

Diamond Williams

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Tuesday, July 12, 2011 12:12 PM
To: Frank Bondurant; Beth Keating; J.R. Kelly; Cecilia Bradley; Filings@psc.state.fl.us; Pauline Robinson; Schef Wright
Subject: Electronic Filing - Docket 110041-EI
Attachments: 110041.Marianna.Petition-Protesting-PAA.7-12-11.pdf

a. Person responsible for this electronic filing:

Robert Scheffel Wright
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301
(850) 222-7206
swright@yvlaw.net

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 18 pages.

e. The document attached for electronic filing is The City of Marianna's Petition Protesting Proposed Agency Action Order No. PSC-11-0269-PAA-EI and Requesting Formal Proceeding.

(see attached file: 110041.Marianna.Petition-Protesting-PAA.7-12-11.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

DOCUMENT NUMBER-DATE

04786 JUL 12 =

FPSC-COMMISSION CLERK

7/12/2011

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: July 12, 2011

**THE CITY OF MARIANNA'S PETITION PROTESTING PROPOSED AGENCY
ACTION ORDER NO. PSC-11-0269-PAA-EI AND
REQUESTING FORMAL PROCEEDING**

The City of Marianna, Florida ("Marianna" or "City"), pursuant to Rules 28-106.201 and 25-22.029, Florida Administrative Code ("F.A.C."), hereby files its petition protesting the Commission's Order No. PSC-11-0269-PAA-EI, entitled "Notice of Proposed Agency Action Order Approving Amendment No. 1 to Purchased Power Contract for Generation Service Between Florida Public Utilities Company and Gulf Power Company for Purposes of Fuel Cost Recovery Calculation" (hereinafter the "PAA Order" or "PAA Order to Approve PPA Amendment") issued in the above-styled docket on June 21, 2011. The City hereby requests that the Commission conduct a formal proceeding, including a *de novo* evidentiary hearing, pursuant to Section 120.57(1), Florida Statutes,¹ on Florida Public Utilities Company's ("FPUC") petition for approval of the proposed amendment to its generation service contract with Gulf Power Company. The City, as a substantial retail customer of FPUC, if the proposed amendment becomes finally effective, would have to pay FPUC's rates that are based on the charges that FPUC pays to Gulf pursuant to its bulk power purchase agreement with Gulf, as that agreement would be amended by the amendment that is the subject of this docket. Accordingly, the City of Marianna's substantial interests will be determined by the Commission's actions herein, and the City is entitled to the requested formal proceeding to protect its interests. In further support of its protest of the PAA Order and request for formal proceeding, the City of Marianna states as follows.

¹ All references to the Florida Statutes in this Petition are to the 2010 edition thereof.

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

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 Protesting Proposed Agency Action is:

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

4. This docket was initiated by FPUC's filing, on January 26, 2011, of its petition for approval of the proposed Amendment No. 1 to FPUC's generation services agreement with Gulf Power Company ("Gulf" or "Gulf Power"). The City petitioned to intervene on February 11, 2011. No party opposed the City's petition to intervene, and the Commission granted the City's petition to intervene by Commission Order No. PSC-11-0137-PCO-EI, issued on February 28, 2011.

5. The Commission issued the PAA Order on June 21, 2011. Procedurally, the PAA Order states that, "The action proposed herein is preliminary in nature." PAA Order at 5. The PAA Order further provides that, "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." The PAA Order also states that, "In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order." Thus, the PAA Order is preliminary and non-final at this time.

6. The City of Marianna learned of the Commission's PAA Order (i.e., the notice of the Commission's proposed decision to approve the PPA Amendment) upon receipt of the PAA Order on or about June 21, 2011. Consistent with and pursuant to the PAA Order, this Petition constitutes the City's petition requesting a formal proceeding, i.e., a de novo evidentiary hearing on FPUC's petition for approval of the PPA Amendment, and the City's formal protest of the Commission's proposal to approve the PPA Amendment via the PAA Order.

7. For convenience, the following abbreviations are used in the City's Petition. The existing wholesale power purchase agreement between FPUC and Gulf, i.e., the "AGREEMENT FOR GENERATION SERVICES BETWEEN GULF POWER COMPANY AND FLORIDA PUBLIC UTILITIES COMPANY Dated as of December 28, 2006," is abbreviated as the "Existing Agreement." The amendment to the Existing Agreement that is the subject of this docket, i.e., the "AMENDMENT NO. 1 TO THE AGREEMENT FOR GENERATION SERVICES BETWEEN GULF POWER COMPANY AND FLORIDA PUBLIC UTILITIES COMPANY," is abbreviated as the "PPA Amendment."

