

Marguerite McLean

100459-EI

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Tuesday, March 01, 2011 2:37 PM
To: Frank Bondurant; Beth Keating; J.R. Kelly; Cecilia Bradley; Filings@psc.state.fl.us; Katherine Fleming; Schef Wright
Subject: Electronic Filing - Docket 100459-EI
Attachments: 100459.Marianna.Pet4FormalProceeding.3-1-11.pdf

a. Person responsible for this electronic filing:

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b. 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.

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

d. There are a total of 9 pages.

e. The document attached for electronic filing is the Petition for Formal Proceeding by the City of Marianna, Florida.

(see attached file: 100459.Marianna.Pet4FormalProceeding.3-1-11-11.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
 Secretary to Schef Wright
 Phone: 850-222-7206
 FAX: 850-561-6834

3/1/2011

DOCUMENT NUMBER-DATE
 01359 MAR-1 =
 FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Florida Public Utilities Company's Petition for)
Authority to Implement a Demonstration Project of) DOCKET NO. 100459-EI
Proposed Time-of-Use and Interruptible Rate Schedules)
In the Northwest Division) Filed: March 1, 2011
_____)

PETITION FOR FORMAL PROCEEDING BY THE CITY OF MARIANNA, FLORIDA

The City of Marianna, Florida ("Marianna" or "City"), pursuant to Rule 28-106.201, Florida Administrative Code ("F.A.C."), and in accord with the Commission's instructions set forth in Order No. PSC-11-0112-TRF-EI, hereby petitions the Commission to conduct a formal proceeding, including a full evidentiary hearing, regarding disputed issues of material fact relating to the petition of Florida Public Utilities Company ("FPUC") that is the subject of this docket. The City of Marianna is a substantial customer of FPUC, the City's substantial interests will be affected and determined by the Commission's actions in this docket, and accordingly, the Commission has granted the City's petition to intervene by its Order No. 11-0129-PCO-EI, issued on February 25, 2011.

The City believes that the facts relating to FPUC's "experimental," "demonstration," "pilot" time-of-use ("TOU") and interruptible service ("IS") rate offerings, which also depend on the ultimate approval of a pending amendment to the wholesale power purchase agreement between FPUC and Gulf Power Company in Commission Docket No. 110041-EI, indicate that the Commission should deny FPUC's petition herein, and accordingly, the City requests that the Commission conduct a formal proceeding, including a formal evidentiary hearing, pursuant to the provisions of Chapter 120, Florida Statutes, and applicable rules of the Florida Administrative Code, in which FPUC will have the burden of proving that its rates should be approved.

DOCUMENT NUMBER-DATE
01359 MAR-1 =
FPSC-COMMISSION CLERK

PRODEDURAL BACKGROUND

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

The City of Marianna, Florida
Attention: Jim Dean, City Manager
City Hall
2898 Green Street
Marianna, Florida 32446
Telephone: (850) 482-4353

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
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and

Frank E. Bondurant, Attorney at Law, City Attorney
Bondurant & Fuqua, P. A.
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Post Office Box 1508
Marianna, Florida 32447
Telephone: (850) 526-2263
Facsimile: (850) 526-5947

3. The agency affected by this Petition for Formal Proceeding is:

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

4. The City received notice of the Commission's interim action on FPUC's petition and tariff proposals when the City received a copy of the Commission's Order No. PSC-11-0112-TRF-EI on February 11, 2011.

5. The City petitioned to intervene in this docket on January 7, 2011, and the Commission granted the City's intervention by Order No. PSC-11-0129-PCO-EI on February 25, 2011.

FACTUAL BACKGROUND

6. 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 FPUC. The City's Ordinance No. 981 is the Franchise Agreement or Franchise Ordinance between the City and FPUC. Among other things, the Franchise requires FPUC to have developed and implemented Time of Use and Interruptible, or similar, rates that were to be (a) "mutually agreed to" by the City and FPUC, (b) available to all of FPUC's customers in the Northwest Division, and (c) in effect by February 17, 2011.

