BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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.	DOCKET NO. 100459-EI ORDER NO. PSC-12-0066-FOF-EI ISSUED: February 13, 2012

The following Commissioners participated in the disposition of this matter:

RONALD A. BRISÉ, Chairman
LISA POLAK EDGAR
ART GRAHAM
EDUARDO E. BALBIS
JULIE I. BROWN

ORDER DISMISSING CITY OF MARIANNA'S PROTEST

BY THE COMMISSION:

Background

Florida Public Utilities Company (FPUC) provides electric service to customers located in two sections of north Florida. The Northwest Division serves Jackson, Calhoun and Liberty counties, and is commonly called the "Marianna Division." The Northeast Division is located in the Fernandina Beach area, and serves Nassau County. FPUC does not generate any of the power it sells, but meets the needs of its customers through contracts for purchased power. FPUC recovers its prudently incurred purchased power costs through the Fuel and Purchased Power Cost Recovery Clause (fuel clause). Prior to 2008, the Marianna Division of FPUC had a long-term agreement with Gulf Power Company dating back to 1997. That contract expired on December 31, 2007.

In December 2006, FPUC finalized a new agreement with Gulf to purchase power. In June 2007, we approved that agreement.[1] In February 2009, FPUC entered into a franchise agreement with the City of Marianna (City). The franchise agreement included a provision that FPUC must put into effect time-of-use (TOU) and interruptible service (IS) rates by February 17, 2011. On December 14, 2010, FPUC filed a petition to implement optional TOU and IS rate schedules and corresponding fuel factors in the Northwest Division on an experimental basis. FPUC explained that if the rates were not in effect by the deadline, the City of Marianna had

[1] Order No. PSC-07-0476-PAA-EI, issued June 6, 2007, in Docket No. 070108-EI, In re: Petition for approval of agreement for generation services and related terms and conditions with Gulf Power Company for Northwest Division (Marianna) beginning 2008, by Florida Public Utilities Company.

certain rights under the franchise agreement which may lead to termination of the franchise and the purchase of FPUC's distribution facilities within the city limit. FPUC, therefore, requested expedited treatment of its petition.

FPUC also entered into an amendment to its purchased power agreement with Gulf. That amendment generates cost savings which FPUC asserts is the floor for the cost basis for the TOU and IS rate schedules. FPUC filed a separate petition with us requesting approval of the amendment to the purchased power agreement on January 26, 2011.[2]

The City of Marianna and the Office of Public Counsel (OPC) were granted intervention in this docket involving the TOU and IS rates. On January 24, 2011, the City filed a preliminary statement of issues and positions. The City stated that FPUC's proposed TOU and interruptible rates were inappropriate, unjust, and unreasonable because they were not cost-based and did not provide appropriate price signals or incentives to FPUC's customers. On January 26, 2011, FPUC filed responses to the City's preliminary statement of issues and positions. FPUC disagreed with the City's positions and requested that we approve the rate schedules as filed, and find that they are fair, just and reasonable.

Our staff issued two sets of data requests. FPUC provided responses to these data requests on January 6, and on January 21, 2011. On January 26, 2011, FPUC filed supplemental responses to the second set of data requests. Additionally, our staff conducted an informal meeting with the parties. On February 11, 2011, we issued Order No. PSC-11-0112-TRF-EI, approving FPUC's request for experimental TOU and IS rates. We modified FPUC's request and approved the rates as a pilot program to expire 4 years from the effective date. The order was a proposed agency action (PAA) order. On March 1, 2011, the City of Marianna protested the PAA order. FPUC moved to dismiss the City of Marianna's protest. The Motion to Dismiss was granted without prejudice by Order No. PSC-11-0290-FOF-EI, issued July 5, 2011. We found that the City of Marianna had not met the Agrico[3] test for standing, because the City had not sufficiently demonstrated that it will suffer an injury in fact which is of sufficient immediacy to entitle it to an administrative hearing.

On July 25, 2011, the City of Marianna filed an Amended Petition for Formal Proceeding regarding the experimental TOU and IS rates. FPUC again filed a motion to dismiss to which the City responded. Both FPUC and the City of Marianna requested oral argument, which we granted.