FACTUAL BACKGROUND

8. 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 purchases retail electric service from FPUC through approximately 112 accounts, including accounts that are billed under FPUC's General Service – Non-Demand (GS), General Service – Demand (GSD), General Service – Large Demand

(GSLD), and Street Lighting (SL) and Outdoor Lighting (OL) rate schedules. The City's Ordinance No. 981 is the Franchise Agreement or Franchise Ordinance between the City and FPUC.

9. FPUC is a "public utility" within the meaning of Section 366.02(1), Florida Statutes. FPUC provides retail electric service in two divisions, the Northeast Division, which is not affected by this proceeding, and the Northwest Division, which includes the City of Marianna and surrounding areas. FPUC does not produce any of the electricity that it sells to the City or its other retail customers. Rather, FPUC purchases the electricity that it sells at retail from Gulf Power Company pursuant to the Existing Agreement, which became effective on January 1, 2008. The Existing Agreement is the bulk electricity purchase and sale agreement through which FPUC 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. The PPA Amendment would amend the Existing Agreement in two main ways: it would reduce the minimum purchase quantity under the Existing Agreement from 97,944 KW to 91,000 KW, thus reducing FPUC's capacity payments to Gulf under the Existing Agreement, and it would otherwise extend the Existing Agreement for two additional years, *i.e.*, through December 31, 2019 as compared to the current termination date of December 31, 2017. As stated by the Commission in the PAA Order, "The capacity rates for 2018 and 2019 are escalated at a rate comparable to the escalation rates for the years contained in the Existing Agreement." PAA Order at 3.

10. Because of the purchased power costs that FPUC incurs under the Existing Agreement, FPUC's retail rates have been the highest, or among the very highest, in Florida for some time. Even after the reductions recently approved by the Commission in Order No. PSC-11-0289-FOF-EI, which included (a) \$9.64 per 1,000 kWh of Residential service to return

amounts over-collected from customers through FPUC's Purchased Power Charges and (b) \$4.53 per 1,000 kWh of Residential service to reflect the effects of the proposed PPA Amendment, see Order No. PSC-11-0289-FOF-EI at 3-4, FPUC's rates remain among the very highest in the state. The effective wholesale power costs that FPUC incurs under the Existing Agreement, and the effective wholesale costs that FPUC would continue to incur even if the PPA Amendment were to become finally effective, are significantly above the market cost for wholesale power in Florida.

11. The Franchise Ordinance requires FPUC to develop "Time of Use" ("TOU") and "Interruptible" ("IS") electric rates or similar electric rate schedules. FPUC has proposed tariffs for such TOU and IS rates, and those proposals are the subject of Commission Docket No. 100459-EI. In FPUC's Petition that is the subject of this Docket No. 110041-EI, FPUC characterized the PPA Amendment with Gulf Power Company as being necessary to support the TOU and IS rate schedules that are the subject of Docket No. 100459-EI. The Commission recognized the relationship of the PPA Amendment to the TOU and IS rates in the PAA Order that is the subject of the City's protest embodied in this Petition; specifically, the Commission stated, "we find that the modifications to the capacity purchase quantity provides the pricing flexibility necessary to develop conservation, or load control measures such as time-of-use and interruptible rates." PAA Order at 3. (As set forth below in the City's statement of disputed issues of material fact, and in its statement of ultimate facts alleged, the City disagrees with the Commission's preliminary conclusion that the modification to the capacity purchase quantity provides any support for the development of conservation, time-of-use, interruptible, or similar rates, and the City accordingly identifies this as a disputed issue of material fact to be determined in the formal proceeding requested by the City through this Petition.)

**IMPACT OF THE COMMISSION'S ACTIONS ON
MARIANNA'S SUBSTANTIAL INTERESTS**

12. The City purchases retail electric service from FPUC through approximately 112 separate service accounts, including accounts that are billed under FPUC's General Service – Non-Demand (GS), General Service – Demand (GSD), General Service – Large Demand (GSLD), and Street Lighting (SL) and Outdoor Lighting (OL) rate schedules. If the PPA Amendment becomes finally approved and effective, the payments that FPUC will make to Gulf Power pursuant to the Existing Agreement, as it will be amended by the PPA Amendment, will be reflected in the Purchased Power Charges that the City will pay to FPUC.

