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Sent: Monday, July 25, 2011 3:35 PM
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Subject: Electronic Filing - Docket No. 100459-EI
Attachments: 100459.Marianna.AmendedPetition.7-25-11.pdf

a. Person responsible for this electronic filing:

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b. 100459-EI
In Re: 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.

c. Document being filed on behalf of the City of Marianna, Florida.

d. There are a total of 21 pages.

e. The document attached for electronic filing is The City of Marianna's Amended Petition for Formal Proceeding Regarding Time-of-Use and Interruptible Rates.

(see attached file: 100459.Marianna.AmendedPetition.7-25-11.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
Secretary to Schef Wright
Phone: 850-222-7206
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7/25/2011

DOCUMENT NUMBER-DATE
05132 JUL 25 =
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Florida Public Utilities Company's Petition for Authority to Implement a Demonstration Project of Proposed Time-of-Use and Interruptible Rate Schedules In the Northwest Division)
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DOCKET NO. 100459-EI
Filed: July 25, 2011

THE CITY OF MARIANNA'S AMENDED PETITION FOR FORMAL PROCEEDING REGARDING TIME-OF-USE AND INTERRUPTIBLE RATES

The City of Marianna, Florida ("Marianna" or "City"), pursuant to Rule 28-106.201, Florida Administrative Code ("F.A.C.") and consistent with the Commission's Order No. PSC-11-0290-FOF-EI, which dismissed the City's original petition herein without prejudice, hereby submits its Amended Petition requesting that the Commission conduct a formal proceeding, including a full evidentiary hearing, regarding disputed issues of material fact relating to the petition of Florida Public Utilities Company ("FPUC") that is the subject of this docket. The City of Marianna is a substantial customer of FPUC, and as such, the City is eligible for service under four of the five proposed rate schedules that are at issue in this docket. The City is also a participating customer, taking service under one of the subject rates, the General Service – Demand Time of Use (GSDT-EXP) tariff. As a customer of FPUC, the City's substantial interests in access to fair, just, and reasonable rates for time-of-use and interruptible service will be determined by the Commission's actions in this docket, and accordingly, the City is entitled to the requested formal proceeding on FPUC's proposals.

The City believes that the facts relating to FPUC's "experimental," "demonstration," "pilot" time-of-use ("TOU") and interruptible service ("IS") rate offerings, which also depend on the ultimate approval of a pending amendment to the wholesale power purchase agreement between FPUC and Gulf Power Company in Commission Docket No. 110041-EI, indicate that the Commission should reverse its preliminary action and deny FPUC's petition herein, and

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FPSC-COMMISSION CLERK

accordingly, through this Amended Petition, the City renews its requests that: (a) the Commission conduct a formal proceeding, including a formal evidentiary hearing, pursuant to the provisions of Chapter 120, Florida Statutes,¹ and applicable rules of the Florida Administrative Code, in which FPUC will have the burden of proving that its proposed TOU and IS rates should be approved, and (b) reverse its preliminary action taken herein and deny FPUC's proposed TOU and IS tariffs.

PRODEDURAL BACKGROUND

1. The name, address, and telephone number of the Petitioner are as follows:

The City of Marianna, Florida
Attention: Jim Dean, City Manager
City Hall
2898 Green Street
Marianna, Florida 32446
Telephone: (850) 482-4353

2. All pleadings, orders, and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright, Attorney at Law
John T. LaVia, III, Attorney at Law
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
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and

Frank E. Bondurant, Attorney at Law, City Attorney
Bondurant & Fuqua, P. A.
4450 Lafayette Street (32446)
Post Office Box 1508
Marianna, Florida 32447
Telephone: (850) 526-2263
Facsimile: (850) 526-5947

¹ All citations to the Florida Statutes in this Amended Petition are to the 2010 edition thereof.

3. The agency affected by this Amended Petition for Formal Proceeding is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

4. This docket was initiated by FPUC's filing, on December 14, 2010, of its petition seeking approval of certain optional time-of-use and interruptible tariff sheets. The City petitioned to intervene on January 7, 2011, and the Commission granted the City intervenor status by its Order No. PSC-110129-PCO-EI on February 25, 2011.