7. FPUC has filed its proposed Time of Use and Interruptible rate schedules with the PSC in this docket. For convenience, the term "Time of Use" is abbreviated as "TOU" herein, references to "Interruptible" rates and services are abbreviated as "IS" (for "Interruptible Service"), and the rate schedules collectively are abbreviated and referred to as "TOU/IS" rates or rate schedules. As a customer of FPUC, the City would have the option of taking service under these rate schedules. FPUC's proposals are for "pilot" or "experimental" rates that would be available to limited numbers of customers within each tariff schedule, e.g., residential, small commercial, and large commercial.

8. FPUC does not own or operate electric generation facilities. FPUC purchases the electric power it sells in its Northwest Division from Gulf Power Company ("Gulf"), pursuant to an Agreement for Generation Services dated December 28, 2006 (the "PPA"). The rates paid by

FPUC to Gulf under the PPA are among the highest wholesale power rates in the State of Florida, resulting in FPUC's retail rates in its Northwest Division being among the highest, if not the highest, in the State of Florida. Since the wholesale rates paid by FPUC to Gulf are in fact FPUC's bulk power supply costs, those rates and the PPA are inextricably related to the retail rates charged by FPUC, including its proposed TOU and IS rates that are the subject of this Docket No. 100459-EI.

9. In a separate petition filed on January 26, 2011, FPUC has also initiated PSC 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. In that petition, FPUC stated the following: "FPUC determined that, in order to develop TOU and Interruptible rates that would satisfy the requirements of the Franchise and also comply with Commission regulatory requirements, changes to the existing PPA with Gulf would be necessary." The TOU and IS rates proposed by FPUC depend on the PPA Amendment being approved by the PSC. The PSC's initial and preliminary consideration of the PPA Petition is presently scheduled to be considered as a "proposed agency action" item at an agenda conference to be held on May 24, 2011. The City opposes the proposed PPA Amendment, and the City has accordingly intervened in PSC Docket No. 110041-EI, which the PSC opened for the purpose of evaluating the PPA Amendment. If the Commission does not consolidate these related dockets on its own motion, the City will move to consolidate at an appropriate, early point in these proceedings.

ISSUES OF MATERIAL FACT

10. The City of Marianna believes that the relevant issues of material fact that must be determined in this proceeding include the following:

- a. Whether FPUC's proposed Time-of-Use tariffs, including the terms and conditions included in the tariffs, and associated rates are fair, just, reasonable, and non-discriminatory;
- b. Whether FPUC's proposed Interruptible Service tariffs, including the terms and conditions included in the tariffs, and associated rates are fair, just, reasonable, and non-discriminatory;
- c. Whether FPUC's proposed Time-of-Use tariffs include rates that accurately reflect the costs that FPUC incurs to provide service on a time-differentiated basis;
- d. Whether FPUC's proposed Time-of-Use tariffs include rates that accurately reflect the costs that are incurred by Gulf Power Company to provide the wholesale service that FPUC purchases to resell to its retail customers in the Northwest Division;
- e. Whether FPUC's proposed Time-of-Use tariffs include rates that provide accurate price signals to FPUC's retail customers as to the costs actually incurred by FPUC to provide service on a time-differentiated basis, or as to the actual costs of providing their electric service;
- f. Whether FPUC's proposed Interruptible Service tariffs include rates that accurately reflect the costs that FPUC incurs to provide service on an interruptible basis;
- g. Whether FPUC's proposed Interruptible Service tariffs include rates that accurately reflect the value that the one interruptible customer that FPUC intends to allow on its IS tariff will provide to FPUC and to FPUC's other customers by virtue of the customer's willingness to be interrupted at need;
- h. Whether FPUC's proposed IS rates provide appropriate cost signals to customers relative to the costs incurred by FPUC to provide service on an interruptible basis, and relative to the value that interruptible customers provide to FPUC and its general body of customers;
- i. Whether it is appropriate to implement FPUC's proposed TOU/IS tariffs and rates on a "pilot" or "experimental" basis;
- j. Whether FPUC's proposed subscription limits on the TOU/IS tariffs are appropriate;
- k. (Ultimate issue) Whether FPUC's proposed TOU rates should be approved; and
- l. (Ultimate issue) Whether FPUC's proposed IS rates should be approved.

