

Diamond Williams

100459 - EI

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Monday, January 24, 2011 4:41 PM
To: Frank Bondurant; bkeating@gunster.com; KELLY.JR@leg.state.fl.us; Cecilia Bradley; Filings@psc.state.fl.us; Katherine Fleming; Schef Wright
Subject: Fwd: Electronic Filing - Docket 100459-EI
Attachments: 100459.Marianna.Preliminary.Stmt.01-24-11.pdf

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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 on an experimental basis and request for expedited treatment.

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 City of Marianna's Preliminary Statement of Issues and Positions.

(see attached file: 100459.Marianna.Preliminary.Stmt.01-24-11.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
 Secretary to Schef Wright
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1/24/2011

DOCUMENT NUMBER: DATE
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 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: January 24, 2011
_____)

**THE CITY OF MARIANNA'S PRELIMINARY STATEMENT
OF ISSUES AND POSITIONS**

The City of Marianna, Florida ("Marianna" or "City"), as a supplement to its Petition to Intervene filed in this docket on January 7, 2011, and pursuant to a request from the Commission Staff, hereby submits its preliminary statement of issues and positions. The City would emphasize that this is a preliminary statement. The City has propounded discovery to Florida Public Utilities Company ("FPU"), and the City's experts are continuing their review of both FPU's rate filing that is the subject of this docket, and of the proposed amendment to the bulk power purchase agreement between FPU and Gulf Power Company, which FPU represents is integrally related to its rate proposals, and which FPU has indicated it intends to file with the Commission on or about January 24, 2011. Accordingly, the City's detailed positions on FPU's proposals may be expanded as discovery proceeds, but the City wishes to make clear to the Commission that the City opposes FPU's proposals for the reasons discussed herein, and the City cannot foresee any discovery responses that would change the City's conclusions that FPU's proposed rates are inappropriate, unfair, unjust, unreasonable, and unduly discriminatory.

ABBREVIATIONS

The following abbreviations are used in this preliminary statement of issues and positions.

"Franchise" or "Franchise Agreement" refers to the current Franchise Agreement between FPU and the City, which is embodied in City of Marianna Ordinance No. 981.

"IS" means or refers to Interruptible Service.

"Petition" refers to FPU's petition for approval of its proposed TOU/IS rates, filed in this docket on December 14, 2010.

"PPA Amendment" refers to the proposed "AMENDMENT NO. 1 TO THE AGREEMENT FOR GENERATION SERVICES BETWEEN GULF POWER COMPANY AND FLORIDA PUBLIC UTILITIES COMPANY."

"TOU" means Time of Use or time of use rates.

"TOU/IS" refers, where appropriate, to FPU's TOU and IS rate proposals collectively.

ISSUES AND POSITIONS

The City of Marianna's Preliminary Statement of Basic Position

FPU's proposed TOU and IS rates are inappropriate, unfair, unjust, and unreasonable because they are not cost-based and because they do not provide appropriate price signals or incentives to FPU's customers. Moreover, the proposed rates feature severely restrictive subscription limits that unduly discriminate against the vast majority of FPU's customers who would not be able to avail themselves of these rates, if they were appropriate. The Commission should accordingly deny approval of FPU's proposed TOU and IS rates.

Moreover, the Commission should reject FPU's inappropriate attempt to induce the Commission to act precipitously on its proposals, where FPU has created its own problem by failing to act – for more than a year – in accord with its contractual obligations to the City under the Franchise Agreement, and where FPU is now attempting to induce the Commission to bail FPU out of the contractually specified consequences of its inaction, and its recent inappropriate actions in proposing rates that are not cost-based.

Notwithstanding FPU's failures and its last-minute, inappropriate TOU/IS rate filing, the City has stated to FPU unequivocally that the City is sincerely interested in negotiating, in good faith, toward a "win-win" or "win-win-win" resolution of all issues implicated here, i.e., a

resolution that will satisfy the needs of the City, the City's citizens, FPU, and Gulf Power Company.