5. On February 11, 2011, the Commission issued its tariff order, Order No. PSC-11-0112-TRF-EI (the "Tariff Order"), approving FPUC's proposed TOU and IS rates pending the filing of a petition for formal proceeding by a party whose substantial interests would be affected by the Commission's actions in the Tariff Order. Tariff Order at 8. The Tariff Order stated that it was "interim in nature" and that it would become final unless a person whose substantial interests are affected by the actions proposed in the Tariff Order filed a petition for a formal proceeding by March 4, 2011. *Id.* The City received notice of the Commission's interim action on FPUC's petition and tariff proposals when the City received a copy of the Tariff Order on February 11, 2011. The City timely filed its original Petition for Formal Proceeding on March 1, 2011.

6. FPUC moved to dismiss the City's Petition for Formal Proceeding on March 17, 2011. The City responded in opposition to the Motion to Dismiss on March 24, 2011. By memorandum dated June 2, 2011, the Commission Staff recommended that the Commission deny FPUC's Motion to Dismiss. At its conference on June 14, 2011, the Commission voted to reject its Staff's recommendation and to grant the motion to dismiss, without prejudice. This vote was memorialized in Commission Order No. PSC-11-0290, issued on July 5, 2011. As stated in this order, the Commission's decision was based on its conclusion that the City "has not

sufficiently demonstrated that it will suffer an injury in fact which is of sufficient immediacy to entitle it to an administrative hearing." Order No. PSC-11-0290 at 3. While recognizing that the dismissal was without prejudice, the order did not specify a time for the City to submit an amended petition requesting a formal proceeding; by agreement with FPUC, the City is filing this Amended Petition Requesting Formal Proceeding on July 25, 2011.

7. In a separate petition filed on January 26, 2011, FPUC initiated PSC 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; that petition is referred to herein as the "PPA Amendment Petition." In that petition, FPUC stated the following: "FPUC determined that, in order to develop TOU and Interruptible rates that would satisfy the requirements of the Franchise and also comply with Commission regulatory requirements, changes to the existing PPA with Gulf would be necessary." PPA Amendment Petition at 3. The TOU and IS rates proposed by FPUC depend on the PPA Amendment being approved by the PSC by a final, non-appealable order by July 31, 2011. PPA Amendment Petition at 4 and Attachment A (to that petition) at 3. The PSC considered the PPA Petition as a "proposed agency action" item at its conference on June 14, 2011. The City opposed and continues to oppose the proposed PPA Amendment, and the City has accordingly intervened in PSC Docket No. 110041-EI, which the PSC opened for the purpose of evaluating the PPA Amendment. Following the Commission's issuance of its Order No. PSC-11-0269-PAA-EI, entitled "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" (the "PAA Order") on June 21, 2011, the City of Marianna timely filed its petition protesting the PAA Order and requesting a formal proceeding on the proposed PPA Amendment.

FACTUAL BACKGROUND

8. The City of Marianna, Florida is a political subdivision of the State of Florida, with a population of approximately 6,200 persons. The City 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 through approximately 112 accounts,² including accounts that are billed under FPUC's General Service – Non-Demand (GS), General Service – Demand (GSD), General Service – Large Demand (GSLD), General Service – Demand Time of Use – Experimental (GSDT-EXP), and Street Lighting (SL) and Outdoor Lighting (OL) rate schedules. The City's Ordinance No. 981 is the Franchise Agreement or Franchise Ordinance between the City and FPUC. Among other things, the Franchise required FPUC to have developed and implemented Time of Use and Interruptible, or similar, rates that were to be (a) "mutually agreed to" by the City and FPUC, (b) available to all of FPUC's customers in the Northwest Division, and (c) in effect by February 17, 2011.

9. As a customer of FPUC, the City is eligible to take service under these rate schedules. Since the City takes service through many accounts that are served under FPUC's GS, GSD, and GSLD rate schedules, the City is eligible to take service under the time-of-use counterparts to each of these tariffs, as well as under FPUC's proposed Interruptible Service – Time-of-Use rate schedule. In fact, the City has already subscribed one of its accounts to time-of-use service under Rate Schedule GSDT-EXP.³

² The figure of 112 accounts is based on review of the City's billing statements from FPUC for accounts that were active as of early January 2011. The number of active accounts fluctuates from time to time, between 110 and 120 accounts.

