

Eric Fryson

120227-E1

**From:** Keating, Beth [BKeating@gunster.com]  
**Sent:** Monday, August 27, 2012 3:56 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** 'Martin, Cheryl'; Cheryl Bulecza-Banks; 'J.R. Kelly'  
**Subject:** New Filing - Petition of Florida Public Utilities Company for Approval of Recognition of Regulatory Asset  
**Attachments:** 20120827155007080.pdf

Attached for electronic filing, please find an electronic copy of the Petition of Florida Public Utilities Company for Approval of Recognition of Regulatory Asset and Associated Amortization Schedule. Thank you for your assistance with this filing, and as always, please don't hesitate to let me know if you have any questions.

Sincerely,  
 Beth

a. Person responsible for this electronic filing:

Beth Keating  
**Gunster, Yoakley & Stewart, P.A.**  
 215 S. Monroe St., Suite 601  
 Tallahassee, FL 32301  
[bkeating@gunster.com](mailto:bkeating@gunster.com)  
 Direct Line: (850) 521-1706

b. New Filing: Petition of Florida Public Utilities Company for Approval of Recognition of Regulatory Asset and Associated Amortization Schedule

c. On behalf of: Florida Public Utilities Company

d. Total pages: 10

e. Description: Petition for Approval of Recognition of Regulatory Asset and Associated Amortization Schedule



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DOCUMENT NUMBER-DATE

05845 AUG 27 2012

8/27/2012

FPSC-COMMISSION CLERK



Writer's E-Mail Address: [bkeating@gunster.com](mailto:bkeating@gunster.com)

August 27, 2012

**VIA ELECTRONIC FILING - FILINGS@PSC.STATE.FL.US**

Ms. Ann Cole, Clerk  
Office of the Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**Re: Petition for Approval of Recognition of a Regulatory Asset and Associated Amortization Schedule by Florida Public Utilities Company.**

Dear Ms. Cole:

Attached for electronic filing, please find Florida Public Utilities Company's Petition for Approval of Recognition of a Regulatory Asset and Associated Amortization Schedule.

Thank you for your assistance with this filing. As always, please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

Beth Keating  
Gunster Yoakley & Stewart  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
850-521-1706

MEK

cc: Office of Public Counsel (Kelly)

DOCUMENT NUMBER-DATE

05845 AUG 27 02

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition of Florida Public Utilities ) Docket No.:  
Company for Recognition of Regulatory Asset )  
and Amortization Schedule ) Filed: August 27, 2012

**PETITION FOR APPROVAL OF  
RECOGNITION OF A REGULATORY ASSET AND ASSOCIATED AMORTIZATION  
SCHEDULE**

Florida Public Utilities Company ("FPUC" or "Company"), by and through undersigned counsel, hereby seeks approval, pursuant to Section 366.076, Florida Statutes, to defer the litigation expenses associated with ongoing litigation initiated by the City of Marianna ("City") regarding FPUC's Time-of-Use ("TOU") and Interruptible Service rates as they relate to the Company's Franchise Agreement with the City as a Regulatory Asset. The Company further asks that the Commission allow FPUC to amortize the new Regulatory Asset over the remaining life of its Generation Services Agreement ("PPA") with Gulf Power Company, which would be a period of five (5) years from January 1, 2013 through December 31, 2017.<sup>1</sup> FPUC's proposal is revenue neutral and consistent with Accounting Standards Codification (ASC) 980. At this time, the Company is not requesting approval of any rate adjustment.

In support of this Petition, the Company hereby states:

1. Notices and communications with respect to this petition and docket should be addressed to:

Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 S. Monroe Street, Suite 601  
Tallahassee, FL 32301-1804

Cheryl Martin  
Director, Regulatory Affairs  
1641 Worthington Road, Suite 220  
West Palm Beach, FL 33409

<sup>1</sup> In view of the various ongoing legal proceedings outlined herein, FPUC has not assumed the longer term, through 2019, provided by Amendment No. 1 to the PPA. In the event that Amendment survives, FPUC would not anticipate seeking to extend the amortization period requested herein.

2. FPUC is an investor-owned electric utility providing retail electric service to customers in Florida and, pursuant to the provisions of Chapter 366 of the Florida Statutes; it is subject to economic regulation by the Commission.

