

Shawna Senko

DOCKET NO. 130233-EI

From: Maro, Corrine <CMaro@gunster.com>
Sent: Friday, August 30, 2013 10:39 AM
To: Filings@psc.state.fl.us
Subject: Docket No. 130000-OT
Attachments: FPUC Petition for Approval of a Stip and Settlement.PDF

a. Person responsible for this electronic filing:

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b. Docket No. 130000-OT – **New Filing**

c. On behalf of: Florida Public Utilities Company

d. There are a total of pages: 13

e. Description: – **Petition for Approval of Stipulation and Settlement with the Office of Public Counsel to address a regulatory asset by Florida Public Utilities Company**

If you have any questions or concerns, please feel free to contact me.



Corrine Maro

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August 30, 2013

E-PORTAL

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

New Filing: Petition for Approval of Stipulation and Settlement with the Office of Public Counsel to address a regulatory asset by Florida Public Utilities Company

Dear Ms. Cole:

Attached for E-filing, please find the Petition of Florida Public Utilities Company for Approval of a Stipulation and Settlement between the Office of Public Counsel and the Company to address litigation costs currently held in an approved regulatory asset.

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

Kind regards,

Beth Keating
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215 South Monroe St., Suite 601
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(850) 521-1706

Attorneys for the Florida Public Utilities Company

Cc:/ Cheryl Bulecza-Banks (PSC)
Patricia Christensen (OPC)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of a Stipulation and Settlement with the Office of Public Counsel to address Regulatory Asset by Florida Public Utilities Company.) Docket No.:
)
) Filed: August 30, 2013
)

PETITION FOR APPROVAL OF STIPULATION AND SETTLEMENT REDUCING
AMOUNT OF APPROVED REGULATORY ASSET

Florida Public Utilities Company (“FPUC” or “Company”), by and through undersigned counsel, hereby seeks approval of a Stipulation and Settlement entered into by the Company with the Office of Public Counsel (“OPC”), which is attached and incorporated herein as Exhibit A hereto. In accordance with the terms of the Stipulation and Settlement, the capacity true-up payment received by FPUC from Gulf Power Company upon withdrawal by the City of Marianna’s appeal of the Commission’s decision in Docket No. 110041-EI would be applied to reduce the regulatory asset established by the Company consistent with the Commission’s decision in Order No. PSC-12-0600-PAA-EI, issued in Docket No. 120227-EI. The Company further asks that the Commission allow FPUC to continue to amortize any amounts remaining in the 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, consistent with the amortization schedule approved by Order No. PSC-12-0600-PAA-EI and in the regulatory accounts referenced therein. 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 request, 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

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

A. Litigation

3. The subject Stipulation and Settlement arises from discussions across several dockets over the course of the past 18 months regarding the appropriate vehicle to address recovery of substantial litigation and consulting costs associated with FPUC's lengthy dispute with the City of Marianna. The history of the dispute and how it has led to this Stipulation and Settlement is generally as follows:

4. 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.¹ Thereafter, the City of Marianna filed a Notice of Appeal of the Commission's decision with the Florida Supreme Court.

¹ 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.

5. Coinciding with its Petition seeking Commission approval of TOU and Interruptible rates, FPUC also filed a 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 nonetheless determined that the PPA Amendment No. 1 was appropriate for purposes of cost recovery, rejecting the City of Marianna's protest.² 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.

6. 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, ("14th 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 sought a 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 intended to proceed with efforts to purchase FPUC's electric distribution assets in the City of Marianna.

² 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.

7. Over the course of the lengthy litigation before the 14th Circuit, the City's appeals to the Florida Supreme Court were both held in abeyance. During that time, FPUC and the City also engaged in efforts to reach a negotiated solution. Ultimately, those negotiation efforts and led to a settlement in March 2013. As a result of that settlement, the City, among other things, withdrew its appeals of the Commission's Order approving Amendment No. 1 to FPUC's Generation Services Agreement with Gulf Power, issued in Docket No. 110041-EI, as well as the TOU/IS Order issued Docket No. 100459-EI. The Orders issued in those Dockets then became final and effective.

B. 2012 Fuel Clause Issue

8. Separately, in the 2012 Fuel and purchased power cost recovery clause with generating performance incentive factor case, Docket No. 120001-EI ("2012 Fuel Clause"), FPUC had raised the matter of recovery of the litigation and consulting fees associated with Docket Nos. 100459, 110041, and the Marianna civil litigation. By stipulation approved by the Commission's Final Order No. PSC-12-0664-FOF-EI, those costs were deferred to the regulatory asset approved in Docket No. 120227-EI.