³ The City could not have subscribed this account, or any other of its accounts, to time-of-use service as of March 4, 2011, when it filed its original Petition Requesting Formal Proceeding, because service under FPUC's TOU rates was not available at that time. In its flyer describing its TOU rates, FPUC included the statement "Enrollment begins May 2, 2011."

10. FPUC does not own or operate electric generation facilities. FPUC purchases the electric power it sells in its Northwest Division from Gulf Power Company ("Gulf"), pursuant to an Agreement for Generation Services dated December 28, 2006 (the "Existing Agreement"). Before the implementation of the PPA Amendment pursuant to the PAA Order, the rates paid by FPUC to Gulf under the Existing Agreement were among the highest, if not the highest, wholesale power rates in the State of Florida, resulting in FPUC's retail rates in its Northwest Division being among the highest, if not the highest, in the State of Florida. Even following the implementation of the PPA Amendment pursuant to the PAA Order, with respect to which the City has timely filed its protest and request for a formal proceeding, the retail rates paid by customers in FPUC's Northwest Division remain among the highest retail rates in Florida. Since the wholesale rates paid by FPUC to Gulf are in fact FPUC's bulk power supply costs, those rates and the Existing Agreement, as modified by the PPA Amendment, are inextricably related to the retail rates charged by FPUC, including its proposed TOU and IS rates that are the subject of this Docket No. 100459-EI.

**IMPACT OF THE COMMISSION'S ACTIONS ON THE
CITY OF MARIANNA'S SUBSTANTIAL INTERESTS**

11. The City purchases retail electric service from FPUC through approximately 112 separate service accounts, including accounts that are billed under FPUC's General Service – Non-Demand (GS), General Service – Demand (GSD), General Service – Large Demand (GSLD), General Service – Demand Time of Use – Experimental (GSDT-EXP), and Street Lighting (SL) and Outdoor Lighting (OL) rate schedules. Thus, the City is: (a) an actual customer of FPUC under one of the TOU rate schedules; (b) a customer who is eligible for Time-of-Use service under nearly all of its other accounts, *i.e.*, under all of its accounts other than the SL and OL schedules, as well as a customer who is eligible for Interruptible Service under its GSLD account; and (c) a customer with substantial interests in all of FPUC's rates,

including the TOU and IS rate proposals, being fair, just, reasonable, cost-based, and effective and cost-effective at achieving their stated purposes.

12. As an actual customer under FPUC's GSDT-EXP rate schedule,⁴ the City's substantial interests in having FPUC's TOU rates be fair, just, and reasonable are clear. Similarly, as an existing customer eligible to take service under four of the five rate schedules at issue in this docket, the City's substantial interests in having those rates be fair, just, and reasonable are equally clear. The City's interests in the rates that it is charged, or that it would be charged, even for an optional service, are substantial and will be determined by the Commission's actions in this docket, and the City's interests are protected by various provisions of the Commission's governing statutes. Finally, to the extent that the City elects to remain a standard, non-TOU customer on some of its accounts, as a "non-participating" customer of FPUC, the City is entitled to have the rates be fair, just, and reasonable, and to have them be fairly evaluated as to whether they are effective, and cost-effective, at encouraging energy conservation and efficiency. The Commission's actions in this docket will determine the City's substantial interests by determining whether to approve FPUC's proposed TOU and IS rates for final implementation for an extended period of time, and also by determining whether to approve them at all or to deny them, as requested by the City.

STATUTES AND RULES THAT ENTITLE THE CITY TO RELIEF

13. The applicable statutes and rules that entitle the City of Marianna to the relief requested – that the Commission conduct a formal proceeding including an evidentiary hearing to resolve disputed issues of material fact, and that the Commission deny FPUC's petition herein because the rates resulting from the PPA Amendment are not and will not be fair, just,

⁴ The City reiterates that it could not have been a customer taking service under any of FPUC's TOU rates at the time the City filed its original Petition Requesting Formal Proceeding, because none of the TOU or IS rates was even available for subscription at the time the City filed that Petition.

reasonable, or otherwise appropriate – include, but are not necessarily limited to, Sections 120.569, 120.57(1), 366.03, 366.04(1), 366.041, 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes, and Rules 25-22.039, F.A.C., and 28-106.101 and 28-106.201, F.A.C. Relevant to the City's right to its requested evidentiary hearing, Section 120.569, Florida Statutes, provides as follows:

120.569 Decisions which affect substantial interests.—

(1) *The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases.*

* * *

(2)(a) Except for any proceeding conducted as prescribed in s. 120.56, a petition or request for a hearing under this section shall be filed with the agency.

