

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

STATE OF FLORIDA



OFFICE OF COMMISSION CLERK
ANN COLE
COMMISSION CLERK
(850) 413-6770

Public Service Commission

March 20, 2012

Thomas D. Hall
Florida Supreme Court
500 South Duval Street
Tallahassee, Florida 32399-1925

Re: City of Marianna, Florida - PSC Docket No. 110041-EI

Dear Mr. Hall:

Enclosed please find a certified copy of a Notice of Administrative Appeal, which was filed with the Public Service Commission on March 19, 2012, along with its attachments, Order Nos. PSC-12-0056-FOF-EI, PSC-12-0081-CO-EI, and PSC-11-0269-PAA-EI. This appeal was filed on behalf of the City of Marianna, Florida.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann Cole".

Ann Cole
Commission Clerk

AC:sas
Enclosure

cc: Robert Scheffel Wright, Esquire
John T. LaVia, III, Esquire
Frank E. Bondurant, Esquire
Beth Keating, Esquire
J.R. Kelly, Office of the Public Counsel
Cecilia Bradley, Office of the Attorney General
Samantha Cibula, Office of the General Counsel
Susan D. Ritenour

DOCUMENT NUMBER: PSC-12-0056-FOF-EI

01665 MAR 20 2012

FPSC-COMMISSION CLERK

P

RECEIVED
THOMAS D. HALL

MAR 07 2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
CLERK, SUPREME COURT
BY _____

Petition for Approval of Amendment No. 1)
To Generation Services Agreement with)
Gulf Power Company, by Florida Public)
Utilities Company.)
_____)

DOCKET NO. 110041-EI
Filed: March 7, 2012

RECEIVED-FPSC
MAR 19 PM 3:37
COMMISSION
CLERK

NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN that the City of Marianna, Florida ("City"), appeals to the Florida Supreme Court the following orders of the Florida Public Service Commission issued in the above-styled docket: Order No. PSC-12-0056-FOF-EI, rendered February 9, 2012, Order No. PSC-12-0081-CO-EI, rendered February 23, 2012, and Order No. PSC-11-0269-PAA-EI, which was issued as a proposed agency action order, subject to the right of substantially affected parties to protest that order and request a formal proceeding, on June 21, 2011. A copy of each of these orders is attached to this Notice of Administrative Appeal.

The nature of Order No. PSC-12-0056-FOF-EI is an order dismissing, with prejudice, the City of Marianna's timely-filed petition protesting PSC Order No. PSC-11-0269-PAA-EI and requesting a formal proceeding on the subject matter of the docket. Order No. PSC-11-0269-PAA-EI is a proposed agency action order, which was timely protested by the City, and which the Commission, through Order

No. PSC-12-0056-FOF-EI and Order No. PSC-12-0081-CO-EI, now intends to

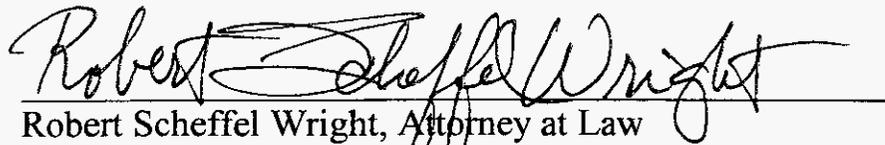
I CERTIFY THAT THIS IS A TRUE AND
CORRECT COPY OF THE ORIGINAL
DOCUMENT THAT WAS FILED WITH THE
FLORIDA PUBLIC SERVICE COMMISSION
BY: Ann Cole
ANN COLE, COMMISSION CLERK
(or Office of Commission Clerk designee)

01653 MAR 19 2012
FPSC-COMMISSION CLERK

make final and effective without affording the City the opportunity for a formal proceeding and evidentiary hearing requested by the City through its petition.

DATED this 7th day of March, 2012.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert Scheffel Wright". The signature is written in a cursive style with a horizontal line underneath it.

Robert Scheffel Wright, Attorney at Law
Florida Bar No. 0966721

John T. LaVia, III, Attorney at Law
Florida Bar No. 0853766

Gardner, Bist, Wiener, Wadsworth, Bowden, Bush,
Dee, LaVia & Wright, P.A.

1300 Thomaswood Drive
Tallahassee, Florida

Frank E. Bondurant, Attorney at Law, City Attorney

Florida Bar No. 0520330

Bondurant & Fuqua, P. A.

