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BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

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.

PROCEEDINGS: COMMISSION CONFERENCE AGENDA  
ITEM NO. 3

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

DATE: Tuesday, January 24, 2012

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: LINDA BOLES, RPR, CRR  
Official FPSC Reporter  
(850) 413-6734

DOCUMENT NUMBER-DATE  
00559 JAN 27 2012  
FLORIDA PUBLIC SERVICE COMMISSION  
FPSC-COMMISSION CLERK

## P R O C E E D I N G S

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3           **CHAIRMAN BRISÉ:** Now we are moving to Item 3,  
4 which is looking at Docket Number 100459-EI, and  
5 Ms. Bennett is going to tee this up for us.

6           **MS. BENNETT:** Good morning, Commissioners.  
7 Lisa Bennett for the General Counsel's office.

8           Item 3 involves FPUC's motion to dismiss  
9 Marianna's formal protest of the Commission's  
10 February 11th order approving FPUC's experimental time  
11 of use and interruptible service rates. The Commission  
12 previously dismissed Marianna's protest because the  
13 Commission found that it would -- that the City of  
14 Marianna did not demonstrate that it would suffer an  
15 injury in fact of sufficient immediacy to entitle it to  
16 an administrative hearing.

17           Issue 1 is a request for an oral argument.  
18 Both parties have requested an oral argument. Staff  
19 recommends that at the Commission's discretion it can  
20 hear oral argument. We recommend five, have recommended  
21 in the recommendation five minutes. The City of  
22 Marianna has requested ten minutes per side.

23           Issue 2 is Staff's recommendation to dismiss  
24 Marianna's protest. We believe this one should be  
25 dismissed with prejudice. This is the second time that

1 the City has come before the Commission.

2           **CHAIRMAN BRISEÉ:** Okay. We're going to go  
3 ahead and grant oral arguments at this time, and we're  
4 going to do five minutes per side. And we're going to  
5 follow the same path as last time, so we're going to ask  
6 Ms. Keating to go first.

7           **MS. KEATING:** Thank you, Commissioners. In  
8 the interest of time, FPUC agrees with your Staff's  
9 recommendation. If I may, I'd like to reserve the  
10 remainder of my time to respond to the City's arguments.

11           **CHAIRMAN BRISEÉ:** Thank you.

12           Mr. Wright.

13           **MR. WRIGHT:** Thank you, Mr. Chairman. Again,  
14 obviously the City disagrees with the Staff's  
15 recommendation and respectfully requests that you deny  
16 the recommendation, deny the motion to dismiss, and set  
17 this matter for a full evidentiary hearing on the  
18 numerous disputed issues of material fact identified in  
19 the City's petition and discussed further in our  
20 response to the motion to dismiss.

21           We disagree with the Staff's conclusion that  
22 the City lacks standing because the City is a  
23 substantial customer of FPUC with more than 110 accounts  
24 and one of the largest customers on FPUC's northwest  
25 division system. The City's interest, its substantial

1 interest in having fair, just, and reasonable rates will  
2 be directly determined and adversely affected by  
3 approval of FPUC's time of use and interruptible rates  
4 as filed because the City will be deprived of access to  
5 fair, just, and reasonable time of use and interruptible  
6 rates which are not fair, just, and reasonable because,  
7 as we have specifically alleged in our petition, they  
8 are not cost-based and are not appropriately designed to  
9 promote energy conservation or efficiency.

10 As a customer, the City is entitled to fair,  
11 just, and reasonable rates, but we'd be deprived of  
12 access to such rates, and FPUC is continuing to try to  
13 prevent us from even having a hearing on this. We want,  
14 all we want is a hearing in which FPUC will be forced to  
15 carry its burden of proving that its rate proposals are  
16 fair, just, and reasonable. There's no exception for  
17 experimental rates not being fair, just, and reasonable.  
18 366.03 applies to, applies to all rates. And its burden  
19 of proving that even if you're evaluating them under  
20 366.075, that they're appropriately, appropriately  
21 designed. Evaluating an experiment on the front end as  
22 to whether it's appropriately designed is fully  
23 appropriate, Commissioners.

24 The standard of review for a motion to dismiss  
25 is taking all facts pled in the petition as true. The

1 petition states its claim sufficient to proceed. We  
2 assert that we have alleged sufficient facts. We're an  
3 actual customer, we're taking service under one of the  
4 rates, we're eligible to take service under all but the  
5 residential time of use rates, and we're affected by the  
6 experiment as a non-participating customer. We allege  
7 that the rates are not cost-based and, therefore, not  
8 fair, just, and reasonable. We have alleged as a matter  
9 of disputed, a disputed issue of material fact that the  
10 purported experiment is not appropriately designed to  
11 achieve its goals.