* * *

(b) *All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; . . .*

(Emphasis supplied.) Section 120.57(1)(b), Florida Statutes, provides that "All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions . . . and to be represented by counsel or other qualified representative." Section 120.57(1)(k), Florida Statutes, provides in pertinent part that "All proceedings conducted under this subsection shall be de novo." Because the City's substantial interests in fair, just, and reasonable rates will be determined by the Commission's actions in this docket, the City is entitled to the requested formal proceeding, pursuant to the provisions of Sections 120.569 and 120.57(1), Florida Statutes.

14. The cited provisions of Chapter 366, Florida Statutes, articulate the Commission's jurisdiction over the rates and service of public utilities and require that all rates must be fair, just, reasonable, and not unduly discriminatory. Specifically, Section 366.03, Florida Statutes,

both articulates the Commission's jurisdiction over the terms and conditions under which public utilities must provide service to their customers, and also states the statutory requirement that "all rates and charges" must be "fair and reasonable." The entire text of Section 366.03, Florida Statutes, is set forth here.

366.03 General duties of public utility.—Each public utility shall furnish to each person applying therefor reasonably sufficient, adequate, and efficient service upon terms as required by the commission. No public utility shall be required to furnish electricity or gas for resale except that a public utility may be required to furnish gas for containerized resale. *All rates and charges made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, shall be fair and reasonable.* No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or disadvantage in any respect.

(Emphasis supplied.) Section 366.04(1), Florida Statutes, further articulates that "the commission shall have jurisdiction to regulate and supervise each public utility with respect to its rates and service."

15. Beyond the broad provisions of Section 366.03, Florida Statutes, cited above, at least five additional sections of the Commission's electric regulatory statute, Chapter 366, articulate the statutory criteria that rates charged by public utilities in Florida must be fair, just, and reasonable. Section 366.041 provides a non-exhaustive list of factors that the Commission is to consider in "fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state by any and all public utilities." Section 366.05(1), Florida Statutes, provides that, in the exercise of its jurisdiction, "the commission shall have power to prescribe fair and reasonable rates and charges . . ." Similarly, Section 366.06(1), Florida Statutes, states that "the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged, or collected by any public utility for its service." Section 366.06(2), Florida Statutes, further provides that:

Whenever the commission finds, upon request made or upon its own motion, that the rates demanded, charged, or collected by any public utility for public utility service, or that the rules, regulations, or practices of any public utility affecting such rates, are unjust, unreasonable, unjustly discriminatory, or in violation of law; that such rates are insufficient to yield reasonable compensation for the services rendered; that such rates yield excessive compensation for services rendered; or that such service is inadequate or cannot be obtained, the commission shall order and hold a public hearing, giving notice to the public and to the public utility, and shall thereafter determine just and reasonable rates to be thereafter charged for such service

Echoing the provisions of Section 366.06(2), Florida Statutes, that the Commission is to hold hearings to respond to requests made to determine that proposed rates are unjust or unreasonable, Section 366.07, Florida Statutes, provides as follows:

366.07 Rates; adjustment.—Whenever the commission, after public hearing either upon its own motion or upon complaint, shall find the rates, rentals, charges or classifications, or any of them, proposed, demanded, observed, charged or collected by any public utility for any service, or in connection therewith, or the rules, regulations, measurements, practices or contracts, or any of them, relating thereto, are unjust, unreasonable, insufficient, excessive, or unjustly discriminatory or preferential, or in anywise in violation of law, or any service is inadequate or cannot be obtained, the commission shall determine and by order fix the fair and reasonable rates, rentals, charges or classifications, and reasonable rules, regulations, measurements, practices, contracts or service, to be imposed, observed, furnished or followed in the future.