4450 Lafayette Street (32446)

Post Office Box 1508

Marianna, Florida 32447

ATTORNEYS FOR THE CITY OF MARIANNA, FLORIDA

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 7th day of March, 2012, to the following:

Curt Kiser, Esquire
Pauline Robinson, Esquire
Office of the General Counsel
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Beth Keating, Esquire
Gunster, Yoakley & Stewart, P.A.
215 S. Monroe St., Suite 618
Tallahassee, FL 32301
bkeating@gunster.com

J.R. Kelly, Esquire
Office of the Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

Cecilia Bradley, Esquire
Office of the Attorney General
The Capitol – PL01
Tallahassee, Florida 32399-1050


Attorney

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of Amendment No. 1 to generation services agreement with Gulf Power Company, by Florida Public Utilities Company.

DOCKET NO. 110041-EI
ORDER NO. PSC-12-0056-FOF-EI
ISSUED: February 9, 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 GRANTING MOTION TO DISMISS WITH PREJUDICE

BY THE COMMISSION:

Background

On June 6, 2007, a 10-year agreement for Generation Services (existing agreement) between Florida Public Utilities Company (FPUC) and Gulf Power Company (Gulf) was approved in Order No. PSC-07-0476-PAA-EI.¹ Under the existing agreement, FPUC provides electric services to customers in the Jackson, Calhoun, and Liberty Counties, and the existing agreement had a contract termination date of 2017. The timeline for appealing that Order has expired.

On January 26, 2011, FPUC filed a petition for approval of Amendment No. 1 to its existing agreement (PPA Amendment) with Gulf. FPUC stated that the PPA Amendment was to enable adequate pricing flexibility to develop the Time of Use and Interruptible (TOU) rates consistent with FPUC's franchise agreement with the City of Marianna (City). The franchise agreement had a provision requiring that FPUC execute TOU rates by February 17, 2011 or the City can initiate proceedings to purchase FPUC's facilities within the City limits.² To develop the rates required by the franchise agreement, FPUC negotiated this PPA Amendment with Gulf.

¹ See Order No. PSC-07-0476-PAA-EI, issued on 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 (made final by Consummating Order No. PSC-07-0556-CO-EI, issued on July 2, 2007).

² We approved FPUC's TOU rates by Order No. PSC-11-0112-TRF-EI, issued on February 11, 2011, in Docket No. 100459-EI before the deadline required by the franchise agreement between FPUC and the City of Marianna. Docket No. 100459-EI is the Companion Docket to this docket.

DOCUMENT NUMBER-DATE

00791 FEB-9 2012

FPSC-COMMISSION CLERK

On February 28, 2011, the City, located in Jackson County, was granted intervenor status in the PPA Amendment docket.³

On June 21, 2011, the PPA Amendment was approved for cost recovery calculation in Order No. PSC-11-0269-PAA-EI. As approved, the PPA Amendment is projected to result in savings of nearly \$6 million for FPUC and its customers through 2017, and extend the term of the contract from 2017 to 2019. The existing agreement and the PPA Amendment are wholesale arrangements, and the Federal Energy Regulatory Commission has exclusive jurisdiction over the terms and rates of the existing agreement and the PPA Amendment. Our jurisdiction is limited to determining the regulatory treatment of the costs and/or savings associated with implementing the existing agreement and the PPA Amendment.

On July 12, 2011, the City filed a petition for a Section 120.57, Florida Statutes (F.S.), hearing (formal proceeding or formal hearing), protesting the PAA Order approving the PPA Amendment. The City alleged that its substantial interests is affected as: (1) the City is an FPUC customer with 112 service accounts; (2) FPUC's rates are unfair, unjust, and unreasonable; (3) the PPA Amendment is not reasonable for cost recovery calculations; and (4) the slight savings through 2017 will be outweighed by the high cost of 2018 and 2019.

On July 28, 2011, FPUC filed its motion to dismiss. In its motion, FPUC asserted that the City's petition should be dismissed as: (1) it failed to allege facts sufficient to show the City will incur an injury in fact sufficient to establish standing for a Section 120.57, F.S., hearing; (2) its alleged injury is not of the type protected by this proceeding; and (3) the City's goal is to obtain FPUC's facilities in Marianna after only 17 months into a 10-year franchise agreement.⁴

On August 4, 2011, the City of Marianna filed its response in opposition stating it has pled facts sufficient to establish standing and state a claim upon which relief can be granted.