We have jurisdiction over this subject matter pursuant to Sections 366.06 and 366.075, Florida Statutes (F.S.).

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[2] 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.

[3] Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).

Legal Standard for Motion to Dismiss

A motion to dismiss questions the legal sufficiency of a complaint.[4] To sustain a motion to dismiss, the moving party must show that, accepting all allegations as true and in favor of the complainant, the petition still fails to state a cause of action for which relief may be granted.[5] When a motion to dismiss a petition is filed, a court may not look beyond the four corners of the petition in considering its legal sufficiency.[6]

City of Marianna's Amended Petition

The City believes that the facts relating to FPUC's experimental, demonstration, pilot time-of-use and interruptible service rate offerings are such that we should reverse our original decision to approve the rates. The City asks that we conduct a formal evidentiary proceeding to consider whether to approve the TOU and IS rates.

The City asserts that it is a political subdivision of the State of Florida. The City states that its population is approximately 6,200 persons. The City contends that it 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. The City states that it has approximately 112 accounts with FPUC, including accounts that are billed under FPUC's General Service-Non-Demand, General Service-Demand, General Service-Large Demand, General Service-Demand Time-of-Use-Experimental, and Street Lighting and Outdoor Lighting rate schedules. The City argues it is a customer with substantial interest in all of FPUC's rates. The City states that as a customer of FPUC, the City is eligible to take service under these rate schedules, as well as the TOU and IS counterparts to each of these tariffs. The City contends that it has already subscribed to one of the TOU rates under the experimental rate structure which is the subject of this dispute. The City argues that its interests are affected in assuring that the TOU and IS rates are fair, just, reasonable, cost based, and cost effective, and cost-effective at achieving their stated purpose.

The City cites several sections under Chapter 366, F.S., that require a utility's rates to be fair, just, and reasonable. The City contends that we have jurisdiction because the statutes mandate that all rates and charges of public utilities in Florida must be fair, just, and reasonable.

The City states that it has a substantial interest in receiving electric service pursuant to fair, just, and reasonable rates, which will be determined by our actions in this docket. Because it is entitled to fair, just, and reasonable rates, the City argues that it is entitled to an evidentiary hearing. The City additionally argues that we should conduct a formal proceeding as requested because the City disputes the effectiveness and cost-effectiveness of FPUC's TOU and IS rates.

The City lists 16 issues that it believes we should decide. These issues include whether the rates are fair, just, reasonable, and non-discriminatory; whether the rates reflect the costs that

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[4] See Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).
[5] See Varnes v. Dawkins, at 350.
[6] See Barbado v. Green and Murphy, P.A., 758 So. 2d 1173, 1174 (Fla. 4th DCA 2000) (citing Bess v. Eagle Capital, Inc., 704 So. 2d 621 (Fla. 4th DCA 1997)).

FPUC incurs to provide TOU and IS service; whether the rates provide accurate price signals; whether the rates effectively promote energy conservation or efficiency; and whether the rates promote energy conservation or efficiency in a cost effective manner. The City lists 12 ultimate facts it relies upon to state that it has a cause of action. According to the City, the facts it relies on are: the rates are not cost-based and therefore not fair, just, or reasonable; the rates do not send appropriate price signals that reflect the costs FPUC incurs to provide service; the IS rates are not cost-based and do not reflect the value provided by the interruptible customers; it is inappropriate to implement the TOU or IS rates on a pilot or experimental basis; the subscription limits are not appropriate; the TOU and IS rates are not appropriately designed to effectively promote energy conservation or efficiency; and the TOU and IS rates are not designed to promote energy conservation or efficiency in a cost-effective manner.