Issue 1: Should the Commission grant FPU's request for expedited treatment?

Marianna Position: No. The Commission should deny FPU's request for expedited treatment, because FPU, and only FPU, has created the timing problem and consequences that FPU is attempting to avoid by inducing the Commission to act quickly on its proposal.

Discussion

FPU's TOU/IS rate proposals that are the subject of this docket arise from FPU's contractual obligation to the City, pursuant to Section 17 of the Franchise Agreement, which provides in relevant part as follows:

SECTION 17. Concurrent with the approval of this agreement, Grantee [FPU] will begin development of "Time of Use" and "Interruptible" electric rates or similar electric rates any or all of which must be mutually agreed to by Grantee and Grantor [the City]. Such rates will be available to all of Grantee's customers both within and without the corporate limits of the Grantor and will be effective no later than February 17, 2011.

The Franchise agreement, including this provision, was negotiated by FPU and the City during the spring and summer of 2009. The City passed the Franchise and the Mayor accordingly executed it on July 7, 2009, and FPU executed and formally filed its acceptance of the Franchise on August 28, 2009. From these simple facts, it is obvious that FPU was fully aware of its obligations under Section 17 of the Franchise since sometime before July 7, 2009. FPU representatives were present at the July 7, 2009 City Commission meeting at which the Franchise Ordinance was enacted.

From the City's execution of the Franchise in July 2009 until December 2010, the City repeatedly asked FPU about its progress on developing the required TOU/IS rates, but FPU never furnished any written documentation to indicate that they were even working on the rates until, on December 10, 2010, about 17 months after the City enacted the Franchise, FPU representatives furnished a spreadsheet showing the rates in comparison to the TOU and IS rates of other utilities in northwest Florida, together with a copy of the unexecuted proposed PPA Amendment. Shortly thereafter, on December 14, 2010, FPU filed its petition, which was the first time that any City official, employee, or agent ever saw the proposed tariff sheets.

All evidence of which the City is aware, particularly FPU's failure to respond – for well over a year – to the City's repeated requests for the TOU and IS rates promised and required under the Franchise Agreement between FPU and the City, indicates that FPU sat on its hands for at least a year before even starting to work on the rates.

FPU is now attempting to bull-rush the Commission into quick action on its petition because FPU will otherwise miss the critical date, February 17, 2011, specified within the Franchise. If FPU misses this date, the City then has the right to initiate proceedings pursuant to the Franchise to "purchase the property of Grantee within the City of Marianna" at a purchase price determined by three qualified appraisers that is equal to "the fair market value decided by the majority vote of the three appraisers."

To be clear, the City believes that FPU cannot comply with its obligations¹ under the Franchise because its current TOU/IS rate proposals, both as filed and as explained by FPU's

¹ Assuming that the Commission receives the PPA Amendment that FPU has stated it intends to file, the Commission will also note that FPU similarly failed to fulfill its contractual obligation to Gulf Power to file for approval of the PPA Amendment by January 15, 2011.

representatives, do not comply with the Franchise's requirements. Accordingly, the City is seriously considering legal action to enforce its rights under the Franchise Agreement.

The point relative to the issue of FPU's request for expedited treatment is simply this: FPU has created its problem by its own inaction and inadequate efforts, and the Commission should not expend any special effort to bail FPU out of the problem that FPU created, particularly where it is virtually certain – unequivocally certain in the City's opinion – that FPU cannot escape the consequences of its inaction and of its late, inappropriate, and inadequate efforts to comply with the Franchise.

Issue 2: Should the Commission approve, deny, or suspend FPU's proposed TOU rate schedules?

Marianna Position: The Commission should deny approval of FPU's proposed TOU rate schedules, because the proposed rates are not cost-based and do not provide accurate price signals to FPU customers, either with regard to the costs that FPU incurs to provide service to its Northwest Division customers or with regard to the actual time-differentiated costs that Gulf incurs to provide service to FPU. In the alternative, the Commission should suspend these rate schedules pending further proceedings.

