

State of Florida



Public Service Commission

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COMMISSION CLERK

DATE: October 4, 2012

TO: Office of Commission Clerk (Cole)

FROM: Division of Accounting and Finance (Slemkewicz)
Office of the General Counsel (Klancke) *JS* *ALM* *AKB*

RE: Docket No. 120227-EI – Petition for approval of recognition of a regulatory asset and associated amortization schedule by Florida Public Utilities Company.

AGENDA: 10/16/12 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\AFD\WP\120227.RCM.DOC

Case Background

Through its petition filed August 27, 2012, Florida Public Utilities Company (FPUC or Company) seeks Commission approval, pursuant to Section 366.079, Florida Statutes (F.S.), to establish a regulatory asset to defer the litigation expenses associated with ongoing litigation with the City of Marianna (City) and amortize it over a 5-year period beginning January 2013. The litigation concerns a dispute in which the City alleges that FPUC's implemented Time-of-Use (TOU) and Interruptible Service (IS) rates do not meet the terms of their franchise agreement. FPUC's proposal is revenue neutral and the Company is not requesting any rate adjustment.

The Commission has jurisdiction pursuant to Sections 366.04, 366.06, and 366.07, F.S.

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Discussion of Issues

Issue 1: Should the Commission approve Florida Public Utilities Company's proposal to record certain litigation expenses as a regulatory asset in Account 182.3, Other Regulatory Assets, and to amortize the asset over a 5-year period beginning January 2013?

Recommendation: Yes. The otherwise unrecouped litigation expenses should be recorded as a regulatory asset in Account 182.3, Other Regulatory Assets, and be amortized to Account 407.3, Regulatory Debits, over a 5-year period beginning January 2013. Further, the Commission should find that the approval to record the regulatory asset for accounting purposes does not limit the Commission's ability to review the amounts for reasonableness in future proceedings in which the regulatory asset is included. (Slemkewicz)

Staff Analysis: According to FPUC's petition, the litigation expenses are associated with ongoing litigation filed in circuit court¹ (Court) by the City alleging that the Company is not meeting the terms of their franchise agreement. In particular, the City maintains that FPUC's implementation of the Commission-approved TOU and IS rates² is not in compliance with their franchise agreement. It should be noted that the City has a Notice of Appeal of the Commission's decision regarding the TOU and IS rates pending before the Florida Supreme Court.³

The amount of litigation expenses incurred in this matter in 2011 was \$536,151. An additional \$445,867 has been incurred for 2012 through June 30, 2012. FPUC has estimated that legal costs will be approximately \$200,000 for the remainder of 2012. For 2011 and 2012, the litigation expenses total \$1,182,018. The Company anticipates that it will incur some additional costs through the first quarter of 2013 that are not included in the \$1,182,018 total for 2011 and 2012. FPUC has requested recovery of only those costs in excess of any attorneys' fees that might be awarded by the Court at the conclusion of the proceedings.

FPUC contends that these expenses exceed the typical annual legal expenses necessary to support its regulated business that have been included in its base rates. In addition, FPUC states it did not initiate the action that has caused it to incur these costs. The Company has requested the establishment of a regulatory asset to lessen the detrimental impact on its earnings and to try to avoid having to seek more significant relief, such as a rate case, at a later date. Staff has estimated that the effects of including the litigation expenses in earnings for 2011 and 2012 would reduce the achieved return on equity (ROE) by 184 basis points and 222 basis points, respectively. The reported achieved ROE was 5.38 percent for 2011 and 3.46 percent for the 12 months ended June 30, 2012. FPUC's authorized ROE midpoint is 11.00 percent.

FPUC has requested that the regulatory asset be amortized over the remaining life of its Generation Services Agreement (PPA) with Gulf Power Company, which would be a 5-year

¹ Circuit Court of the Fourteenth Judicial Circuit in and for Jackson County, Florida, Civil Case No. 11-198CA.

² See Order No. PSC-11-0112-TRF-EI, issued February 11, 2011, in Docket No. 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 on an experimental basis and request for expedited treatment, by Florida Public Utilities Company.

³ City of Marianna, Fla. V. Art Graham, et al., Case No. SC12-649 (Fla. Filed March 20, 2012).

period from January 1, 2013 through December 31, 2017. The Company contends that this is a reasonable basis for determining the amortization period because Amendment 1 to the PPA provided a significant basis for the development of the TOU and IS rates. It should be noted that the City has a Notice of Appeal of the Commission's decision⁴ approving Amendment 1 pending before the Florida Supreme Court.⁵

Based on the significant nature of the unanticipated litigation expenses, staff agrees that it is appropriate to establish a regulatory asset and to amortize those expenses over future periods to mitigate the effects on earnings. Therefore, staff recommends that the otherwise unrecouped litigation expenses should be recorded as a regulatory asset in Account 182.3, Other Regulatory Assets, and be amortized to Account 407.3, Regulatory Debits, over a 5-year period beginning January 2013. Further, the Commission should find that the approval to record the regulatory asset for accounting purposes does not limit the Commission's ability to review the amounts for reasonableness in future proceedings in which the regulatory asset is included. This treatment is revenue neutral and will not have any impact on rates unless recovery is sought in a future proceeding.

⁴ See Order No. PSC-11-0269-PAA-EI, issued June 21, 2011, in 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.

⁵ City of Marianna, Fla. V. Art Graham, et al., Case No. SC12-569 (Fla. Filed March 20, 2012).

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Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order. (Klancke)

Staff Analysis: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.