The City acknowledges that FPUC does not own or operate its own generation facilities but rather purchases the electric power from Gulf Power Company, based on an Agreement entered into on December 28, 2006. The City asserts that FPUC and Gulf entered into an amendment to that Purchased Power Agreement. The City states that prior to the amendment, the rates paid by FPUC to Gulf were among the highest, if not the highest, wholesale power rates in the State of Florida, resulting in FPUC's retail rates being among the highest, if not the highest, in the State of Florida. The City asserts that even with the amendment, FPUC's rates remain among the highest retail rates in Florida. The City states that it has protested the amendment to the Purchased Power Agreement in Docket No. 110041-EI, which is before us. The City argues that since the wholesale rates paid by FPUC to Gulf are FPUC's bulk power supply costs, those rates and the December 26, 2006 Agreement, as modified by the amendment, are inextricably related to the retail rates charged by FPUC, including the proposed TOU and IS rates.

Finally, the City contends that it has entered into a Franchise Agreement, through City Ordinance No. 981, in which FPUC is required to develop and implement Time-of-Use and Interruptible or similar rates that were to be mutually agreed to by the City and FPUC. According to the City, those rates were to be in effect by February 17, 2011.

FPUC's Motion to Dismiss

FPUC asserts that even reading the petition in the light most favorable to the City, the City's protest should be dismissed. FPUC claims that the City has failed to identify any injury in fact that is of sufficient immediacy to warrant relief. FPUC contends that the City does not adequately allege any harm or statutory violation that will arise as a result of these rates, and has not provided any explanation of why the allegations it has raised warrant cancellation of the TOU and IS rates. FPUC claims that even taking all the allegations in the Amended Protest as true, none of the City's assertions would support a finding that the City, as a customer of FPUC, would suffer as a result of service provided under the TOU and IS rates.

FPUC asserts that the City must do more than allege that it is a customer of FPUC to proceed with the protest before the Commission. FPUC argues that the City must demonstrate that its substantial interests will be affected. FPUC contends that the City must identify a real, impending injury that will result from the Commission's action in this docket. FPUC contends

that merely alleging that a customer has a substantial interest in receiving service pursuant to fair, just and reasonable rates is insufficient to state a cause of action. FPUC states that this allegation disregards the Agrico test which requires that the City identify an injury that it will actually incur as a proximate result of the implementation of our action approving FPUC's TOU and IS rates. FPUC contends that the City did not provide an explanation as to what it is about the rates that is not fair, just, or reasonable, nor did it identify what impact the proposed rates will have on the City as a customer. FPUC's conclusion is that the City cannot provide an explanation because there is, in fact, no harm that the City will suffer.

FPUC asserts that the TOU and IS rates do not result in any mandatory rate increase for the City, nor do the rates impair the City's ability to receive electric service pursuant to rates approved in accordance with Chapter 366, F.S. FPUC argues that the TOU and IS rates instead provide an avenue for customers that opt to take service under these rates to manage their energy usage in a way that will produce savings on their overall energy bill.

The TOU and IS tariffs are limited to a certain number of customers (subscription limits). FPUC argues that while the City alleges that the subscription limits are an issue in the docket, the City does not identify any injury that the City will incur as a result of the subscription limits. FPUC states that subscription limits of varying design are not at all uncommon in experimental or pilot programs.

FPUC also contends that the City fails to explain how the TOU and IS rates set by this tariff do not provide customers with appropriate price signals. FPUC states that the amended protest does not explain why the City believes customers will not receive appropriate price signals and why the rates will not promote energy efficiency. According to FPUC, the only assertion made by the City is that the rates do not accurately reflect costs. FPUC points out that the City does not identify any injury it will suffer associated with its allegations that the rates are not cost effective at encouraging energy conservation or efficiency. FPUC concludes that the City's mere assertion that this is an ultimate issue of disputed fact does not entitle the City to a hearing.

FPUC asserts that the City's argument that the rates do not encourage energy conservation or efficiency disregards the fact that the rates are approved on an experimental basis. According to FPUC, the experimental nature of Section 366.075, F.S., allows us and the Company to gather data upon which we can make a subsequent Commission determination as to whether the rates do, in fact, encourage energy conservation or efficiency. If the rates do, then they may be implemented on a more permanent basis. FPUC states that this does not mean that a challenge to an experimental tariff will never be permissible. Rather the challenge must be able to demonstrate that the experimental rates result in a real, direct, and immediate injury to the challenger that is within our jurisdiction to remedy. FPUC states that the experimental nature of the tariff cannot be ignored in our determination of whether to dismiss the protest. FPUC argues that, realistically speaking, an assessment cannot be made, even through the hearing process, as to whether these rates do send an appropriate price signal, unless and until the rates have been available to customers for some reasonable period of time.