The City reserves its rights to raise additional issues in accord with Commission procedures and procedural orders issued in this docket, as such may be indicated through discovery or otherwise.

STATEMENT OF ULTIMATE FACTS ALLEGED

11. The City of Marianna alleges the following ultimate facts that the City believes should result in the Commission denying FPUC's petition and disapproving FPUC's proposed TOU and IS rates.

- a. FPUC's TOU rates are not cost-based, and are therefore not fair, just, or reasonable.
- b. FPUC's TOU rates do not send appropriate price signals that reflect either the costs that FPUC incurs to provide service during on-peak and off-peak periods, or in the seasons of the year, and therefore are not fair, just, and reasonable.
- c. FPUC's IS rates are not cost-based and do not reflect the value provided by customers who are willing to be interrupted, and therefore are not fair, just, and reasonable.
- d. FPUC's IS rates accordingly do not send appropriate price signals to customers who actually take, or who might consider taking, service under FPUC's IS rates, and therefore are not fair, just, and reasonable.
- e. It is not appropriate to implement FPUC's TOU or IS rates on a pilot or experimental basis.
- f. The proposed subscription limits on FPUC's TOU and IS rates are not appropriate.
- g. FPUC's TOU rates should not be approved.
- h. FPUC's IS rates should not be approved.

STATUTES AND RULES THAT ENTITLE THE CITY TO INTERVENE

12. The applicable statutes and rules that entitle the City of Marianna to the relief requested – that the Commission conduct a formal proceeding and that the Commission deny approval of FPUC's TOU and IS rates – include, but are not limited to, Sections 120.569, 120.57(1), 366.03, 366.04(1), 366.041, 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes.

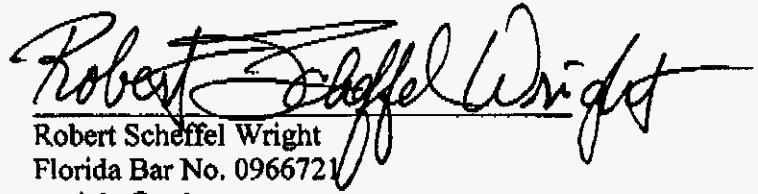
The cited provisions of Chapter 120, Florida Statutes, relate to the conduct of formal proceedings involving disputed issues of material fact. The cited provisions of Chapter 366, Florida Statutes, articulate the Commission's jurisdiction over the rates and service of public utilities and require that all rates must be fair, just, reasonable, and not unduly discriminatory. The rates proposed by FPUC are not cost-based and do not reflect the value that customers will create by modifying their consumption, either by shifting their times of use or by being interrupted, and accordingly, the cited statutes warrant denial of FPUC's proposed TOU and IS rates.

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 respectfully petitions the Commission to conduct a formal proceeding (hearing) for the purpose of receiving evidence on the rate proposals that are the subject of FPUC's petition herein and of Commission Order No. 11-0112-TRF-EI. FPUC's Time-of-Use and Interruptible rates that are the subject of this docket are not cost-based and do not provide accurate price signals to customers, and accordingly, they are not fair, just, and reasonable rates. Accordingly, the Commission should deny the continued implementation of those rates.

WHEREFORE, as explained in the foregoing Petition for Formal Proceeding, the City of Marianna, Florida respectfully asks the Commission to conduct a formal proceeding, including a full evidentiary hearing on the issues raised herein, and at the conclusion of that proceeding, to issue its order denying its approval to the continued implementation of FPUC's Time-of-Use and Interruptible rates that are the subject of this docket.

Respectfully submitted this 1st day of March, 2011.



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CERTIFICATE OF SERVICE

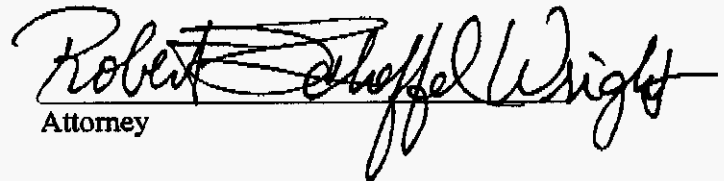
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery and U.S. Mail this 1st day of March, 2011, to the following:

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