### BACKGROUND

3. On December 14, 2010, FPUC filed a Petition with the Commission seeking approval of to implement experimental TOU and Interruptible Service rates for its Northwest Division. Docket No. 100459-EI was initiated by the Commission to address FPUC's request. The City of Marianna contested FPUC's request, but the Commission ultimately approved FPUC's Petition.<sup>2</sup> Thereafter, the City of Marianna filed a Notice of Appeal of the Commission's decision with the Florida Supreme Court, which is pending at this time.

4. Coinciding with its Petition seeking Commission approval of TOU and Interruptible rates, FPUC also filed Petition for Approval of Amendment No. 1 to its PPA with Gulf Power Company. The Amendment No. 1, which created significant savings for FPUC and its customers, provided a significant basis for the development of the TOU and Interruptible rates, as well as a two-year extension of the existing PPA with Gulf Power through 2019. As with the TOU and Interruptible Service Petition, the City of Marianna also contested FPUC's request for approval of Amendment No. 1 to its PPA with Gulf Power. In that proceeding, Docket No. 110041-EI, the Commission determined that the PPA Amendment No. 1 was appropriate for purposes of cost recovery, rejecting the City of Marianna's protest.<sup>3</sup> The City of Marianna also filed a Notice of Appeal of the Commission's decisions in Docket No. 110041-EI with the Florida Supreme Court. As with the other referenced appeal to the Supreme Court, this action is

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<sup>2</sup> See Order No. PSC-11-0112-TRF-EI, issued February 11, 2011; rendered final and effective by Order No. PSC-12-0066-FOF-EI, issued February 13, 2012.

<sup>3</sup> See Order No. PSC-11-0269-PAA-EI, issued June 21, 2011; rendered final and effective by Order No. PSC-12-0056-FOF-EI, issued February 9, 2012, and Order No. PSC-12-0081-CO-EI, issued February 23, 2012.

currently in abeyance pending the outcome of the civil litigation proceedings in Jackson County, which are described below.

5. On March 2, 2011, the City of Marianna also filed a declaratory action against FPUC in the Circuit Court of the Fourteenth Judicial Circuit in and for Jackson County, Florida, (“14<sup>th</sup> Circuit” or “Court”) seeking a ruling from the Court that the TOU and Interruptible Service rates implemented by FPUC in accordance with the Commission’s Orders do not meet the terms of the Franchise Agreement between FPUC and the City. The City is seeking the declaratory judgment in an attempt to trigger an option provision in the franchise agreement that would allow the City the right to pursue a referendum to purchase FPU’s property (consisting of the electric distribution assets) within the City of Marianna. By separate letter dated August 2, 2011, the City of Marianna notified FPUC that it intends to proceed with efforts to purchase FPUC’s electric distribution assets in the City of Marianna, although – to date – no referendum vote has been held and the civil action before the 14<sup>th</sup> Circuit is ongoing.

#### REGULATORY ASSET

6. Throughout the course of the proceedings before the 14th Circuit Court for Jackson County, the Company has continued to incur significant legal expenses. These expenses exceed typical, annual legal expenses necessary to support the regulated business, and as such, they are not otherwise being recovered through base rates or through any other type of recovery mechanism. If, however, FPUC is successful in defending the action before the Court, the result will be that: 1) FPUC will retain the distribution assets in Marianna for the foreseeable future; 2) the TOU and Interruptible Service rates will continue to be available for customers in Marianna;

and 3) the Company will have the opportunity to pass along additional fuel savings to customers in the Northwest Division in the near term.

7. ASC 980 allows regulated companies to defer all or part of an incurred cost that would otherwise be charged to expense and create regulatory assets through the approval of their regulators if both of the following criteria are met:

- 1) It is probable that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes; and
- 2) Based on available evidence, the future revenue will be provided to permit recovery of the previously incurred costs rather than to provide for expected levels of similar future costs. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred costs.

The purpose of this deferral under ASC 980 is to match the timing of expense of these costs with the corresponding periods, in which the permitted revenue for recovery is recorded.

