

Marguerite McLean

110041-EI

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Friday, March 11, 2011 3:05 PM
To: Beth Keating; J.R. Kelly; Filings@psc.state.fl.us; Pauline Evans; Schef Wright
Subject: Electronic Filing - Docket 110041-EI
Attachments: 110041.Marianna.Obj2ConfClass.Mot2VacateOrder.3-11-11.pdf

a. Person responsible for this electronic filing:

Robert Scheffel Wright
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301
(850) 222-7206
swright@yvlaw.net

b. 110041-EI

In Re: Petition for approval of Amendment No. 1 to Generation Services Agreement with Gulf Power Company, by Florida Public Utilities Company.

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

d. There are a total of 13 pages.

e. The document attached for electronic filing is The City of Marianna's Objection to Request for Confidential Classification and Motion to Vacate Order as Premature.

(see attached file: 110041.Marianna.Obj2ConfClass.Mot2VacateOrder.3-11-11.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
Secretary to Schef Wright
Phone: 850-222-7206
FAX: 850-561-6834

3/11/2011

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Approval of Amendment No. 1 to)	DOCKET NO. 110041-EI
Generation Services Agreement with Gulf Power)	Filed: March 11, 2011
Company, by Florida Public Utilities Company.)	
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THE CITY OF MARIANNA'S OBJECTION TO REQUEST FOR CONFIDENTIAL CLASSIFICATION AND MOTION TO VACATE ORDER AS PREMATURE

The City of Marianna, Florida ("Marianna" or "City"), pursuant to Rules 25-22.006(3)(b) and 28-206.204(1), Florida Administrative Code ("F.A.C."), hereby (a) objects to the request for confidential classification filed by Florida Public Utilities Company ("FPUC") on February 25, 2011, and (b) respectfully moves the Commission, through the Prehearing Officer assigned to this docket, to vacate or withdraw Order No. PSC-11-0159-PCO-EI ("Order No. 11-0159") because that Order was issued before the time allowed by Rule 25-22.006(3)(b), F.A.C., for parties to object to confidentiality requests had expired. In summary, most of the information for which FPUC has sought confidential classification is already publicly available pricing information or percentage increases that are easily calculated from the publicly available information, and that which is not already publicly available is simply pricing information that is escalated from the publicly available information. Accordingly, the information is not subject to protection under either the Commission's rules or statutes. With respect to the City's Motion to Vacate, the City simply asks that the Prehearing Officer withdraw Order No. 11-0159 so that he can consider both FPUC's request and the City's timely filed objection before rendering a final decision on the request.

PRODEDURAL BACKGROUND

1. This docket was opened by FPUC's filing on January 26, 2011, of its petition for approval of Amendment No. 1 to its Generation Services Agreement with Gulf Power Company. Hereinafter, the existing Generation Services Agreement is referred to as the "PPA" and the

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proposed Amendment No. 1 is referred to as the "PPA Amendment." FPUC also sought confidential protection of certain information – specifically, the demand charges to be imposed under the PPA Amendment for the years 2018 and 2019 – by a request for confidential classification filed on January 26, 2011. That request was granted by Commission Order No. PSC-11-0122-PCO-EI, issued on February 22, 2011.

2. On February 11, 2011, the City petitioned to intervene in this docket. The City's intervention was granted by Commission Order No. PSC-11-0137-PCO-EI, issued on February 28, 2011.

3. On February 25, 2011, FPUC submitted its responses to the Staff's First Set of Data Requests and an accompanying request for confidential classification of certain information contained in those responses in a table titled, "Docket No. 110041-EI, Company's Responses to First Set of Data Requests, Attachment A – Response to Question 4c." The information for which confidential classification was sought is labeled as the "Capacity Rates" under the PPA, which covers the pricing through 2017, and under the PPA Amendment, which includes the pricing for 2018 and 2019.

4. By Order No. 11-0159, the Prehearing Officer granted confidential classification to the information as requested by FPUC. Rule 25-22.006(3)(b), F.A.C., provides that any party to a formal proceeding may file an objection to a request for confidential classification within 14 days of service of the copy or summary of the information. Thus, as an intervenor in this proceeding, the City has until March 11, 2011 to file its objection, and is hereby doing so.

OBJECTION TO CONFIDENTIAL CLASSIFICATION

5. The City of Marianna objects to FPUC's request because the substantial majority of the information for which FPUC seeks confidential classification is already publicly available, or readily calculated from the public information. Specifically, the pricing information – i.e., the

Capacity Rates – for the years through 2017 are already publicly available from the website of the Federal Energy Regulatory Commission ("FERC"). A copy of the information, which was obtained from the FERC's website by one of the City's consultants, is attached as Exhibit A to this Objection. The percentage increases from year to year, for which FPUC also seeks confidential classification, are obviously readily calculated from the rate values themselves.