13. Thus, the City's substantial interests – in its electric bills, in the rates that make up the City's bills, and in having rates that are fair, just, and reasonable – will be determined by the Commission's actions in this docket. The City believes that, notwithstanding the slight reduction in retail rates that would apparently result in 2011 through 2017 from the modified demand charges under the PPA Amendment, the rates that FPUC will pay to Gulf in 2018 and 2019, and thus the rates that the City and FPUC's other customers will be required to pay for service from FPUC in those years, will be unreasonably high, more than offsetting the short-run reductions, and accordingly the City requests an evidentiary hearing to challenge FPUC's assertion that the PPA Amendment is reasonable and prudent for purchased power purposes, as well as the Commission's preliminary conclusion that the PPA Amendment is appropriate for purposes of fuel cost recovery calculation. Accordingly, as recognized in Commission Order No. PSC-11-0137-PCO-EI granting the City's Petition to Intervene in this docket, the City is entitled to intervene and to have the Commission conduct a formal proceeding, including an evidentiary hearing, on the disputed issues of fact identified below.

DISPUTED ISSUES OF MATERIAL FACT

14. At this point in these proceedings, the City of Marianna has identified the following disputed issues of material fact:
- a. Whether the proposed rates to be charged under the PPA Amendment, including the rates to be charged from 2011 through 2017 and the rates to be charged in the extension years, 2018 and 2019, will result in FPUC's rates being fair, just, and reasonable, or whether the rates in the PPA Amendment will result in FPUC's rates being unfair, unjust, and unreasonable.
 - b. Whether the proposed rates to be charged under the PPA Amendment in the extension years, 2018 and 2019, are so excessive that they will outweigh the slight, near-term reductions in FPUC's rates between June 2011 and 2017 that would result if the PPA Amendment were to become final and effective.
 - c. Whether there are additional cost risks, including risks associated with fuel costs and environmental costs that Gulf Power may incur that would affect the "Monthly Energy Payments" or similar charges that reflect fuel and related costs to be paid under the Existing Agreement as amended by the PPA Amendment, inherent in FPUC's proposal to purchase bulk power from Gulf for the extension period in the PPA Amendment, and whether these cost risks further make approval of the PPA Amendment inappropriate and contrary to the best interests of the City and of FPUC's other customers.
 - d. Whether the PPA Amendment, and the rates to be paid by FPUC to Gulf Power pursuant to the Existing Agreement as it would be amended by the PPA Amendment, are reasonable for cost recovery calculations.

- e. Whether the PPA Amendment, and the rates to be paid by FPUC to Gulf Power pursuant to the Existing Agreement as it would be amended by the PPA Amendment, are reasonable and prudent for purposes of purchased power.
- f. Whether the PPA Amendment, and the rates to be paid by FPUC to Gulf Power pursuant to the Existing Agreement as it would be amended by the PPA Amendment, are appropriate for purposes of developing conservation or load control measures such as time-of-use rates or interruptible service rates. (This issue and the following issue "g" include the related issues of whether the rates to be paid by FPUC under the PPA Amendment, and the modification to the minimum capacity purchase quantity, provide "the pricing flexibility necessary to develop conservation, or load control measures such as time-of-use and interruptible rates," and, to the extent relevant in this docket, whether the PPA Amendment will encourage energy conservation or efficiency.)
- g. Whether the structures of the demand and energy charges provided for in the PPA Amendment, including, without limitation, the proposed minimum capacity purchase quantity "floor" of 91,000 KW, are appropriate for purposes of developing conservation or load control measures such as time-of-use rates or interruptible service rates. (This issue and the preceding issue "f" include the related issue of whether the rates to be paid by FPUC under the PPA Amendment, and the modification to the minimum capacity purchase quantity, provide "the pricing flexibility necessary to develop conservation, or load control measures such as time-of-use and interruptible rates," and, to the extent relevant in this docket, whether the PPA Amendment will encourage energy conservation or efficiency.)