8. In view of the extent of the costs associated with the litigation before the 14<sup>th</sup> Circuit Court, the Company now asks that it be allowed to record a Regulatory Asset to capture those costs in order to lessen the detrimental impact on the Company, and ultimately, its ratepayers. The Company only seeks to include those costs that are not otherwise recouped should the Court award FPUC its attorneys' fees at the conclusion of the proceedings.<sup>4</sup>

9. The amount to be included in the proposed Regulatory Asset for 2011 is \$536,151. For the first six months of 2012, the actual amount to be added to the proposed Regulatory Asset is \$445,867. As noted, however, the proceedings before the Court are ongoing; thus, FPUC projects legal costs for the remainder of 2012 (July through December) to approach \$200,000,

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<sup>4</sup> FPUC notes that it has requested recovery of attorneys' fees and consultant fees associated with the proceedings before the Commission through the Fuel Clause. In the event that the Commission determines that recovery of such fees through the Clause is not appropriate, FPUC reserves the right to amend or otherwise seek leave of the Commission to include some or all of those fees in the proposed Regulatory Asset.

with the likelihood that additional costs will be incurred through the first quarter of 2013. The total expected amount for the proposed Regulatory Asset through 2012 is \$1,182,018. Attachment A to this Petition, which is incorporated by reference herein, includes additional detail regarding the litigation expenses.

10. The action that has caused the Company to incur these costs was not initiated by the Company, and FPUC has only taken those actions necessary and appropriate to defend the action before the Court. Moreover, FPUC has endeavored to mitigate the extent and duration of the ongoing exposure to the extent possible.

11. Allowing the Company to record this Regulatory Asset and amortize the amount recorded over the remaining life of the Generation Services Agreement with Gulf Power will reduce the immediate impact of these unexpected expenses, and is consistent with prior Commission recognition that:

This concept of deferral accounting allows companies to defer costs due to events beyond their control and seek recovery through rates at a later time. The alternative would be for the company to seek a rate case each time it experiences an exogenous event. [*Emphasis added*]

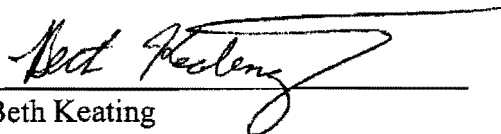
Order No. PSC-06-1042-PAA-EI, at p. 4. While FPUC has not yet determined that the costs associated with this Regulatory Asset will need to be moved into base rates, the Company has determined that deferred regulatory treatment is necessary and prudent in an effort to try to avoid having to seek more significant relief at a later date. That said, should litigation costs continue to accrue over an even more extended period of time than is currently anticipated, it is possible that the Company (and the Commission) may determine that other regulatory treatment is more appropriate.

12. For these reasons, FPUC asks that it be allowed to record and amortize the proposed Regulatory Asset over the period beginning January 1, 2013 and ending December 31, 2017. Since this Regulatory Asset relates specifically to the TOU rates and the amendment to the Gulf Power Contract for fuel purchases, the Company feels that amortization of the related litigation costs should be amortized over the remaining life of the fuel contract. The Company believes this proposal is in the best interests of both the Company and its ratepayers.

13. Attachment A to this Petition is a spreadsheet reflecting the detail of litigation expenses incurred and projected through 2012. The spreadsheet also details the impact of the amortization over the proposed five year period.

WHEREFORE, for all the foregoing reasons, FPUC respectfully requests that the Commission granted the relief requested herein.

Respectfully submitted this 27th day of August,  
2012.



Beth Keating  
Gunster, Yoakley & Stewart, P.A.  
215 South Monroe St., Suite 601  
Tallahassee, FL 32301  
(850) 521-1706  
*Attorneys for Florida Public Utilities Company*



**Florida Public Utilities Company**  
**REGULATORY ASSET AND ASSOCIATED AMORTIZATION SCHEDULE**  
**NW Electric Division Litigation Costs 2011 through 2013**  
**Amortization Schedule 2013-2017**

Regulatory Asset      \$ 1,182,018

**Amortization**

	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>Total</b>
January	19,700	19,700	19,700	19,700	19,700	
February	19,700	19,700	19,700	19,700	19,700	
March	19,700	19,700	19,700	19,700	19,700	
April	19,700	19,700	19,700	19,700	19,700	
May	19,700	19,700	19,700	19,700	19,700	
June	19,700	19,700	19,700	19,700	19,700	
July	19,700	19,700	19,700	19,700	19,700	
August	19,700	19,700	19,700	19,700	19,700	
September	19,700	19,700	19,700	19,700	19,700	
October	19,700	19,700	19,700	19,700	19,700	
November	19,700	19,700	19,700	19,700	19,700	
December	19,700	19,700	19,700	19,700	19,718	
<b>Net</b>	<b>236,400</b>	<b>236,400</b>	<b>236,400</b>	<b>236,400</b>	<b>236,418</b>	<b>1,182,018</b>