Both parties requested Oral Argument.

We have jurisdiction pursuant to Chapter 366, Florida Statutes (F.S.).

³ See Order No. PSC-11-0137-PCO-EI, issued on February 28, 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.

⁴ FPUC also asserted that the City protested the TOU order on March 1, 2011, and the next day, March 2, 2011, the City filed pleadings in the Fourteenth Judicial Circuit in Jackson County seeking a declaratory judgment that FPUC violated the terms of the franchise agreement. FPUC also claimed that the City send FPUC a letter indicating it would pursue the purchase of FPUC's facilities in Marianna. We dismissed the City's request for a Section 120.57, F.S., hearing on the TOU rates by Order No. PSC-11-0290-FOF-EI, issued on July 5, 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.

Discussion

Standing

The Agrico case established the two prong test that a petitioner must meet to demonstrate standing for a Section 120.57, F.S., hearing.⁵ Prong One of the Agrico test requires an injury in fact that is of “sufficient immediacy” to warrant a Section 120.57, F.S., hearing, while Prong Two of the test requires that the “substantial injury be of a type or nature that the proceeding is designed to protect.”⁶

The first prong of the Agrico test deals with the degree of injury, which must be both real and immediate and not speculative, too remote, or conjectural. The second prong of the test deals with the nature of the injury. Failure to satisfy either or both prongs of the test is grounds for dismissal, as demonstrated by the Florida Supreme Court. In 2007, the Court affirmed our denial of Nuvox’s petition for a formal hearing for lack of standing in Nuvox Communications, Inc. v. Lisa Polak Edgar, Etc.⁷ In 1997, the Florida Supreme Court also affirmed our dismissal of Ameristeel Corporation’s petition for a Section 120.57, F.S., hearing for lack of standing in Ameristeel Corp. v. Clark.⁸

Motion to Dismiss

A motion to dismiss questions the legal sufficiency of a complaint.⁹ In order 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.¹⁰ 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.¹¹

⁵ See Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981)(reversing the DEP’s determination that appellee, a competitor of Agrico, had standing for a Section 120.57, F.S., hearing where the appellee’s alleged injury was “far too remote and speculative in nature” to satisfy the first prong of the Agrico test and the alleged injury was not of the type the proceeding was designed to protect).

⁶ See Agrico, 406 So. 2d 478 at 482.

⁷ See Nuvox Communications, Inc. v. Lisa Polak Edgar, Etc., 958 So. 2d 920 (Fla. 2007).

⁸ See Ameristeel Corp. v. Clark, 691 So. 2d 473, 479-480 (Fla. 1997). See also Order No. PSC-11-0290-FOF-EI, issued on July 5, 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 (wherein the City of Marianna’s petition was dismissed for a Section 120.57, F.S., hearing for lack of standing).

⁹ See Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

¹⁰ See Varnes v. Dawkins, at 350.

¹¹ 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's Motion to Dismiss

In its dismissal motion, FPUC stated that the City lacked standing and failed to state a cause of action upon which relief can be granted.

Standing

FPUC stated that the City failed to show injury in fact that is of sufficient immediacy to warrant a Section 120.57, F.S., hearing or that the alleged injury is of the type the proceeding is designed to protect in that:

- the City's acknowledgement that the PPA Amendment reflects definite savings through the year 2017 cannot be construed as a "harm" or "injury," and its contentions regarding cost of the PPA Amendment's extension for 2018 and 2019 are speculative.
- the City's unsubstantiated allegations of "additional cost risks" such as fuel and environmental cost risks and cost of fuel and purchased power for 2018 and 2019 are speculative and do not demonstrate an "injury in fact of sufficient immediacy" to warrant a hearing.
- the City failed the second prong of the Agrico test in that this docket will not set rates or actual fuel cost recovery charges, and the ability to design conservation or load control measures is not a statutory criteria for determining the propriety of the PPA Amendment. The City is motivated by economic gain and is attempting to interfere with the City's 10-year franchise agreement with FPUC and obtain FPUC's facilities in Marianna.

Cause of Action

FPUC asserted that the City's petition failed to state a cause of action upon which this Commission can grant relief, in that:

- even when taken as true, there is no injury in fact, and this docket does not set rates or actual fuel cost recovery charges, but only reviews the prudence of the PPA Amendment and the propriety of cost recovery.
- even when read in light most favorable to the City, the petition failed to meet the Agrico test for standing.