- h. Whether FPUC appropriately evaluated the costs that FPUC, and FPUC's customers, would incur during the 2018-2019 extension period relative to the short-term savings provided by the modification to the minimum capacity purchase quantity, taking into account fuel price forecasts, bulk power price forecasts, consumption forecasts for FPUC's Northwest Division, other alternatives to the extension, and other factors and variables.
- i. Whether the proposed PPA Amendment is consistent with, or contrary to, the best interests of FPUC's customers and the public interest.
- j. Whether FPUC's request for approval of the proposed PPA Amendment, for cost recovery, should be approved or denied.

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

15. While it is FPUC's burden to prove, by a preponderance of the evidence, that the proposed PPA Amendment is reasonable and prudent, the City believes that the following are the appropriate ultimate factual determinations that the Commission should make in this proceeding. These facts relate directly to the fundamental issue of whether FPUC's retail rates, which would apply to the City's electric service, are and will be fair, just, and reasonable, as required by numerous sections of Chapter 366, Florida Statutes; those provisions are recited and discussed in detail below. These facts warrant reversal of the Commission's proposed action herein, and the Commission should accordingly deny FPUC's petition for approval of the PPA Amendment.

- a. The proposed rates to be paid by FPUC under the PPA Amendment, including the rates to be charged from 2011 through 2017 and the rates to be charged in the

extension years, 2018 and 2019, are excessive and will result in FPUC's rates being unfair, unjust, and unreasonable.

- b. The proposed rates to be paid by FPUC under the PPA Amendment in the extension years, 2018 and 2019, are so excessive that they will outweigh the slight, near-term reductions in FPUC's rates between June 2011 and 2017 that would result if the PPA Amendment were to become final and effective.
- c. There are additional cost risks, including risks associated with fuel costs and environmental costs that Gulf Power may incur over the relevant time horizon, that would affect the "Monthly Energy Payments" or similar charges that reflect fuel and related costs to be paid under the Existing Agreement as amended by the PPA Amendment, inherent in FPUC's proposal to purchase bulk power from Gulf for the extension period in the PPA Amendment, and these cost risks further make approval of the PPA Amendment inappropriate and contrary to the best interests of the City and of FPUC's other customers.
- d. The PPA Amendment, and the rates to be paid by FPUC to Gulf Power pursuant to the Existing Agreement as it would be amended by the PPA Amendment, are not reasonable for cost recovery calculations.
- e. The PPA Amendment, and the rates to be paid by FPUC to Gulf Power pursuant to the Existing Agreement as it would be amended by the PPA Amendment, are not reasonable and prudent for purposes of purchased power.
- f. The PPA Amendment, and the rates to be paid by FPUC to Gulf Power pursuant to the Existing Agreement as it would be amended by the PPA Amendment, are not appropriate for purposes of developing conservation or load control measures such as time-of-use rates or interruptible service rates. (Moreover, to the extent

relevant in this docket, the PPA Amendment, and the rates and rate structures under the PPA Amendment, do not and will not encourage energy conservation or efficiency.)

- g. The structures of the demand and energy charges to be paid by FPUC under the Existing Agreement, as amended by the PPA Amendment, including, without limitation, the proposed minimum capacity purchase quantity "floor" of 91,000 KW, are inappropriate for purposes of developing conservation or load control measures such as time-of-use rates or interruptible service rates. (Moreover, to the extent relevant in this docket, the rates and rate structures under the PPA Amendment do not and will not encourage energy conservation or efficiency.)
- h. FPUC did not appropriately evaluate the costs that FPUC, and FPUC's customers, would incur during the 2018-2019 extension period relative to the short-term savings provided by the modification to the minimum capacity purchase quantity, taking into account fuel price forecasts, bulk power price forecasts, consumption forecasts for FPUC's Northwest Division, other alternatives to the extension, and other factors and variables.
- i. The proposed PPA Amendment is contrary to the best interests of FPUC's customers and contrary to the public interest.
- j. FPUC's request for approval of the proposed PPA Amendment, for cost recovery, should be denied.

STATUTES AND RULES THAT ENTITLE THE CITY TO RELIEF

16. The applicable statutes and rules that entitle the City of Marianna to the relief requested – that the Commission conduct a formal proceeding including an evidentiary hearing to resolve disputed issues of material fact, and that the Commission deny FPUC's petition herein

because the rates resulting from the PPA Amendment are not and will not be fair, just, reasonable, or otherwise appropriate – 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, and Rules 25-22.039, F.A.C., and 28-106.101 and 28-106.201, F.A.C. Relevant to the City's right to its requested evidentiary hearing, Section 120.569, Florida Statutes, provides as follows:

120.569 Decisions which affect substantial interests.—

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases.