City's Response to Motion to Dismiss

The City claims that it has plainly stated a claim upon which relief can be granted, namely that the rates for which the City is eligible, and under which the City receives service, are not fair, just, and reasonable because they are not cost-based. The City argues FPUC appears to be trying to argue that the City has to "demonstrate standing" by explaining exactly what its injury is, perhaps in dollar terms. The City argues that this is inconsistent with the proper review of a motion to dismiss. The City contends that it has pled sufficient facts to establish its claims as to immediate injury in fact, within the zone of interests protected by our statutes and this proceeding. In paragraph 11, the City states that:

> The immediate injury alleged by the City is simply this: The City is eligible for fair, just, and reasonable time-of-use and interruptible rates, but the TOU and IS rates that the Commission has approved, albeit on an interim basis, are not fair, just and reasonable because they do not reflect either the cost or the value associated with time-of-use or interruptible service. . . . The City has also alleged that the subject rates are not effective or cost-effective at promoting energy conservation and efficiency, because they are not cost-based, and accordingly allowing the rates to continue in effect is immediately determining the City's substantial interests, adversely to the City, in having fair, just, and reasonable rates, and immediately depriving the City of its substantive rights under numerous provisions of Chapter 366, F.S.

The City explains that its injury is that the rates are "wrong" in that they are not cost-based. The City believes that the rates should be cost-based. The City also believes the rates should properly reflect the cost of providing service to the customer. Finally, the City believes that the rates should reflect the value that customers using the rates would provide to FPUC's system by shifting their consumption patterns in response to the TOU and IS rates. The City argues that if the TOU and IS rates reflected these criteria, they would be appropriate and the City could take advantage of them accordingly. The City also asserts that if the rates were properly designed to promote energy conservation and efficiency, the rates would send proper price signals reflecting the cost of service and value provided, thereby making them appropriate under the criteria set forth in Section 366.075, F.S.

The City contends that the injury it alleges must only be within the zone of interests protected by the given proceeding. The City argues that it is a major customer of FPUC, eligible for and taking service under the challenged rate schedules, and the City simply seeks our protection of the City's substantial economic interests as a customer of FPUC. The City contends those allegations are sufficient to state that it is within the zone of interests protected by chapter 366, F.S.

The City asserts that the mere fact that the TOU and IS rates are optional and do not impose a mandatory rate increase does not prevent it from seeking our scrutiny. According to the City, if that were the case, then customers would be precluded from challenging a proposed rate decrease even where they wanted to adduce evidence that the hypothetical decrease was not sufficient.

The City also asserts that because the rates are experimental, they are not exempt from the other requirements of Chapter 366, F.S., namely that the rates be fair, just, and reasonable. According to the City, Section 366.075, F.S., states the criteria that experimental rates may be approved to encourage energy conservation and efficiency. The City states that it disputes that the rates are appropriately designed to accomplish these purposes, and that the City is therefore entitled to a hearing on this issues as well as on the issues of whether the rates satisfy the general requirements that the rates be fair, just, and reasonable.

In concluding, the City states that if FPUC wishes to assert that its TOU and IS rates do send appropriate price signals, FPUC should do so in its testimony and briefs. The City states that it will argue through its testimony and briefs that the rates do not and cannot send accurate price signals to customers because they do not reflect either the cost to service or the value provided by customers who might shift their usage patterns. The City concludes that this is a matter that we can determine based on the evidence in the record at the conclusion of a formal evidentiary proceeding.