**Baker & Hostetler Invoices, Marianna Litigation**

**2011**

March	\$	70,177.15
April	\$	70,117.26
May	\$	41,667.66
June	\$	77,167.47
July	\$	42,773.90
August	\$	38,699.45
September	\$	63,997.80
October	\$	28,604.48
November	\$	42,776.38
December	\$	60,169.64

Net \$ 536,151.19

**2012**

January	\$	86,795.65
February	\$	59,644.70
March	\$	110,277.79
April	\$	100,272.04
May	\$	40,634.90
June	\$	48,242.17

Net \$ 445,867.25

**Total Actual through June 2012** \$ **982,018.44**

**2012 July-December** \$ **200,000.00**

**Total Expected through 2012** \$ 1,182,018.44

(Shaded amounts reflect legal fees not associated with the Marianna litigation, which have been excluded from the calculation of the amount identified for the Regulatory Asset.)

Sum of Inv Total Amt	Column Labels												Grand Total		
	2011		2012												
Row Labels	Feb	Mar	May	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Mar	Apr	May	Jul	
FE00MG40072209230							6,355.00	3,355.00							9,710.00
FE00MG71372209230												188,829.99	100,272.04	88,877.07	377,979.10
1444615												4,492.50			4,492.50
GENERAL CONTRACT MATTERS (2010-2013)												4,492.50			4,492.50
1453686												59,644.70			59,644.70
CITY OF MARIANNA, FLORIDA VS. CLIENT												59,644.70			59,644.70
1457066												14,415.00			14,415.00
GENERAL CONTRACT MATTERS (2010-2013)												14,415.00			14,415.00
1457174												110,277.79			110,277.79
CITY OF MARIANNA, FLORIDA VS. CLIENT												110,277.79			110,277.79
1468273													100,272.04		100,272.04
CITY OF MARIANNA VS CLIENT													100,272.04		100,272.04
1475314														40,634.90	40,634.90
CITY OF MARIANNA VS CLIENT														40,634.90	40,634.90
1480927														48,242.17	48,242.17
CITY OF MARIANNA, FLORIDA VS CLIENT														48,242.17	48,242.17
FE00MG91272209230	848.75	5,882.95													6,731.70
FE00MK40072209230			140,294.41	41,667.66	77,167.47	42,773.90	109,909.75		28,604.48	102,946.02	86,795.65				630,159.34
1363483			70,177.15												70,177.15
CITY OF MARIANNA VS. FPU			70,177.15												70,177.15
1367531			70,117.26												70,117.26
CITY OF MARIANNA VS. FPU			70,117.26												70,117.26
1377406				41,667.66											41,667.66
LEGAL FEES				41,667.66											41,667.66
1383575					77,167.47										77,167.47
LEGAL FEES CITY OF MARIANNA VS CLIENT					77,167.47										77,167.47
1394760						42,773.90									42,773.90
CITY OF MARIANNA, FLORIDA VS. CLIENT						42,773.90									42,773.90
1406829								7,212.50							7,212.50
GENERAL CONTRACT MATTERS								7,212.50							7,212.50
1412027								38,699.45							38,699.45
CITY OF MARIANNA VS. CLIENT								38,699.45							38,699.45
1412030								63,997.80							63,997.80
CITY OF MARIANNA VS. CLIENT								63,997.80							63,997.80
1420259									28,604.48						28,604.48
CITY OF MARIANNA VS. CLIENT									28,604.48						28,604.48
1430611										42,776.38					42,776.38
CITY OF MARIANNA, FLORIDA VS CLIENT										42,776.38					42,776.38
1430778										60,169.64					60,169.64
CITY OF MARIANNA, FLORIDA VS CLIENT										60,169.64					60,169.64
1445276											86,795.65				86,795.65
CITY OF MARIANNA, FLORIDA VS CLIENT											86,795.65				86,795.65
FE45GM45072209230				1,875.00	7,690.00										9,565.00
Grand Total	848.75	5,882.95	140,294.41	43,542.66	84,857.47	42,773.90	116,264.75	3,355.00	28,604.48	102,946.02	86,795.65	188,829.99	100,272.04	88,877.07	1,034,145.14

Non TOU related 52,126.70

Table Check total 982,018.44