* * *

(2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency.

* * *

(b) All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; . . .

Section 120.57(1)(b), Florida Statutes, provides that "All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions . . . and to be represented by counsel or other qualified representative." Section 120.57(1)(k), Florida Statutes, provides in pertinent part that "All proceedings conducted under this subsection shall be de novo." Because the City's substantial interests in fair, just, and reasonable rates will be determined by the Commission's actions in this docket, the City is entitled to the requested formal proceeding, pursuant to the provisions of Sections 120.569 and 120.57(1), Florida Statutes.

17. 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. Specifically, Section 366.03, Florida Statutes,

both articulates the Commission's jurisdiction over the terms and conditions under which public utilities must provide service to their customers, and also states the statutory requirement that "all rates and charges" must be "fair and reasonable." The entire text of Section 366.03, Florida Statutes, is set forth here.

366.03 General duties of public utility.—Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission. No public utility shall be required to furnish electricity or gas for resale except that a public utility may be required to furnish gas for containerized resale. All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable. No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

Section 366.04(1), Florida Statutes, further articulates that "the commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service."

18. Beyond the broad provisions of Section 366.03, Florida Statutes, cited above, at least five additional sections of the Commission's electric regulatory statute, Chapter 366, articulate the statutory criteria that rates charged by public utilities in Florida must be fair, just, and reasonable. Section 366.041 provides a non-exhaustive list of factors that the Commission is to consider in "fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state by any and all public utilities." Section 366.05(1), Florida Statutes, provides that, in the exercise of its jurisdiction, "the commission shall have power to prescribe fair and reasonable rates and charges . . ." Similarly, Section 366.06(1), Florida Statutes, states that "the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service." Section 366.06(2), Florida Statutes, further provides that:

Whenever the commission finds, upon request made or upon its own motion, that the rates demanded, charged, or collected by any public utility for public utility service, or that the rules, regulations, or practices of any public utility affecting

such rates, are unjust, unreasonable, unjustly discriminatory, or in violation of law; that such rates are insufficient to yield reasonable compensation for the services rendered; that such rates yield excessive compensation for services rendered; or that such service is inadequate or cannot be obtained, the commission shall order and hold a public hearing, giving notice to the public and to the public utility, and shall thereafter determine just and reasonable rates to be thereafter charged for such service

Echoing the provisions of Section 366.06(2), Florida Statutes, that the Commission is to hold hearings to respond to requests made to determine that proposed rates are unjust or unreasonable, Section 366.07, Florida Statutes, provides as follows:

366.07 Rates; adjustment.—Whenever the commission, after public hearing either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, excessive, or unjustly discriminatory or preferential, or in anywise in violation of law, or any service is inadequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

19. The applicable provisions of Chapter 120 require the Commission to hold a hearing to resolve disputed issues of material fact where the petitioner's substantial interests are subject to being determined by an agency's actions. Here, the City of Marianna is a substantial customer of FPUC that takes service from FPUC under approximately 112 separate accounts under 5 different rate schedules. The Commission's proposed action to approve the PPA Amendment will thus directly affect the City's substantial interests in receiving its electric service pursuant to rates that are fair, just, and reasonable, and the City is entitled by Sections 120.569 and 120.57(1), Florida Statutes, to the formal proceedings and evidentiary hearing requested by this Petition.

20. The above-cited sections of Chapter 366, Florida Statutes, articulate the Commission's jurisdiction over FPUC's rates and charges and further articulate the statutory

mandate that all rates and charges of public utilities in Florida must be fair, just, and reasonable. The City's substantial interests in receiving electric service pursuant to fair, just, and reasonable rates will be determined by the Commission's actions in this docket, and the City is accordingly entitled by Chapter 366 to its requested formal proceeding and evidentiary hearing; moreover, because the rates resulting from the PPA Amendment are not and will not be fair, just, and reasonable, the Commission should deny FPUC's petition consistent with the mandates of Chapter 366.

21. Moreover, Commission Rule 25-22.039, F.A.C., provides for persons – the City of Marianna in this instance – whose substantial interests will be determined by a proceeding, to intervene in such proceeding. Rule 28-106.101, F.A.C., provides that Chapter 28-106 applies in all proceedings in which the substantial interests of a party – the City in this instance – are determined by the agency, and Rule 28-106.201, F.A.C., provides that the initiation of formal proceedings shall be made by written petition, and the City has accordingly filed this Petition protesting the PAA Order and requesting a formal proceeding and evidentiary hearing to determine the disputed issues of material fact identified herein.

