Diamond Williams 100459-EI

From: Beth Keating [BKeating@gunster.com]
Sent: Wednesday, January 26, 2011 4:56 PM
To: Filings@psc.state.fl.us
Cc: Katherine Fleming; Elisabeth Draper; Schef Wright; cecilia.bradley@myfloridalegal.com; CHRISTENSEN.PATTY; Geoffroy, Tom
Subject: Docket NO. 100459-EI
Attachments: 20110126165354551.pdf

Attached for electronic filing, please find Florida Public Utilities Company's Response to the Preliminary Statement of Issues and Positions offered by the City of Marianna. Please do not hesitate to contact me if you have any questions.

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a. Person responsible for this electronic filing:

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b. Docket No. 100459-EI - 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.

c. On behalf of: Florida Public Utilities Company

d. There are a total of 7 pages.

e. Description: FPUC's Response to the City of Marianna's Issues and Positions

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January 26, 2011

VIA E-MAIL FILINGS@PSC.STATE.FL.US

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

Re: **Docket No. 100459-EI** - Florida Public Utilities Company's Petition for Authority to Implement a Demonstration Project of Proposed Time-of-Use and Interruptible Rate Schedules In the Northwest Division

Dear Ms. Cole:

Upon reflection on the "Preliminary Statement of Issues and Positions" (herein referred to as "Comments") recently submitted by the City of Marianna ("City"), Florida Public Utilities Company ("FPUC" or "Company") offers the following responsive comments.

First and foremost, the Company acknowledges that the burden to support and defend its Petition and the rates set forth therein falls upon the Company, and only upon the Company. In that regard, the Company sincerely appreciates the work of the Commission's professional staff on this matter, and the schedule that has been established. In furtherance of that schedule, the Company has endeavored, and continues to strive, to be prompt and responsive to requests for information and data regarding its proposal in this Docket, whether the request is from the Commission's professional staff or from the City of Marianna.

With regard to the Comments submitted by the City, the Company believes that the arguments set forth therein should be viewed for what they are – a thinly-veiled attempt to

leverage the regulatory process to gain unfair advantage under the franchise agreement. In its Comments, the City has not only offered a series of arguments unsupported by data, it has also made numerous statements couched as "facts" that have no bearing on the Commission's consideration of the Petition and tariff before it.

Much of what the City has to say in its Comments appears geared toward bolstering its position for the Court proceeding hinted at on page 5 of the City's Comments. On this point, to be clear, any dispute arising under the Franchise Agreement between the City and FPUC ("Franchise") would be a matter for the Courts, not the Commission.[1] Moreover, the question of whether or not the Time-of-Use ("TOU") and Interruptible rates proposed by the Company comply with the Franchise is irrelevant to the Commission's review and approval process of the rates proposed in this Docket. Rather, as the Commission is well-aware, the rate schedules should be reviewed for consistency with Chapter 366, Florida Statutes.

The City first asks that the Commission reject the Company's request for expedited treatment, because it believes the Company "sat on its hands" rather than proceed to develop TOU and Interruptible rates as required by the Franchise. As such, the Commission should not, according to the City, "bail FPU out." (Comments at pp. 4 and 5).[2] The City fails to acknowledge, however, that in order to develop the TOU and Interruptible rates proposed, the Company was required to negotiate an amendment to its existing Generation Services Agreement ("PPA") with Gulf Power. Over a period of several months, Gulf Power and FPUC discussed several options for amending the existing PPA in a way that would allow FPUC to develop cost-based TOU and Interruptible rates. Ultimately, the Companies were able to find a reasonable solution, as reflected in the Amendment No. 1 ("Amendment") submitted for Commission approval today.

[1] The Franchise Agreement is codified as City of Marianna Ordinance No. 981.
[2] The City even suggests that the Company is attempting to "bull-rush" the Commission....which is, frankly, blatant hyperbole that should not be given countenance.