C. Reinstatement of Amendment No. 1/True-Up

9. While the appellate and civil litigation proceedings were ongoing, Gulf Power and FPUC had reverted to operation under the original Generation Services Agreement, because the Commission's Order approving Amendment No. 1 had not been deemed final by the required date. As reflected in the Letter Agreement submitted in that Docket on January 5, 2012, Gulf Power and FPUC were able to reach a further agreement that Amendment No. 1 would be reinstated if the appeals were dismissed, withdrawn, or otherwise resolved in favor of the Commission's Order. In the event of such favorable resolution, FPUC was then entitled to

invoice Gulf Power for the amount necessary to true-up capacity payments made to Gulf Power under the original Generation Services Agreement to the lesser amounts that would have otherwise been due had Amendment No. 1 remained in effect and not the subject of an appeal. That true-up transaction took place in the second quarter of 2013.

D. Costs Incurred Preserved Benefits

10. 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 exceeded the 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. Because, however, FPUC was successful in defending the various legal actions taken by the City of Marianna, the result was that: 1) FPUC retained the distribution assets in Marianna for the foreseeable future; 2) the TOU and Interruptible Service rates remain 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.

SETTLEMENT DISCUSSIONS

11. In March 2013, the civil litigation with the City of Marianna was resolved through a settlement. Upon reaching that settlement, the Company again raised with Commission staff the issue of the propriety of recovery of the litigation and consulting fees, now held in the Regulatory Asset, through the 2013 Fuel and purchased power cost recovery clause with generating performance incentive factor case, Docket No. 130001-EI ("Fuel Clause"). Staff noticed a meeting for May 7, 2013, for purposes of this discussion.

12. At that meeting, the OPC voiced concerns about FPUC's proposal. Specifically, the OPC's position is that these costs are more appropriately recovered through base rates, and thus,

should not be addressed through the Fuel Clause. Staff urged FPUC and OPC to work towards a resolution of the issue, and both FPUC and OPC agreed to do so. Over the past few months since that meeting, OPC and FPUC have met on several occasions to discuss the issue and have reached a settlement that provides a fair and straight-forward solution that is in the best interests of both FPUC and its ratepayers.

RELIEF REQUESTED

13. Consistent with its agreement with OPC, FPUC now offers this Stipulation and Settlement for Commission consideration and approval. If approved, the Stipulation and Settlement contemplates that FPUC would be allowed to apply the full amount of the true-up payment Gulf to reduce the amount of the regulatory asset approved in Docket No. 120227-EI. Any remaining amount would then continue to be amortized consistent with Order No. PSC-06-0600-PAA-EI.

14. The benefits of this proposal are two-fold: 1) the regulatory asset will be nearly eliminated, thus avoiding the need for this asset to be addressed through alternative rate relief through a limited proceeding; and 2) both the subject costs, as well as the capacity true-up payment are addressed, thus avoiding the unnecessary additional expense of litigation of these issues through the 2013 Fuel Clause proceedings.

15. Commission approval of this Stipulation and Settlement will not impact FPUC's base rates, nor will it increase the Company's fuel factor for 2013 or 2014. Moreover, approval of this proposal will avoid costly and time consuming litigation of this issue through the Fuel Clause and likewise defer the need for the Company to seek alternative rate relief to address this issue by means of a limited proceeding.

16. The Company further emphasizes that this proposal is appropriate because it ties the litigation cost liability to the customer base that will receive the benefit of the refund payment. Specifically, the litigation costs were incurred in defending issues that ultimately preserved benefits that inure only to FPUC ratepayers in the Northwest Division. In particular, the preservation of Amendment No. 1 preserved capacity cost savings that will only be recognized through the fuel factors set for the Northwest Division. Likewise, if the one-time capacity true-up payment from Gulf Power were to be flowed through the Fuel Clause, it would only be reflected as a benefit for those customers in the Northwest Division. As such, the Company firmly believes that linking the capacity true-up payment to the litigation cost regulatory asset not only appropriately balances the costs and benefits, but also ties both to the customer base that would have been directly impacted had the litigation with the City of Marianna been resolved unfavorably and had Amendment No. 1 been terminated.

17. The Commission has historically viewed Stipulations and Settlements in a favorable light, and approved such negotiated resolutions if they are in the public interest. As set forth herein, this Stipulation and Settlement certainly meets that standard.³

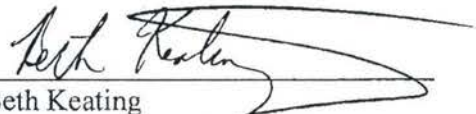
18. Recognizing that the schedule for the Fuel Cost Recovery Clause proceeding, Docket No. 130001-EI, is well advanced at this point, FPUC still intends to submit testimony addressing this issue in that Docket. In the event that the Commission decides that the Stipulation and Settlement should not be approved, the Company contemplates seeking relief through the Fuel Clause, as it had originally contemplated, recognizing that such relief will likely be contested by

³ See, for instance, Order No. PSC-05-0250-PAA-EI, issued March 4, 2005, approving a Stipulation and Settlement ("Settlement") between OPC, FIPUG and Gulf Power in Docket No. 050093-EI, wherein the Commission determined the Settlement was in the public interest, representing a "reasonable resolution" of the issues, saved "all parties the time and expense" of processing a cost recovery petition, and "fairly balanced the interests of Gulf and its ratepayers." Order at p. 4.

the OPC. The Company believes, however, that if the Commission approves the stipulation prior to the November 4, 2013, hearing scheduled in Docket No. 130001-EI, such approval will negate the need to address this matter at that hearing. In the event that the Commission is unable to address the Stipulation and Settlement prior to November 4, 2013, the Company commits to work with both the OPC and with Commission staff on the most procedurally appropriate means to address this issue.