Relationship of the Cited Statutes and Rules to the City's Substantial Interests

16. Because the City's substantial interests in fair, just, and reasonable rates will be determined by the Commission's actions in this docket, the City is entitled to the requested formal proceeding, pursuant to the provisions of Sections 120.569 and 120.57(1), Florida Statutes. The applicable provisions of Chapter 120 require the Commission to hold a hearing to resolve disputed issues of material fact where the petitioner's substantial interests will be determined by an agency's actions. Fla. Stat. § 120.569(1) & 2(b). Here, the City of Marianna is a substantial customer of FPUC that takes service from FPUC under approximately 112 separate accounts under at least 5 different rate schedules. Moreover, the City is eligible to take service under the proposed Interruptible Service rate schedule and under three of the four proposed TOU

rate schedules. In fact, the City already takes service under one of FPUC's TOU rate schedules, Rate Schedule GSDT-EXP. The Commission's interim action in the Tariff Order to approve the TOU and IS rates will thus directly affect the City's substantial interests in receiving its electric service pursuant to rates that are fair, just, and reasonable, and the City is entitled by Sections 120.569 and 120.57(1), Florida Statutes, to the formal proceedings and evidentiary hearing requested by this Amended Petition.

17. The above-cited sections of Chapter 366, Florida Statutes, articulate the Commission's jurisdiction over FPUC's rates and charges and further articulate the substantive statutory mandate that all rates and charges of public utilities in Florida must be fair, just, and reasonable. Thus, the Commission has both the jurisdiction and the statutory mandate to ensure that all of FPUC's rates and charges are fair, just, and reasonable; stated differently, the Commission has both the statutory power and the statutory mandate to grant the relief requested by the City of Marianna. The City's substantial interests in receiving electric service pursuant to fair, just, and reasonable rates will be determined by the Commission's actions in this docket, and the City is accordingly entitled by Chapter 366 to its requested formal proceeding and evidentiary hearing. Additionally, because it is disputed as to whether FPUC's TOU and IS rates will be either effective or cost-effective at encouraging energy conservation or efficiency, the City is entitled by Chapter 366 to its requested formal proceeding and evidentiary hearing on these issues as well. Moreover, because the TOU and IS rates are not and will not be fair, just, and reasonable, and because it is disputed as to whether they will be effective or cost-effective at encouraging energy conservation or efficiency, the Commission should conduct the formal proceeding requested by the City and deny FPUC's petition consistent with the mandates of Chapter 366, or alternately, direct FPUC to develop rates that are fair, just, and reasonable, and that effectively and cost-effectively promote conservation and efficiency.

18. Moreover, Commission Rule 25-22.039, F.A.C., provides for persons – the City of Marianna in this instance – whose substantial interests will be determined by a proceeding, to intervene in such proceedings. Rule 28-106.101, F.A.C., provides that Chapter 28-106 applies in all proceedings in which the substantial interests of a party – the City in this instance – are determined by the agency, and Rule 28-106.201, F.A.C., provides that the initiation of formal proceedings shall be made by written petition, and the City has accordingly, consistent with the directives set forth in the Tariff Order, and also consistent with the Commission's order dismissing the City's original petition without prejudice, filed this Amended Petition requesting a formal proceeding and evidentiary hearing to determine the disputed issues of material fact identified herein.

FURTHER DISCUSSION – THE CITY'S STANDING

19. Order No. 11-0290 states the Commission's conclusion that the City "has not sufficiently demonstrated that it will suffer an injury in fact which is of sufficient immediacy to entitle it to an administrative hearing." Order No. PSC-11-0290 at 3. Although the Order does not expressly articulate the basis for this conclusion, the Commission's discussion at the June 14 agenda conference appeared to give at least some weight to the argument that, because the proposed TOU and IS rates are optional, the City could not suffer injury in fact sufficient to give rise to the City's right to a formal proceeding pursuant to Chapter 120, Florida Statutes. For example, Commissioner Balbis stated "I'm struggling to find an injury when it is a, an optional program." Agenda Conference Transcript at 21. To the same effect, Commissioner Brisé stated the following: "Considering that we looked at this issue in February . . . and it's not required for everyone to be on it, . . . there probably isn't enough injury or injury at this juncture to – I think I'll leave it at that for now." *Id.* at 22.

20. As explained below, the City believes that this conclusion is erroneous.

Moreover, the City asserts that it is entitled to the requested formal proceeding, as well as to the ultimate substantive relief requested – denial or substantial modification of the proposed TOU/IS rates – by applicable provisions of Chapter 120 and Chapter 366.