Negotiating an Amendment to the PPA was, however, only the beginning of the process. Once an Amendment to the PPA was agreed upon, FPUC had to undertake the similarly lengthy task of developing TOU and Interruptible rates for the customers in the Northwest Division that would meet with Commission regulatory requirements. As part of that process, the Company hired a consulting firm, Christensen and Associates, Inc., to work with the Company to develop appropriate rates. The Company also diverted countless hours of its own personnel to work on the development of these rates. All told, the Company has invested over $100,000 in consulting fees and man-hours over a period of at least 12 months in order to develop TOU and Interruptible rates for the Northwest Division. By no stretch of the imagination did the Company "s[i]t on its hands;" clearly, the purely punitive delay suggested by the City is not warranted in view of the efforts undertaken by the Company to fulfill its obligations. [3]

The Company takes issue with the City's further suggestion that there is no reason for the Commission to address FPUC's request under the current schedule established by PSC Staff because the rates proposed by FPUC will not comply with the requirements of the Franchise even if they are approved by the Commission.[4] Whether or not the City's assertion is true (which the Company contends it is not) is a matter for a court of competent jurisdiction to decide. The Company respectfully suggests that delaying this matter simply because the City believes that the rates will not satisfy the Franchise requirements would, in effect, take the issue out of the Court's hands and have the Commission decide an issue arising not under Chapter 366, F.S., but instead, under the Franchise Agreement, which is outside the Commission's purview.[5]

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[3] To the contrary, the fact that the Company was able to complete the process of negotiating an amendment to the PPA and developing the proposed rates in less than 16 months from the date the Franchise was signed by the Company – and with the intervening purchase of the Company by Chesapeake Utilities – is indicative of the Herculean effort undertaken by numerous Company personnel.

[4] See (Comments at p. 5).

[5] Needless to say, the Company believes, strongly, that it has complied with the Franchise terms and that the rates proposed in this Docket, meet requirements of both Chapter 366 and the Franchise Agreement. Likewise, the Company believes that certain actions taken by the City in this regard constitute breach of the Franchise Agreement, and thus, like the City, the Company is currently weighing the merits of legal action to enforce its rights.

As for the City's suggestion that the proposed rates should be rejected because the rates are not cost-based and do not send appropriate pricing signals, the City has provided no data whatsoever to support this assertion.[6] To the contrary, the rates proposed by the Company are cost-based (as reflected by the substantial amount of supporting data provided by the Company), and reflect an average savings for FPUC customers of over $900,000 annually over the remaining life of the PPA with Gulf Power.

Specifically, the Commission should approve the proposed TOU rate schedules because they are, in fact, supported by costs approved by the Commission and incorporate known savings to derive the proposed TOU rate levels. The Commission approved the Company's 2011 levelized fuel factors in Docket No. 100001-EI, based on the costs expected to be incurred in 2011 as defined by the PPA. The Company's proposed TOU rates incorporate all of these same costs, but then utilize the expected savings from the Amendment to the PPA to derive the on-peak and off-peak TOU rates. As such, the TOU rates are cost-based. In essence, the Company has negotiated the savings in advance and is passing a portion (approximately 50%) of the savings through to TOU participants in the form of on-peak and off-peak prices.

The City also states that ". . .the rates proposed by FPU do not match the rates charged by Gulf Power in either the existing FPU-Gulf PPA or the Amendment to the PPA as it would be amended by the PPA Amendment."[7] The Company disagrees with this contention and states that FPUC's proposed TOU rates precisely match the rates charged by Gulf Power, as described above.

The City then goes on to say that because the "Gulf Energy Rate" is a flat rate, then there is no time-of-use cost basis for this component of the overall charge. The City concludes that "while there can be no doubt that Gulf's production costs vary from hour to hour and from season to season, nothing in the FPUC-Gulf PPA reflects such cost differences, and accordingly FPUC's proposed TOU rates do not and cannot reflect costs incurred to provide electric service

[6] See (Comments at p. 6)
[7] Comments at pp. 5 and 6.

at the times when power is consumed."[8] On the face of this comment, it appears that the City is describing "real time" pricing, which is a pricing philosophy separate and distinct from TOU rates.[9] In contrast, the TOU rates proposed by the Company can best be described as a premium and discount to the approved levelized fuel rates for 2011. Again, the net premium and discount revenues reflect the Amended Agreement savings allocated to the TOU rate classifications (approximately 50% of the overall Amended Agreement savings).