Discussion

FPU's TOU/IS rate proposals are not cost-based; that is, they are not based on actual cost differences according to the times of day, or the times of the year, in which electricity is consumed. Specifically, the rates proposed by FPU do not match the rates charged by Gulf

Power in either the existing FPU-Gulf PPA or in that PPA as it would be amended by the PPA Amendment.

Still more specifically, the "Gulf Energy Rate" prescribed in Appendix C of the FPU-Gulf PPA – which accounts for approximately 65-70 percent of the total charges paid by FPU to Gulf under the PPA – is a flat rate for each entire year of the PPA. In other words, there is no time-of-use cost basis in the costs incurred by FPU under the PPA for approximately 65-70 percent of the costs, i.e., the energy costs or charges. Put differently, while there can be no doubt that Gulf's production costs vary from hour to hour and from season to season, nothing in the FPU-Gulf PPA reflects such cost differences, and accordingly FPU's proposed TOU rates do not and cannot reflect costs incurred to provide electric service at the times when power is consumed.

Moreover, because the TOU rates are not cost-based, they do not send accurate price signals to customers. This means that the rates will not induce or incentivize customers to make good decisions as to when to use or not use electricity based on the actual cost of providing that service. It is obvious that Gulf's costs vary by hour, but the rates paid by FPU to Gulf do not reflect those variations, so customers who modify their consumption are not making their consumption decisions based on actual costs.

Finally, FPU has proposed its TOU rates on a severely limited basis, which the City believes is unduly discriminatory. FPU's proposals, which it characterizes as "demonstration" and "experimental" rates, would limit subscription to 940 residential customers, out of a total of approximately 10,100 residential customers in FPU's Northwest Division (less than 10% of the otherwise eligible residential customer population). FPU's proposals would limit subscription by General Service-Non-Demand

customers to 75 customers (less than 5% of the class population) out of a total class of approximately 2,078 customers. FPU's proposals would limit subscription by General Service-Demand customers to 25 customers (less than 6% of the class population) out of a total of about 457 customers, and by General Service-Large Demand customers to 1 customer out of 13 customers in FPU's Northwest Division. If the rates themselves were appropriate, these subscription limits would not be. The Commission should deny approval of FPU's proposed TOU rates.

Issue 3: Should the Commission approve, deny, or suspend FPU's proposed Interruptible Service rate schedule?

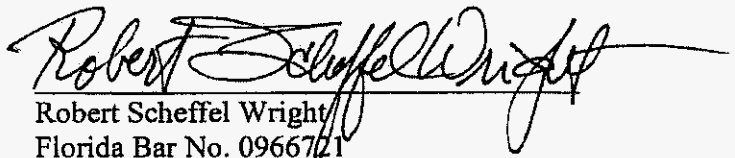
Marianna Position: The Commission should deny approval of FPU's proposed IS rate schedule, because the proposed rates are not cost-based and do not provide accurate price signals to FPU customers, either with regard to the costs that FPU incurs to provide service or with regard to the value that a customer's being interruptible provides. Moreover, if the rates were appropriate, the subscription limit of one customer is inappropriate and unduly limiting. In the alternative, the Commission should suspend this rate schedule pending further proceedings.

Discussion

Similar to FPU's non-cost-based TOU rate proposals, FPU's proposed IS rates are inappropriate, unfair, unjust, and unreasonable because they do not reflect the value of the "interruptibility" of customer load that would be subject to interruption under the proposed tariff. Moreover, the IS proposal does not give customers an opportunity to

create value or receive appropriate, cost-based rewards for any cost savings that they might create for FPU. The IS proposal also includes an inappropriate subscription limit of only one customer, which, like the subscription limits proposed by FPU for its TOU proposals, is unduly discriminatory. If the IS rates themselves were appropriate, the subscription limit would not be. The Commission should deny approval of FPU's proposed IS rates.

Respectfully submitted this 24th day of January, 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 24th day of January, 2011, to the following:

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