6. Thus, FPUC's request for confidential classification of the pricing and percentage information for the period 2010 through 2017 must be denied because the subject information does not satisfy the specific requirement of Section 366.093(3), Florida Statutes, that such information "has not been disclosed unless disclosed pursuant to" valid legal compulsion. Since the information is contained in, and available to the public through, a publicly available website of the U.S. federal government, it does not satisfy this statutory requirement, and accordingly, FPUC's request must be denied.

7. With respect to the pricing information for 2018 and 2019, the City objects to FPUC's request because FPUC has indicated to the City's personnel that the prices for 2018 and 2019 are simply escalated from the 2017 prices, which is, of course, the most obvious assumption that any interested party would make regarding the extended-term pricing in any event. The 2018 and 2019 pricing is thus capable of being practically estimated from the publicly available 2010-2017 information and therefore, FPUC's request should be denied.

MOTION TO VACATE ORDER NO. 11-0159 AS PREMATURE

8. This Motion to Vacate is strictly procedural based on the timing of the issuance of Order No. 11-0159. This Motion is not a motion for reconsideration of the Order. The substance of the City's positions with respect to FPUC's confidentiality request is contained in the City's foregoing Objection.

9. As explained above, the City was granted intervention on February 28, 2011, three days after FPUC filed its request for confidential classification that is the subject of Order No. 11-0159. Since the City is now a party to this formal proceeding, pursuant to Rule 25-22.006(3)(b), F.A.C., the City has 14 days, i.e., until the close of business on March 11, 2011, to file its objection, and the City is thus timely filing that objection. Accordingly, the City respectfully believes that Order No. 11-0159 was issued prematurely and thus moves that the Prehearing Officer withdraw or vacate Order No. 11-0159 so that he can review FPUC's request in light of the City's objections and render a fully considered decision based on both pleadings.

10. The undersigned has consulted with counsel for FPUC and is authorized to represent that FPUC has no position regarding the motion at this time, but that FPUC may file an objection to the motion. The undersigned has also communicated with counsel for the Commission Staff and is authorized to represent that the Staff takes no position at this time on the motion.

CONCLUSION AND RELIEF REQUESTED

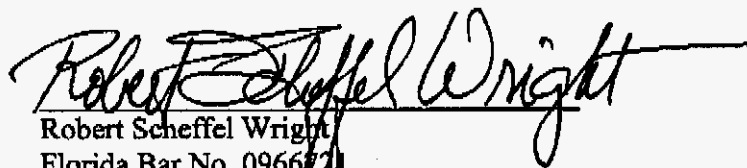
The City of Marianna objects to FPUC's request for confidential protection of the pricing information in the PPA and PPA Amendment. That request should be denied because the vast majority of the subject information is already publicly available or readily calculated from public information, and thus, that information does not meet the statutory requirement for protection. Additionally, the pricing for 2018 and 2019 can be readily and reasonably estimated from the publicly available 2010-2017 pricing information, and accordingly, FPUC's request for confidentiality of that information should also be denied.

Commission Order No. 11-0159 was issued before the 14-day period for objections had expired, and accordingly, the Prehearing Officer should withdraw that Order until he has a full opportunity to review FPUC's request and the City's objection filed herein and then render a fully

considered decision in light of both pleadings. The City's motion is strictly procedural, and based solely on the fact that the Order was issued before the City's time to file its objection had expired.

WHEREFORE, as explained in the foregoing, the City of Marianna, Florida respectfully moves the Commission, through the Prehearing Officer assigned to this docket, to vacate or withdraw Order No. PSC-11-0159-PCO-EI, on the basis that the Order was issued prematurely. The City also objects to FPUC's request for confidential classification that is the subject of Order No. 11-0159 and accordingly asks the Commission to issue its order denying FPUC's request.

Respectfully submitted this 11th day of March, 2011.



Robert Scheffel Wright
Florida Bar No. 0966721
swright@yvlaw.net

John T. LaVia, III
Florida Bar No. 0853666
jlavia@yvlaw.net
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
(850) 222-7206 Telephone
(850) 561-6834 Facsimile

Frank E. Bondurant, City Attorney
Florida Bar No. 0520330
fbondurant@embarqmail.com
Bondurant and Fuqua, P.A.
4450 Lafayette Street (ZIP 32446)
Post Office Box 1508
Marianna, Florida 32447
(850) 526-2236 Telephone
(850) 526-5947 Facsimile

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 11th day of March, 2011, to the following:

Pauline Evans, 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

EXHIBIT A

PRINTOUT OF GULF-FPUC CAPACITY RATES FROM FERC WEBSITE

peaking	type_name	name	quantity	units_for_contract	rate	rate_minimum	rate_maximum
FP	MB	ENERGY	0	KWH	0	0	0
FP	MB	CAPACITY	0	KW-MO	7.8	0	0
FP	MB	CAPACITY	0	KW-MO	8.35	0	0
FP	MB	CAPACITY	0	KW-MO	8.45	0	0
FP	MB	CAPACITY	0	KW-MO	8.7	0	0
FP	MB	CAPACITY	0	KW-MO	9	0	0
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FP	MB	CAPACITY	0	KW-MO	11.7	0	0

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