12 To cut this short, at the bottom line,  
13 Commissioners, the notion that a customer taking service  
14 under a rate, eligible for rates, and otherwise affected  
15 by rates in this experimental case does not have  
16 standing to have a hearing where that customer  
17 specifically alleges that the rates are not cost-based  
18 and that they are not fair, just, and reasonable for  
19 that reason, and that the purported experiment is not  
20 appropriately designed to achieve the specific goal of  
21 Section 366.075, that they be designed to encourage  
22 energy conservation or to encourage energy efficiency is  
23 frankly unfathomable. Standing is standing; customers  
24 have standings to challenge rates.

25 **CHAIRMAN BRISÉ:** You have about a minute.

1           **MR. WRIGHT:** Thank you, sir.

2           Relative to the *Sanlando* case cited in the  
3 Staff's recommendation, if you substitute wrong rates,  
4 which is our assertion -- we assert the rates are wrong  
5 because they're not cost-based and therefore not fair,  
6 just, and reasonable -- if you substitute wrong rates  
7 for higher rates, as that phrase is used in the *Sanlando*  
8 case, it would be clear that we satisfy the, satisfy the  
9 standing requirements articulated there.

10           Commissioners, customers have standing to  
11 challenge rates, you know. And if, if you don't agree  
12 today, that's fine, and we will let the appellate court  
13 sort this out.

14           Thank you very much.

15           **CHAIRMAN BRISÉ:** Thank you. Thank you,  
16 Mr. Wright.

17           Ms. Keating.

18           **MS. KEATING:** Thank you, Commissioners.

19           Commissioners, the City has really raised no  
20 new arguments from the last time that you heard this  
21 discussion. The mere allegation that the time of use  
22 and interruptible service rates aren't fair, just, and  
23 reasonable, even if accepted as true, fails to identify  
24 any harm to the City, much less one of immediacy that  
25 would justify setting this matter for hearing.

1           The fact of the matter is, is this program has  
2 been offered as an experimental program. The City does  
3 not have to take service under this program. And the  
4 Commission has recognized time and again that the  
5 purpose of experimental programs is to test ideas in the  
6 field to see if they work, to see if they're  
7 cost-effective. That is how this program has come  
8 before you, and we'd ask that you dismiss the City's  
9 protest. Thank you.

10           **CHAIRMAN BRISÉ:** Thank you.

11           Commissioners, if there are questions,  
12 comments at this time.

13           Commissioner Balbis.

14           **COMMISSIONER BALBIS:** Thank you, Mr. Chairman.  
15 I just want to make a few comments, and if we're in a  
16 position to make a motion, would do so.

17           You know, I agree with Staff's recommendation,  
18 and I did not hear any new information that would cause  
19 me to change my decision that we made previously. This  
20 is, again, an experimental program, it's voluntary. So  
21 obviously those who do not choose to participate cannot  
22 be harmed by it. And that we even modified the program  
23 so that it expires after four years to provide further  
24 flexibility. You know, we encourage the City and the  
25 utility to work towards implementing this program. And

1 at the end of the period if there's something that might  
2 be better, encourage you to work with them to develop  
3 something that may work better.

4 But, again, this is an experimental program  
5 that I can't see where there would be any harm to  
6 someone who does not participate.

7 So with that, I move Staff's recommendation on  
8 all issues.

9 **CHAIRMAN BRISÉ:** Is there a second?

10 **COMMISSIONER EDGAR:** Second.

11 **COMMISSIONER GRAHAM:** Second.

12 **CHAIRMAN BRISÉ:** All right. We have two  
13 seconds. All in favor, say aye.

14 (Affirmative response.)

15 Any opposed?

16 (No response.)

17 Very good. This item is carried as described  
18 by Staff, as proposed by Staff.

19 With that, we are ready to adjourn. So at  
20 this time Commissioner Balbis moves that we adjourn.

21 (Agenda Conference adjourned at 9:57 a.m.)

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1 STATE OF FLORIDA )  
2 : CERTIFICATE OF REPORTER  
3 COUNTY OF LEON )

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I, LINDA BOLES, RPR, CRR, Official Commission Reporter, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 27<sup>th</sup> day of January, 2012.

Linda Boles  
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FPSC Official Commission Reporter  
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