21. First, although the Agrico test focuses on "injury in fact," the plain language of Section 120.569(1), Florida Statutes, states, "The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574." Moreover, Section 120.569(2), provides that "All parties shall be afforded an opportunity for a hearing after reasonable notice" The City's interests in fair, just, and reasonable rates, and the City's interests in the proposed rates being effective and cost-effective at encouraging conservation and efficiency, will be determined by the Commission in this docket. The City has a procedural statutory right to rates that meet the statutory criteria, and a substantive statutory right to a hearing where its substantial interests will be determined: depriving the City of its substantive rights, as a substantial customer of FPUC, is an immediate injury in fact. Moreover, allowing rates that are not fair, just, and reasonable to continue in effect is also an immediate injury in fact.

22. The mere fact that a rate schedule is optional does not exempt such a rate from scrutiny by the Commission, nor does it exempt such a rate from challenge by a customer whose rates or service will be affected by it. Section 366.03, Florida Statutes, requires that "All rates and charges . . . shall be fair and reasonable." There is no exemption for optional rates. If this reasoning – that the existence of an option implies that there cannot be injury in fact, resulting in a determination of no standing – were to be accepted, then no party would ever have standing to challenge a rate proposal that was optional, as long as the would-be challenger/petitioner, like the City here, had another service option available to it. For example, if a utility proposed a new

time-of-use rate, or a new interruptible or other non-firm service tariff, or a new rider of some sort, this reasoning would preclude any party, whether eligible for the rate or not, or whether the party's rates would be affected by subsequent impacts of the proposal, from having standing to challenge it.

23. FPUC also argues that, because it claims to be seeking approval of its TOU and IS rates as experimental rates pursuant to Section 366.075, Florida Statutes, those rates are not subject to the "fair, just, and reasonable" criteria mandated for "all rates and charges" by several sections of Chapter 366. Although it is unclear how much, if any, weight the Commission gave to this argument, the City feels compelled to address this theory, as well. The City believes that FPUC's argument is completely without merit. In the first instance, Section 366.03, Florida Statutes, is unequivocal, stating, "*All rates and charges* made, demanded, or received by any public utility for any service rendered, or to be rendered by it, and each rule and regulation of such public utility, *shall be fair and reasonable.*" (Emphasis supplied.) Reading, as it must do, this provision as part of the organic whole of Chapter 366, and harmonizing any arguably conflicting provisions of its Statutes so as to give effect to all provisions thereof,⁵ the Commission must conclude that the mandate of Section 366.03 applies to experimental rates under Section 366.075, because it applies to "all rates and charges," and because there is no exception granted to experimental rates. Logically, of course, there is no reason that appropriately designed experimental rates cannot be fair and reasonable, as required by Section 366.03. Also to this point, the Florida Legislature has crafted specific statutory exceptions and exemptions where it determines that such exceptions or exemptions are appropriate. For

⁵ See State v. Zimmerman, 370 So. 2d 1179, 1180 (Fla. 4th DCA (1979) (stating, "It is an axiom of statutory construction that the legislature would not enact a purposeless and therefore useless piece of legislation. Sharer v. Hotel Corporation of America, 144 So. 2d 813 (Fla. 1962). It is the judiciary's duty to uphold and give effect to all provisions of a legislative enactment, and to adopt any reasonable view that will do so. Tyson v. Lanier, 156 So. 2d 833 (Fla. 1963).")

example, in Section 366.11(1), Florida Statutes, the Legislature provided for a number of specific exemptions from various provisions of Chapter 366, stating as follows:

No provision of this chapter shall apply in any manner, other than as specified in ss. 366.04, 366.05(7) and (8), 366.051, 366.055, 366.093, 366.095, 366.14, 366.80-366.85, and 366.92, to utilities owned and operated by municipalities, whether within or without any municipality, or by cooperatives organized and existing under the Rural Electric Cooperative Law of the state, or to the sale of electricity, manufactured gas, or natural gas at wholesale by any public utility to, and the purchase by, any municipality or cooperative under and pursuant to any contracts now in effect or which may be entered into in the future, when such municipality or cooperative is engaged in the sale and distribution of electricity or manufactured or natural gas, or to the rates provided for in such contracts.

If the Legislature had wished to exempt experimental rates authorized under Section 366.075 from the blanket requirement of Section 366.03 that "[a]ll rates and charges . . . shall be fair and reasonable," it would have done so. The Commission cannot read such an exemption into Section 366.075, Florida Statutes.