The City's arguments fail to recognize that there is one major difference between FPUC and all other IOU's in Florida. FPUC does not generate power, so it does not have any control over the production costs of electricity. The Agreement acts as a surrogate to the production costs, which under the terms of the Agreement, are constant throughout the year. Therefore, for FPUC's customers, there is no difference in the cost of producing power throughout the year, as properly reflected in FPU 2011 approved levelized fuel rates. The Amended Agreement, with the reduced Peak Capacity Quantity, creates a differential in costs between peak periods and non-peak periods that are, by the terms of the Amended Agreement, enjoyed evenly throughout the year.

The City further contends that the TOU rates "do not send accurate price signals to customers" and do 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."[10] The Company finds this suggestion perplexing, and believes that, on the contrary, under the TOU rates proposed by FPUC, customers will be encouraged to conserve during peak periods when prices are higher, and will receive significant economic benefits for consumption during off-peak periods when prices are lower. The proposed rates themselves will encourage participation because participants will receive an immediate and significant economic benefit. Moreover, all

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[8] Comments at p. 6.
[9] While the Commission has recognized that energy production cost differences such as those suggested by the City do exist, stating in Order No. PSC-10-0131-FOF-EI, for instance, that "usage which occurs outside the designated peak periods can be served at a lower cost." Order No. PSC-10-0131-FOF-EI at p. 140, issued March 5, 2010. Nonetheless, true "real time" pricing has not seen widespread use Florida.
[10] Comments at p. 6.

customers, whether program participants or not, will obtain benefits under the Company's proposal as a result of reduced peak demand.

The City has also suggested that the TOU rates proposed are discriminatory, because they will initially be subject to subscription limitations. While it is true that the rates, as proposed, have subscription limitations attached, the mere inclusion of subscription limitations does not result in a discriminatory program or rates. To the contrary, the Company's proposal is for a demonstration project on an experimental basis, consistent with Section 366.075, Florida Statutes, the purpose of which is to allow the Company to correlate the overall level of demand reductions with the savings allocated to the TOU rate classifications, as stated in the Company's Petition.[11] The limitations set forth in the Company's proposal are consistent with the Company's request that these rate schedules be approved on an experimental basis pursuant to Section 366.075, Florida Statutes, and they will allow for more accurate correlation of the data received over time.

Moreover, the proposed rates are available to all customers in the Northwest Division on a first-come, first-served basis.[12] There is no customer or class-specific limitation on who may participate in the Open Enrollment process.[13] The proposal also includes a "revert back" or "opt out" provision that will allow customers to avoid being penalized with higher rates should they decide after they have already enrolled in the program that they no longer want to participate. Furthermore, as set forth at Paragraphs 23 and 24 of the Petition, the Company has even proposed to absorb the incremental costs related to the program to ensure that program-entry costs do not pose a problem, and has also proposed to implement a comprehensive customer education program, which would include an energy audit. Thus, the Company does not believe that the proposal can properly be construed as "discriminatory."

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[11] Petition, p. 10.

[12] Notably, the City has cited no statutory basis for its claim that the Company's proposal is discriminatory; thus, the Company perceives this argument to be posited primarily in an attempt to bolster the City's position and arguments under the Franchise.

[13] Anectdotal evidence suggests that it is unlikely that the participation limits proposed will actually be reached by the customer classes in the Northwest Division.

In conclusion, Florida Public Utilities Company respectfully requests that the Commission proceed with consideration of the Company's proposed Demonstration Project of Time-of-Use and Interruptible rates for the Northwest Division under the schedule currently in effect. The Company also asks that the Commission approve the Rates Schedules as filed, and find that they are fair, just, and reasonable and designed to yield reasonable compensation for the services rendered, consistent with Section 366.06, Florida Statutes.

Sincerely,

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