

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: October 11, 2013

TO: Office of Commission Clerk (Cole)

FROM: Division of Accounting and Finance (Lester, Mouring, Prestwood)
Office of the General Counsel (Young) *PL AL CDF CREW CW*

RE: Docket No. 130233-EI – Petition for approval of stipulation and settlement agreement reducing amount of approved regulatory asset between Florida Public Utilities Company and the Office of Public Counsel.

AGENDA: 10/24/13 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\AFD\WP\130233.RCM.DOC

Case Background

On August 30, 2013, Florida Public Utilities Company (FPUC) filed a petition with the Commission seeking approval of a stipulation and settlement (settlement) with the Office of Public Counsel (OPC). The settlement proposes to reduce a regulatory asset established by Commission Order No. PSC-12-0600-PAA-EI. The regulatory asset was established to account for costs associated with litigation that arose between FPUC and the City of Marianna (City). That litigation involved Time of Use rates established in Docket No. 100459-EI¹, an amendment

¹ Order No. PSC-11-0112-TRF-EI, issued February 11, 2011 in Docket No. 100459-EI, In re: Petition for authority to implement a demonstration project consisting of proposed time-of-use and interruptible rate schedules and

to FPUC's power supply agreement with Gulf Power Company (Gulf) considered in Docket No. 110041-EI², and civil litigation with the City. Order No. PSC-12-0600-PAA-EI established a regulatory asset for these costs with amortization over five years.³

FPUC buys all its power for its Northwest Division from Gulf. In 2006, FPUC and Gulf negotiated a long-term power supply agreement, which was approved by the Commission by Order No. PSC-07-0476-PAA-EI.⁴ FPUC negotiated an amendment to this agreement in 2011 that lowered its capacity payments. The Commission approved that amended agreement by Order No. PSC-11-0269-PAA-EI.⁵ While the litigation between FPUC and the City was ongoing, Gulf reverted to charging FPUC for power based on the original power supply agreement. In March 2013, FPUC and the City of Marianna reached a settlement resolving all litigation. With the litigation between FPUC and the City resolved, Gulf began charging the lower capacity payments based on the amended agreement and refunded to FPUC the difference between the higher capacity payments from the original agreement and the lower capacity payments. The Commission has jurisdiction pursuant to Sections 366.04, 366.06, and 366.07, F.S.

corresponding fuel rates in the Northwest Division on an experimental basis and request for expedited treatment, by Florida Public Utilities Company.

² Order No. PSC-11-0269-PAA-EI, issued June 21, 2011 in Docket No. 110041-EI, In re: Petition for approval of Amendment No. 1 to generation services agreement with Gulf Power Company, by Florida Public Utilities Company.

³ Order No. PSC-12-0600-PAA-EI, issued November 5, 2012 in Docket No. 120227-EI, In re: Petition for approval of recognition of a regulatory asset and associated amortization schedule by Florida Public Utilities Company.

⁴ 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.

⁵ Order No. PSC-11-0269-PAA-EI, issued June 21, 2011 in Docket No. 110041-EI, In re: Petition for approval of Amendment No. 1 to generation services agreement with Gulf Power Company, by Florida Public Utilities Company.

Discussion of Issues

Issue 1: Should the Commission approve the proposed Stipulation and Settlement Agreement?

Recommendation: Yes. The proposed Stipulation and Settlement Agreement is in the public interest and should be approved. (Mouring, Lester)

Staff Analysis: FPUC and the OPC have proffered the proposed Settlement Agreement (Attached as Exhibit A) to address the disposition of the litigation costs accrued as a result of the lengthy dispute between FPUC and the City of Marianna. The proposed Settlement Agreement provides that the refund credit received by FPUC from Gulf be applied to the regulatory asset created in Docket No. 120227-EI,⁶ which consists of the accrued litigation costs. Under the terms of the Settlement Agreement, the net remaining balance of the regulatory asset would be amortized over a 5-year period starting in January 2013, consistent with Order No. PSC-12-0600-PAA-EI.⁷ The total net remaining regulatory asset is approximately \$100,000.⁸

On May 7, 2013, a meeting was held with staff, the OPC and FPUC to discuss this issue. At the meeting, OPC voiced concerns about FPUC's proposal to recover the regulatory asset through the Fuel Clause. Specifically, OPC believes these costs should be recovered through base rates, and not through the Fuel Clause, based on its assertion that the contended power supply agreement did not result in fuel savings, but rather reduced capacity payments. Subsequent to this meeting, FPUC and OPC met on several occasions to discuss this issue and on August 30, 2013, the Company filed the proposed Settlement Agreement. Since the litigation costs are specific to the Northwest Division, and the litigation affected the power supply agreement between FPUC and Gulf, staff believes reducing the regulatory asset by the amount of the refund credit is appropriate. Staff believes that approval of the proposed Settlement Agreement is in the public interest as it provides a timely resolution of the Gulf refund credit, as well as the regulatory asset, and thus alleviates the need for additional costs of litigating these issues in the future. Although staff believes that recovery of the accrued litigation costs and the refund credit through the Fuel Clause would be appropriate,⁹ given the de minimis amount of the net remaining regulatory asset resulting from the offset of accrued litigation costs by the refund credit, staff believes that the treatment proposed in the Settlement Agreement is reasonable. Thus, staff recommends approval of the proposed Settlement Agreement. Approval of the proposed Settlement Agreement will have no impact on base rates unless recovery of the remaining balance is sought through a future base rate proceeding. Further, the Company's fuel factors for 2013 and 2014 will not be affected.

⁶ Id.

⁷ Id.

⁸ \$1.87 million regulatory asset less the \$1.77 million refund credit received from Gulf.

⁹ Eligible litigation costs have been approved for recovery through the Fuel Clause in the past. See Order No. PSC-11-0579-FOF-EI, issued December 16, 2011 in Docket No. 110001-EI, In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.

Docket No. 130233-EI
Date: October 11, 2013

Issue 2: Should this docket be closed?

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

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.



**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.

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By:



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