WHEREFORE, for all the foregoing reasons, FPUC respectfully requests that the Commission grant the relief requested herein and approve the Stipulation and Settlement set forth in Exhibit A.

Respectfully submitted this 30th day of August,
2013.




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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the following by US Mail and Electronic Mail this 30th day of August, 2013.

Keino Young, Esquire Florida Public Service Commission 2540 Shumard Oak Boulevard Tallahassee, FL 32399-0850 kyoung@psc.state.fl.us	Patricia Christensen, Esquire Office of Public Counsel c/o The Florida Legislature 111 W. Madison Street, Room 812 Tallahassee, FL 32399-1400 Christensen.patty@leg.state.fl.us
Cheryl Martin Florida Public Utilities Company 1641 Worthington Road, Suite 220 West Palm Beach, FL 33409 Cheryl_Martin@fpuc.com	

By: _____



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



**STIPULATION AND SETTLEMENT OF LITIGATION COST
RECOVERY ISSUES**

WHEREAS, Florida Public Utilities Company ("FPUC") has recently concluded, through a negotiated settlement, lengthy litigation with the City of Marianna, Florida ("City") before the Circuit Court for the 14th Judicial Circuit (Case No. 11-198CA) regarding FPUC's franchise agreement (Ordinance No. 981) with the City ("Marianna Litigation"); and

WHEREAS, the dispute with the City involved FPUC's development and implementation of Time of Use ("TOU") and Interruptible Service ("IS") rates in accordance with City Ordinance No. 981; and

WHEREAS, the necessity to develop said TOU and IS rates prompted FPUC to negotiate an amendment to its existing Generation Services Agreement with Gulf Power Company ("Amendment 1"); and

WHEREAS, Amendment 1 has produced fuel savings through a reduction in the minimum capacity charge that FPUC's Northwest Division customers are required to pay; and

WHEREAS, FPUC's defense of the Marianna litigation preserved the savings derived from Amendment 1; and

WHEREAS, said Marianna litigation has been resolved through a negotiated settlement that preserves the above-mentioned benefits and savings for customers throughout FPUC's Northwest Division; and

WHEREAS, both OPC and FPUC agree that there is a reasonable means to address recovery of the aforementioned Marianna litigation costs and fees, which will, in no circumstance, be deemed to exceed \$1.87 million; and

Stipulation

WHEREAS, the agreed-upon mechanism proposed herein would avoid the necessity for a full evidentiary proceeding on this issue, and thus, save the Company and its ratepayers additional expense, including legal expense; and

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein and in view of the unique circumstances associated with the instant case, the Parties hereby stipulate and agree as follows:

A. The refund amount contemplated in the letter assigned Document No. 00067-12 in Docket No. 110041-EI and since paid by Gulf Power Company in the amount of \$1,766,623.88 to FPUC will be applied to recover the litigation costs in the regulatory asset established by Order No. PSC-12-0600-PAA-EI, issued in Docket No. 120227-EI.

B. All remaining Marianna litigation costs and fees, if any, recorded to Account 182.3, will be amortized over a five-year period beginning January 2013, consistent with Order No. PSC-12-0600-PAA-EI, issued in Docket No. 120227-EI. Any of the Gulf refund amount remaining in excess of the litigation costs and legal fees recorded to Account 182.3 will be addressed by the Company through the final, year-end 2013 Fuel True-Up process.

C. The Parties agree that approval by the Commission of this treatment for the specified litigation costs and fees should be strictly limited to the facts of this case and not be considered precedential for purposes of future Commission proceedings addressing similar costs associated with other fuel related items.

Stipulation

D. All Parties to this Stipulation and Settlement agree to endorse and support the Stipulation and Settlement on Procedure before the Commission and any other administrative or judicial tribunal, and in any other forum.

E. This Stipulation and Settlement is contingent on approval in its entirety by the Commission.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement on Procedure by their signature.

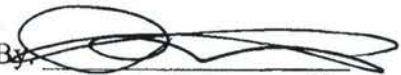
Florida Public Utilities Company
P.O. Box 3395
West Palm Beach, FL 33402-3395

By:


Jeff Householder

Office of Public Counsel
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111 West Madison Street, Suite 812
Tallahassee, Florida 32399-1400

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