City of Marianna's Response

The City of Marianna opposed FPUC's dismissal motion and alleged it has pled facts sufficient to establish standing and a claim for which this Commission can grant relief.

Standing

The City asserted it has standing in that:

- whether FPUC adequately evaluated all of the impacts of the PPA Amendment is an immediate injury in fact, and this docket determines cost for 2018 and 2019.
- while it is technically true that the actual purchased power cost recovery charges for 2018 and 2019 will not be set until 2017 and 2018 respectively, the costs that FPUC will incur and incorporate into its purchased power charges in 2018 and 2019 will be determined in this proceeding. The City will have to pay these costs in 2018 and 2019 if the PPA Amendment is approved.
- the imposition of the adverse impact of the PPA Amendment on the City in the future does not make them speculative. Additionally, FPUC's costs under the PPA Amendment equal unjust, unfair, and unreasonable rates that the City will pay, which constitutes the City's injury.
- this docket is the City's only opportunity to challenge the costs FPUC will incur under the PPA Amendment, and approval of the amendment bars the City from litigating in 2018 and 2019 regarding the unreasonableness and imprudence of the costs.

Cause of Action

The City alleged that its disputed issues of material facts include the following:

- it disagrees with this Commission's preliminary conclusion that the modification to the capacity purchase quantity provides support to develop conservation, time-of-use, interruptible, or similar rates.
- FPUC's costs under the PPA Amendment are unreasonable and imprudent and will result in unfair, unjust, and unreasonable rates, and risks associated with full costs and environmental costs that Gulf power may incur are additional risks identified by the City in its petition.

Analysis

Standing

FPUC challenges the City's standing for a Section 120.57, F.S., hearing. Therefore, the City is required to show conclusively that it has an injury in fact of sufficient immediacy to warrant a Section 120.57, F.S., hearing and that the alleged injury is of the type protected by this proceeding. The City is protesting a PAA Order approving FPUC's proposed PPA Amendment, which should result in a savings of nearly \$6 million for FPUC and its customers through 2017, and extend the contract year from 2017 to 2019.

Although the City is a customer of FPUC, the City's allegations of future costs in 2018 and 2019 are "speculative and conjectural" and fails to demonstrate the requisite "injury in fact" that is both real and immediate to warrant a Section 120.57, F.S., hearing. The City's allegations of a possible increase in FPUC costs for 2018 and 2019 is also "far too remote and speculative in nature" to qualify as an immediate harm under the first prong of the AgriCo standing test.

The City's assertion that it is "technically true" that the actual purchased power cost recovery charges for 2018 and 2019 will not be set until 2017 and 2018 further supports our conclusion that the City's assertions are speculative and too remote at this time to constitute immediate harm sufficient to warrant a Section 120.57, F.S., hearing. Additionally, the City acknowledged that the amendment will result in a rate reduction through 2017, which does not demonstrate an immediate harm to the City. Therefore we find that the City has failed to show that its alleged injury in fact is of sufficient immediacy to warrant a section 120.57, F.S., hearing.

The City also failed to demonstrate that its alleged injury is of the type protected by this proceeding. This docket addresses the cost recovery calculation for the PPA Amendment. Additionally, the PPA Amendment is a wholesale arrangement, and the Federal Energy Regulatory Commission has exclusive jurisdiction over the terms and rates of the PPA Amendment. Here, the City asserted that this docket sets rates that are unjust, unfair, and unreasonable. However, in this docket, as outlined in the order approving the PPA Amendment, our jurisdiction is limited to determining the regulatory treatment of the costs and/or savings associated with implementing the PPA Amendment. Therefore, the City has not demonstrated that its alleged injury is of the type protected by this proceeding.

Cause of Action

The Order approving the PPA Amendment should result in savings of nearly \$6 million for FPUC and its customers through 2017 and extend the contract year from 2017 to 2019.

The City's petition, if taken as true, does not demonstrate that the City, as a customer, will suffer injury from the PPA Amendment as the PPA Amendment is only approved for cost recovery calculations, resulting in savings to FPUC and its customers. The City's statements of unfair, unjust, and unreasonable rates are conclusory and not demonstrative of a disputed issue of material fact or an injury for which relief can be granted in this docket. The City's allegation that the savings through 2017 will be outweighed by potential costs of 2018 and 2019 also failed to demonstrate an immediate injury.