24. Further, even Section 366.075, Florida Statutes, contains its own substantive criterion: that rates promulgated pursuant to that section are to encourage energy conservation and efficiency. Because of the tenuous or non-existent relationship (at least alleged by the City, as a disputed issue of fact) between the rates to be charged under the TOU and IS rates and the costs to provide those services, it is also disputed as to whether those rates will promote energy conservation or efficiency. In short, to even be approved pursuant to Section 366.075, Florida Statutes, experimental or transitional rates must "encourage energy conservation or [] encourage efficiency." The City believes that the proposed TOU and IS rates will not do so because they do not accurately reflect costs, and accordingly, the City is entitled to a hearing on this disputed issue of material fact. The City further believes that it is completely appropriate for the Commission to evaluate experimental rates, at the point in time when the Commission considers approving them for initial implementation, as to whether they appear designed to effectively or cost-effectively encourage conservation or efficiency.

25. Finally, the City believes that a front-end evaluation, tested in a formal evidentiary proceeding, i.e., a hearing subject to the procedural requirements and safeguards of Section 120.57(1), Florida Statutes, of the design of any experimental rate is fully appropriate and consistent with Section 366.075, Florida Statutes, as well as the other provisions of Chapter 366. The suggestion, advanced by FPUC, that an experimental rate cannot be evaluated until after it has been implemented for some period of time, is simply misplaced. If this argument were accepted, no party would ever have standing to challenge, on the front end, an experimental rate before its implementation. This is an irrational result, and the Commission should not countenance it.

ISSUES OF MATERIAL FACT

26. The City of Marianna believes that the relevant issues of material fact that must be determined in this proceeding include the following:

- a. Whether FPUC's proposed Time-of-Use tariffs, including the terms and conditions included in the tariffs, and associated rates are fair, just, reasonable, and non-discriminatory;
- b. Whether FPUC's proposed Interruptible Service tariffs, including the terms and conditions included in the tariffs, and associated rates are fair, just, reasonable, and non-discriminatory;
- c. Whether FPUC's proposed Time-of-Use tariffs include rates that accurately reflect the costs that FPUC incurs to provide service on a time-differentiated basis;
- d. Whether FPUC's proposed Time-of-Use tariffs include rates that accurately reflect the costs that are incurred by Gulf Power Company to provide the wholesale service that FPUC purchases to resell to its retail customers in the Northwest Division;
- e. Whether FPUC's proposed Time-of-Use tariffs include rates that provide accurate price signals to FPUC's retail customers as to the costs actually incurred by FPUC to provide service on a time-differentiated basis, or as to the actual costs of providing their electric service;

- f. Whether FPUC's proposed Interruptible Service tariffs include rates that accurately reflect the costs that FPUC incurs to provide service on an interruptible basis;
- g. Whether FPUC's proposed Interruptible Service tariffs include rates that accurately reflect the value that the one interruptible customer that FPUC intends to allow on its IS tariff will provide to FPUC and to FPUC's other customers by virtue of the customer's willingness to be interrupted at need;
- h. Whether FPUC's proposed IS rates provide appropriate cost signals to customers relative to the costs incurred by FPUC to provide service on an interruptible basis, and relative to the value that interruptible customers provide to FPUC and its general body of customers;
- i. Whether it is appropriate to implement FPUC's proposed TOU/IS tariffs and rates on a "pilot" or "experimental" basis;
- j. Whether FPUC's proposed subscription limits on the TOU/IS tariffs are appropriate;
- k. Whether FPUC's proposed TOU rates are designed to effectively promote energy conservation or efficiency;
- l. Whether FPUC's proposed TOU rates are designed to promote energy conservation or efficiency in a cost-effective manner;
- m. Whether FPUC's proposed IS rate schedule is designed to effectively promote energy conservation or efficiency;
- n. Whether FPUC's proposed IS rate schedule is designed to promote energy conservation or efficiency in a cost-effective manner;
- o. (Ultimate issue) Whether FPUC's proposed TOU rates should be approved; and
- p. (Ultimate issue) Whether FPUC's proposed IS rates should be approved.

The City reserves its rights to raise additional issues in accord with Commission procedures and procedural orders issued in this docket, as such may be indicated through discovery or otherwise.

