, and provides other municipal services to its citizens. The City has several electric service accounts through which it purchases retail electric service from FPU. The City's Ordinance No. 981 is the Franchise Agreement or Franchise Ordinance between the City and FPU.

5. Section 17 of the Franchise Ordinance requires FPU to develop "Time of Use" ("TOU") and "Interruptible" ("IS") electric rates or similar electric rate schedules, which must, by the terms of the Franchise Ordinance, be "mutually agreed to by" FPU and the City, and which must be effective by February 17, 2011. Those TOU and IS rates are the subject of Commission Docket No. 100459-EI, and the City has filed its Petition to Intervene in that docket as well. In FPU's Petition that is the subject of this Docket No. 110041-EI, FPU has characterized the "Amendment No. 1 to Generation Services Agreement" (hereinafter the "GSA Amendment") with Gulf Power Company as being necessary to support the Time of Use and Interruptible rate schedules that are the subject of Docket No. 100459-EI. The Generation Services Agreement is the bulk electricity purchase and sale agreement through which FPU buys wholesale electricity from Gulf Power Company, which electricity is then re-sold to the City and FPU's other customers in the Northwest Division.

MARIANNA'S STANDING

6. To participate as a party in this proceeding, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997), Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 135 (Fla. 1982). In this docket, the Commission will decide whether to approve FPU's petition for approval of the GSA Amendment. As a customer with several FPU service accounts, Marianna's electric costs will be determined by the GSA Amendment, and accordingly, Marianna's substantial interests in paying fair, just, and reasonable rates for its electric service will be determined in this proceeding.

7. Accordingly, Marianna's substantial interests in this proceeding are of sufficient immediacy to entitle it to participate in this docket and are exactly the type of interests that the proceeding is designed to protect, namely the interests of utility customers in having access to fair, just, reasonable, and non-discriminatory rates and service.

ISSUES OF MATERIAL FACT

8. The City of Marianna believes that the relevant issues of material fact that must be determined in this proceeding are as follows:
- a. Whether the wholesale rates provided for in the proposed GSA Amendment will result in fair, just, and reasonable retail rates being charged by FPU to the City and FPU's other retail customers;
 - b. Whether the other, non-price terms and conditions in the GSA Amendment that affect FPU's power supply costs, including, without limitation, the term of the GSA Amendment in years and the demand and energy charge structures provided in the GSA Amendment, will result in

fair, just, and reasonable rates being charged by FPU to the City and FPU's other retail customers; and

- c. (Ultimate issue) Whether the proposed GSA Amendment should be approved as requested by FPU.

The City reserves its rights to add other, additional, and more specific issues as may be identified through discovery and through further analysis as this docket progresses.

STATEMENT OF ULTIMATE FACTS ALLEGED

9. At this early point in this docket, the only issue raised by the City's Petition to Intervene is simply whether this Petition should be granted. As to this immediate issue, the City of Marianna is entitled to intervene because, as a customer of FPU, the City's substantial interests will be determined by the Commission's actions herein.

10. Regarding the substantive facts relating to the proposed GSA Amendment, the City has engaged experts who are presently reviewing the proposed GSA Amendment and supporting documentation. Based on the City's preliminary review, and based upon information and belief developed through conversations with FPU personnel, the City believes that:

- a. The proposed rates to be charged under the GSA Amendment in the extension years, 2018 and 2019, are excessive and will result in FPU's rates being unfair, unjust, and unreasonable.
- b. The structures of the demand and energy charges are inappropriate.
- c. The proposed GSA Amendment is contrary to the best interests of FPU's customers and contrary to the public interest.
- d. FPU's request for approval of the proposed GSA Amendment, for cost recovery, should be denied.

STATUTES AND RULES THAT ENTITLE THE CITY TO INTERVENE

11. The applicable statutes and rules that entitle the City of Marianna to intervene in this docket include, but are not limited to, Chapter 120, Florida Statutes, and Rules 25-22.039 and 28-106.205, F.A.C.

CONCLUSION AND RELIEF REQUESTED

The City of Marianna's substantial interests will be determined by the Commission's actions in this proceeding, and accordingly, the City is entitled to intervene in this proceeding as prayed herein.

WHEREFORE, as explained in the foregoing Petition to Intervene, the City of Marianna, Florida respectfully asks the Commission to issue its order **GRANTING** this Petition to Intervene and requiring that all parties serve copies of all pleadings and other documents on the City's attorneys named above.

Respectfully submitted this 11th day of February, 2011.



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Attorneys for the City of Marianna, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery and U.S. Mail this 11th day of February, 2011, to the following:

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Florida Public Service Commission
Division of Legal Services
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