Section 120.569(2)(c), F.S., provides that the "dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured." The PAA Order protested by the City is projected to result in \$6 million in savings to FPUC and its customers through 2017. The City's petition failed to establish an immediate harm or an alleged injury of the type protected by this proceeding. The City's petition also failed to state a cause of action. It is conclusive, from the face of the petition, that the defects in the City's pleadings cannot be cured. Therefore, we find it appropriate to dismiss the City's petition with prejudice,

ORDER NO. PSC-12-0056-FOF-EI
DOCKET NO. 110041-EI
PAGE 7

and a Consummating Order shall be issued reviving Order No. PSC-11-0269-PAA-EI, making it final and effective.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the City of Marianna's Petition Protesting Proposed Agency Action Order No. PSC-11-0269-PAA-EI and Requesting Formal Proceeding is dismissed with prejudice. It is further

ORDERED that the docket shall be closed, and a Consummating Order shall be issued reviving Order No. PSC-11-0269-PAA-EI and making it final and effective.

By ORDER of the Florida Public Service Commission this 9th day of February, 2012.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

PER

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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of Amendment No. 1 to generation services agreement with Gulf Power Company, by Florida Public Utilities Company.

DOCKET NO. 110041-EI
ORDER NO. PSC-12-0081-CO-EI
ISSUED: February 23, 2012

CONSUMMATING ORDER

BY THE COMMISSION:

By Order No. PSC-11-0269-PAA-EI issued on June 21, 2011, this Commission proposed to take certain actions, subject to a Petition for Formal Proceeding as provided in Rule 25-22.029, Florida Administrative Code. A petition for formal hearing was dismissed with prejudice, in regard to the above mentioned docket. It is, therefore,

ORDERED by the Florida Public Service Commission that Order No. PSC-11-0269-PAA-EI is revived and has become effective and final. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 23rd day of February, 2012.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

Copies furnished: A copy of this document is provided to the parties of record at the time of issuance and, if applicable, interested persons.

PER

DOCUMENT NUMBER-DATE

01021 FEB 23 2012

FPSC-COMMISSION CLERK

ORDER NO. PSC-12-0081-CO-EI
DOCKET NO. 110041-EI
PAGE 2

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 judicial review of Commission orders that is available pursuant to Section 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 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 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.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of Amendment No. 1 to generation services agreement with Gulf Power Company, by Florida Public Utilities Company.	DOCKET NO. 110041-EI ORDER NO. PSC-11-0269-PAA-EI ISSUED: June 21, 2011
--	---

The following Commissioners participated in the disposition of this matter:

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

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING AMENDMENT NO. 1 TO PURCHASED POWER CONTRACT FOR
GENERATION SERVICE BETWEEN FLORIDA PUBLIC UTILITIES COMPANY AND
GULF POWER COMPANY FOR PURPOSES OF FUEL COST RECOVERY
CALCULATION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

I. Case Background

Florida Public Utilities Company (FPUC) provides electric utility service to customers located in two sections of north Florida. The Northwest Division serves Jackson, Calhoun, and Liberty Counties. 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 purchased power contracts. FPUC recovers its prudently incurred purchased power costs through the Fuel and Purchased Power Cost Recovery Clause (fuel clause).

On December 28, 2006, FPUC and Gulf Power Company (Gulf) executed a purchased power contract for generation service, which was effective January 1, 2008, for power supply to FPUC's Northwest Division over a ten-year period (Existing Agreement). Order No. PSC-07-

DOCUMENT NUMBER-DATE
04287 JUN 21 =
FPSC-COMMISSION CLERK

0476-PAA-EI, approving the Existing Agreement was issued on June 6, 2007.¹ On January 26, 2011, FPUC filed a petition requesting approval to amend its existing purchased power agreement (Amendment) with Gulf. The terms of the Amendment are expressly conditioned upon the receipt of a final, non-appealable order of the Amendment no later than July 31, 2011.

The Existing Agreement and the proposed Amendment are wholesale arrangements, and the Federal Energy Regulatory Commission has exclusive jurisdiction over the terms and rates of the Existing Agreement and the proposed Amendment. We have jurisdiction to determine the regulatory treatment of the costs and/or savings associated with implementing the Existing Agreement and the Amendment.

On February 11, 2011, the City of Marianna (City) which is located in Jackson County, filed a petition to intervene. On February 28, 2011, Order No. PSC-11-0137-PCO-EI was issued granting the City intervention in this docket.²

We have jurisdiction over this subject matter pursuant to Section 366, Florida Statutes (F.S.).