CONCLUSION

The City of Marianna's substantial interests in having access to electric service at fair, just, and reasonable rates, as required by numerous sections of Chapter 366, Florida Statutes, discussed above, will be determined by the Commission's actions in this proceeding. The City has identified numerous disputed issues of material fact that must be determined by the Commission in its consideration of whether to approve the PPA Amendment "as being a reasonable and prudent agreement for purposes of purchased power" as requested by FPUC.² Because the City's substantial interests will be determined, and because there are disputed issues of material fact involved in the Commission's decision herein, the City is entitled to a formal proceeding pursuant to Section 120.57(1), Florida Statutes. Moreover, the City of Marianna believes that the ultimate facts will show that the rates that would be charged by FPUC if the PPA Amendment were approved would not, properly evaluated over the full term of the Existing Agreement as it would be amended by the PPA Amendment, be fair, just, and reasonable. The City further believes that those rates and the PPA Amendment are not appropriate for purposes of developing conservation or load control measures such as time-of-use rates or interruptible service rates. The City further believes that the proposed PPA Amendment is contrary to the best interests of the City, as a substantial customer of FPUC, to the best interests of FPUC's other

² The City notes that the PAA Order proposes to approve the PPA Amendment "for purposes of fuel cost recovery calculation." PAA Order at 4. FPUC's requested approval was somewhat different, *i.e.*, that the Commission approve the PPA Amendment "as being a reasonable and prudent agreement for purposes of purchased power." FPUC's Petition for Approval at 5. Because it appears that the Commission intends its action to approve the PPA Amendment as requested by FPUC, and because that determination would, if it were to become final, obligate the City and FPUC's other customers to pay the rates resulting from the PPA Amendment through 2019, the City protests the PAA Order in its entirety, including both the proposition that the PPA Amendment is reasonable for purposes of cost recovery calculations and the proposition, advanced by FPUC, that the PPA Amendment is reasonable and prudent for purposes of purchased power.

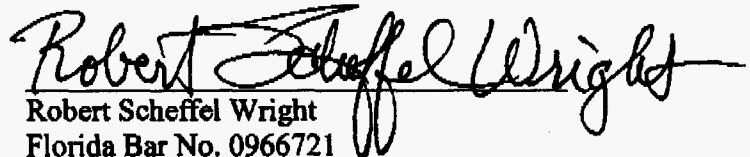
customers in the Northwest Division, and to the public interest. Accordingly, the Commission should deny FPUC's petition for approval of the PPA Amendment.

RELIEF REQUESTED

WHEREFORE, for the reasons set forth above and based upon the City's right to a formal proceeding in this matter, as well as the City's and all customers' right to electric service at fair, just, and reasonable rates, the City of Marianna, Florida, hereby requests that the Commission:

- a. Conduct a formal proceeding on FPUC's petition for approval of the PPA Amendment, pursuant to Section 120.57(1), Florida Statutes; and
- b. Deny FPUC's petition for approval of the PPA Amendment.

Respectfully submitted this 12th day of July, 2011.



Robert Scheffel Wright
Florida Bar No. 0966721

swright@yvlaw.net

John T. LaVia, III

Florida Bar No. 0853666

jlavia@yvlaw.net

Young van Assenderp, P.A.

225 South Adams Street, Suite 200

Tallahassee, Florida 32301

(850) 222-7206 Telephone

(850) 561-6834 Facsimile

Frank E. Bondurant, City Attorney

Florida Bar No. 0520330

fbondurant@embarqmail.com

Bondurant and Fuqua, P.A.

4450 Lafayette Street (ZIP 32446)

Post Office Box 1508

Marianna, Florida 32447

(850) 526-2236 Telephone

(850) 526-5947 Facsimile

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 12th day of July, 2011, to the following:

Pauline Robinson, Esquire
Office of the General Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Beth Keating, Esquire
Gunster, Yoakley & Stewart, P.A.
215 S. Monroe St., Suite 618
Tallahassee, FL 32301
bkeating@gunster.com

J.R. Kelly, Esquire
Office of the Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

Cecilia Bradley, Esquire
Office of the Attorney General
The Capitol – PL01
Tallahassee, Florida 32399-1050


Attorney