Analysis and Ruling

In its response, the City states that it has alleged facts that, if true, are sufficient to form the basis for us to grant relief. The City states that in the context of utility rates subject to our jurisdiction under Chapter 366, the only thing that a petitioner must do is allege that the petitioner is subject to, or entitled to, service under the challenged rates, that the rates are wrong, e.g. not fair, just, and reasonable (or that such rates are unduly discriminatory or otherwise in violation of law) and that we have jurisdiction to make the rates right. The City contends that its allegations that the rates are not fair, just, and reasonable, and that they are not cost-effective at promoting energy conservation and energy efficiency, are sufficient facts to proceed to a formal administrative hearing. We disagree. As described in detail by both FPUC and the City, the statutory requirement for setting of rates is that they be fair, just, reasonable, and non-discriminatory. The statutory standard for approval of experimental rates is whether the rates encourage energy conservation or the rates encourage energy efficiency. The City has only pled the statutory standard which we apply to rates, not any factual allegation supporting the City's contentions that the rates violate the statutory standards, nor any facts demonstrating that the City will be harmed by the implementation of the rates.

Rule 28-106.201, F.A.C., requires any protest to include, among other things, "an explanation of how the petitioner's substantial interests will be affected by the agency determination," and must also contain "a concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant a reversal or modification of the agency's proposed action."

To determine whether a petitioner has alleged sufficient facts to intervene in a docket, we refer to the case of Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981). In Agrico, Agrico appealed from an order of the Florida Department of Environmental Regulation (DER) denying Agrico's construction permit. Agrico's business competitors were granted intervention in the permitting process. The court reversed the permit denial holding that the granting of a business competitor's intervention was

erroneous. The court found that the business competitors had no standing to interfere in the DER permitting process. In evaluating the issue of standing, the court considered that the nature of the proceedings, under Chapter 403, was environmental. The intervenors did not show that their environmental interests were substantially affected and therefore Section 120.57(1), F.S., did not automatically entitle the intervenors to standing. The court stated that

> Chapter 403 simply was not meant to redress or prevent injuries to a competitor's profit and loss statement. Third-party protestants in a chapter 403 permitting procedure who seek standing must frame their petition for a section 120.57 formal hearing in terms which clearly show injury in fact to interests protected by chapter 403.

As we hold in determining entitlement to intervention, the petitioner must show that 1) he will suffer an injury in fact which is of immediate sufficiency to entitle him to a Section 120.57, F.S. hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Making that determination requires that we review the factual allegations in the petition to determine if the petitioner has sufficiently pled facts that would support a formal administrative proceeding. We find that an allegation that our decision does not comport with the statutory requirement of fair, just, and reasonable rates or that the order does not encourage energy efficiency or energy conservation is not an allegation of fact sufficient to state a cause of action. The pleading should be of sufficient clarity to demonstrate how a would-be litigant reasonably expects to be affected by the outcome of the decision (See Peace River Manasota Regional Water Supply Authority v. Department of Environmental Protection, 18 So. 3d 1079, 1082-1083 (Fla. 2d DCA, 2009)). In the current docket, the City only states that it is injured because it believes the rates are not fair, just, and reasonable, the rates are not cost-based, and the rates do not promote energy conservation or efficiency. The City does not attempt to explain in factual terms how it is harmed by the rates, either economically or from a conservation standpoint. Nor does the City explain how it believes the rates are not fair, just, and reasonable and do not promote energy conservation or efficiency. The City merely states that it believes the rates are not fair, just or reasonable and do not promote energy conservation or efficiency.

By Order No. PSC-07-0724-PCO-EQ,[7] we dismissed the Florida Industrial Cogeneration Association (FICA's) Petitions for Formal Hearing and for Leave to Intervene in each of several dockets. In dismissing the complaint without prejudice, we stated that "It is FICA's burden, not the IOUs' burden, to state all disputed issues of material fact, as well as provide a concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification, pursuant to Rule 28-106.201, F.A.C." Like the current docket, FICA's petition only contained general statements that did not meet the pleading requirements. A review of the original pleadings shows its similarities to the City's petition. FICA merely

[7] Issued September 5, 2007, in Docket Nos. 070232-EQ, 070234-EQ, 070235-EQ, and 070236-EQ, In re: Petitions for approval of new standard offer for purchase of firm capacity and energy from renewable energy facilities or small qualifying facilities and approval of tariff schedule by Gulf Power Company, Florida Power & Light Company, Progress Energy Florida Inc., and Tampa Electric Company.