II. Analysis

The proposed Amendment contains two significant changes to the current Agreement: (1) an immediate reduction in FPUC's monthly capacity payment; and (2) a two-year extension of the terms of the Existing Agreement. In its petition to intervene, the City requested denial of the Amendment for cost recovery as the City alleges that the rates to be charged under the Amendment in years 2018 and 2019 are excessive and will result in FPUC's rate being unfair, unjust, and unreasonable. The City also stated that the structure of the demand and energy charges is inappropriate.

The Existing Agreement contains a ratchet provision based on historic peak demand values. In the Existing Agreement, if actual demand requirements are reduced in the future through conservation, or load control measures such as time-of-use and interruptible rates, there is no corresponding reduction in the capacity payments to Gulf. The current minimum capacity purchase quantity (97,944 kW) was set beginning in 2008, and was established considering FPUC's peak demand during the period 2004 through 2007. Weather conditions and relatively favorable rates resulted in elevated capacity demand levels during the 2004 through 2007 time period. FPUC's actual peak demand since 2007 has declined, but the ratchet provision contained in the Existing Agreement has maintained the capacity purchase quantity at 97,944 kW since 2008. Absent the ratchet provision, FPUC's purchase amount in 2009 and 2010 would have been 89,807 kW and 87,797 kW, respectively.

¹ See 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.

² See Order No. PSC-11-0137-PCO-EI, issued February 28, 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.

The proposed Amendment eliminates the ratchet provision and reduces the minimum capacity purchase quantity from the current level of 97,944 kW to 91,000 kW. Therefore, the capacity purchase quantity can rise above the minimum in any particular year. If the capacity purchase quantity subsequently reverts to 91,000 kW or lower, FPUC will again be billed for 91,000 kW. Based on current projections, the proposed reduction in the capacity purchase quantity would result in a savings of nearly \$6 million for FPUC and its customers through 2017. Table 1 below summarizes the projected savings that would result from the Amendment and the impact on a residential customer's bill.

Table 1: Savings Associated with the Proposed Amendment³

Year	Projected Annual Savings (\$)	Projected Residential Bill Reduction (\$/1,000 kWh)	Projected Residential Bill Reduction (\$/1,200 kWh)
2011	724,954	2.59	3.10
2012	749,952	2.67	3.21
2013	791,616	2.82	3.38
2014	837,446	2.99	3.59
2015	879,110	3.13	3.75
2016	929,107	3.32	3.99
2017	974,938	3.49	4.19
Total	5,887,123	-	-

As described, the Amendment extends Gulf's services to FPUC an additional two years. The capacity rates for 2018 and 2019 are escalated at a rate comparable to the escalation rates for the years contained in the Existing Agreement. FPUC explained that the companies discussed numerous options, but ultimately, near term reductions were only achievable through an extension of the Existing Agreement.

The Existing Agreement was approved based on the evaluation and outcome of a bid process. Given that the Existing Agreement does not terminate until the end of 2017, it is not reasonable to conclude that a similar process several years into the future would yield results that would out-weigh the projected savings of the proposed Amendment. Furthermore, the City identified the ratchet provision as a feature that is contributing to high rates and the Amendment eliminates that feature.

III. Conclusion

We find that near-term rate reductions for FPUC are desirable. As discussed above, the proposed Amendment is projected to result in a savings of nearly \$6 million through 2017 for FPUC and its customers. Moreover, we find that the modifications to the capacity purchase quantity provides the pricing flexibility necessary to develop conservation, or load control measures such as time-of-use and interruptible rates.

³ In Order No. PSC-11-0112-TRF-EI, issued February 11, 2011, in Docket No. 100459-EI, we approved FPUC's proposal to allocate up to 55 percent of the projected annual savings to time-of-use and interruptible rates. Therefore, the actual reduction in a residential customer's bills may be less.

Accordingly, we hereby approve the amendment to the agreement for generation services between Gulf Power Company and Florida Public Utilities Company for purposes of fuel cost recovery calculations.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Amendment No. 1 to the generation services agreement between Florida Public Utilities Company and Gulf Power Company for purposes of fuel cost recovery calculation is approved as set forth herein. It is further

ORDERED that if no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of this Order, this docket shall be closed upon the issuance of a Consummating Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of June, 2011.



ANN COLE
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399
(850) 413-6770
www.floridapsc.com

(S E A L)

PERE

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 that is available under Section 120.57, 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 will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on July 12, 2011.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.