STATEMENT OF ULTIMATE FACTS ALLEGED

27. The City of Marianna alleges the following ultimate facts that the City believes should result in the Commission denying FPUC's petition and disapproving FPUC's proposed TOU and IS rates.

- a. FPUC's TOU rates are not cost-based, and are therefore not fair, just, or reasonable.
- b. FPUC's TOU rates do not send appropriate price signals that reflect either the costs that FPUC incurs to provide service during on-peak and off-peak periods, or in the seasons of the year, and therefore are not fair, just, and reasonable.
- c. FPUC's IS rates are not cost-based and do not reflect the value provided by customers who are willing to be interrupted, and therefore are not fair, just, and reasonable.
- d. FPUC's IS rates accordingly do not send appropriate price signals to customers who actually take, or who might consider taking, service under FPUC's IS rates, and therefore are not fair, just, and reasonable.
- e. It is not appropriate to implement FPUC's TOU or IS rates on a pilot or experimental basis.
- f. The proposed subscription limits on FPUC's TOU and IS rates are not appropriate.
- g. FPUC's proposed TOU rates are not appropriately designed to effectively promote energy conservation or efficiency.
- h. FPUC's proposed TOU rates are not appropriately designed to promote energy conservation or efficiency in a cost-effective manner.
- i. FPUC's proposed IS rate schedule is not appropriately designed to effectively promote energy conservation or efficiency.
- j. FPUC's proposed IS rate schedule is not appropriately designed to promote energy conservation or efficiency in a cost-effective manner.
- k. FPUC's TOU rates should not be approved.
- l. FPUC's IS rates should not be approved.

STATUTES AND RULES THAT ENTITLE THE CITY TO RELIEF

28. The applicable statutes and rules that entitle the City of Marianna to the relief requested – that the Commission conduct a formal proceeding and that the Commission deny approval of FPUC's TOU and IS rates – include, but are not limited to, Sections 120.569, 120.57(1), 366.03, 366.04(1), 366.041, 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes.

The cited provisions of Chapter 120, Florida Statutes, relate to the conduct of formal proceedings involving disputed issues of material fact. The cited provisions of Chapter 366, Florida Statutes, articulate the Commission's jurisdiction over the rates and service of public utilities and require that all rates must be fair, just, reasonable, and not unduly discriminatory. The rates proposed by FPUC are not cost-based and do not reflect the value that customers will create by modifying their consumption, either by shifting their times of use or by being interrupted, and accordingly, the cited statutes warrant denial of FPUC's proposed TOU and IS rates.

CONCLUSION

The City of Marianna's substantial interests will be determined by the Commission's actions in this proceeding, and accordingly the City respectfully petitions the Commission to conduct a formal proceeding (hearing) for the purpose of receiving evidence on the rate proposals that are the subject of FPUC's petition herein and of the Tariff Order, i.e., Commission Order No. 11-0112-TRF-EL. The Commission has both the statutory jurisdiction and the substantive statutory mandate to grant the relief requested by the City in this Amended Petition, and the City is accordingly entitled to the relief requested. FPUC's Time-of-Use and Interruptible rates that are the subject of this docket are not cost-based and do not provide accurate price signals to customers, and accordingly, they are not fair, just, and reasonable rates. Accordingly, the Commission should grant the City's request for a formal proceeding and deny the continued implementation of those rates.

RELIEF REQUESTED

WHEREFORE, as explained in the foregoing Amended Petition for Formal Proceeding, the City of Marianna, Florida respectfully renews its requests that the Commission conduct a formal proceeding, including a full evidentiary hearing on the issues raised herein, and at the conclusion of that proceeding, to issue its order denying its approval to the continued implementation of FPUC's Time-of-Use and Interruptible rates that are the subject of this docket.

Respectfully submitted this 25th day of July, 2011.



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CERTIFICATE OF SERVICE

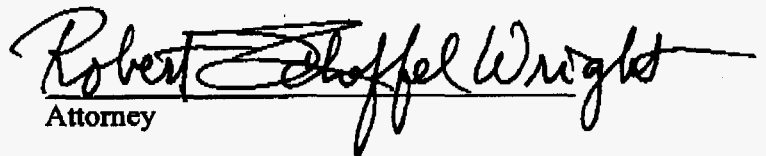
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery and U.S. Mail this 25th day of July, 2011, to the following:

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