made general allegations of possible violation of Florida laws and policy.[8] Conversely, by Order No. PSC-94-0987-FOF-WS,[9] we denied a motion to dismiss protests filed by several ratepayers. We found that the ratepayers met the Agrico standing test by "asserting that as ratepayers and customers of Sanlando the Petitioners rates will increase if the conservation plan is implemented." Additionally we found that Section 367.121(1)(a), F.S., charges us with setting fair and reasonable rates, and because the Petitioners alleged that they would be paying unjustifiably higher rates, the second prong of the Agrico standing test was met (the requirement that the injury alleged is of a type or nature which the proceeding is designed to protect.) In the current docket, the City has not alleged that it is paying higher rates. It has not alleged any injury at all. Accordingly, the City has not met the first prong of the Agrico test.

Furthermore, we found in the Sanlando order that the petitioners had stated sufficient disputed issues of material facts to avoid a dismissal. We stated that "while the petitions do not allege each specific disputed fact, it is clear that the Petitioners have objected to the PAA Order's findings and the implementation of the rates upon Sanlando's customers." The petitions in the Sanlando docket each complained that the manner in which the rates would be implemented would result in a significant amount of taxes being paid indirectly by Sanlando's ratepayers. The Petitioners went on to state that if the rates were implemented differently, much of the taxes could be eliminated.

Accordingly, the FICA and Sanlando dockets discussed above demonstrate the type of information we seek from a party to comply with the requirements of Rule 28-106, F.A.C. Facts need to be sufficiently pled to guide the proceeding. Mere assertions of the violation of statutes do not give us, or any party to the proceeding, sufficient guidance to conduct a formal evidentiary proceeding as contemplated by Section 120.569, F.S.

Finally, we find that the amended petition does not allege that the City's injury is of a type or nature which the proceeding is designed to protect. The tariffs were adopted under Section 366.075, F.S. That section permits us to approve experimental and transitional rates for any public utility to encourage energy conservation or to encourage efficiency. It authorizes us to approve the rates to test the efficiency of those rates. As we review the Amended Petition, we are cognizant that the approved rates are temporary and are designed to test whether or not these rates would be successful. This is particularly important because FPUC is a non-generating investor-owned utility, the only one in Florida. Therefore, the traditional TOU and IS tariffs tied to generation, do not necessarily apply to this utility. Accordingly, we find that testing is appropriate. We find that the City has not demonstrated in its petition how it will be harmed by FPUC testing the TOU and IS rates, most of which may be taken advantage of by the City. Therefore, we find that the City has not demonstrated that it meets the second prong of the Agrico test for standing either.

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[8] In an amended petition in Docket No. 070236-EQ, FICA filed a much more comprehensive and detailed complaint alleging specific facts. Pursuant to that amended petition, FICA proceeded to formal administrative hearing. To view the revised factual allegations, refer to Document No. 080467-07 filed in Docket No. 070236-EQ.

[9] Issued August 15, 1994, in Docket No. 930256-WS, In re: Petition for limited proceeding to implement water conservation plan in Seminole County by Sanlando Utilities Corporation.

In conclusion, FPUC's Motion to Dismiss is granted, with prejudice. The City has not pled facts sufficient to demonstrate that it has suffered an injury in fact or that the nature of these proceedings is designed to protect any injury the City has alleged. Moreover, the amended petition does not comply with Rule 28-106.201, F.A.C., because it does not contain "an explanation of how the petitioner's substantial interests will be affected by the agency determination," nor does it contain "a concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant a reversal or modification of the agency's proposed action." Proposed Agency Action Order, Order No. PSC-11-0112-TRF-EI is hereby deemed final and effective.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Public Utilities Company's Motion to Dismiss the City of Marianna's Amended Protest is granted, and the City of Marianna's Amended Protest is dismissed, with prejudice. It is further

ORDERED that Order No. PSC-11-0112-TRF-EI is hereby deemed final and effective.

By ORDER of the Florida Public Service Commission this 13th day of February, 2012.

ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
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Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

LCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.