BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for declaratory statement concerning rights under Rule 25-6.115, F.A.C. by Town of Palm Beach, Town of Jupiter Island, and Town of Jupiter Inlet Colony.	DOCKET NO. 080035-EU ORDER NO. PSC-08-0299-DS-EU ISSUED: May 8, 2008

The following Commissioners participated in the disposition of this matter:

MATTHEW M. CARTER II, Chairman
LISA POLAK EDGAR
KATRINA J. McMURRIAN
NANCY ARGENZIANO
NATHAN A. SKOP

ORDER GRANTING PETITION FOR DECLARATORY STATEMENT

BY THE COMMISSION:

Background

On January 10, 2008, the towns of Palm Beach, Jupiter Island, and Jupiter Inlet Colony (towns) filed a petition for declaratory statement pursuant to Section 120.565, Florida Statutes (F.S.), and Chapter 28-105, Florida Administrative Code. Also on January 10, 2008, the towns filed a Request for Oral Argument and Alternative Motion for Leave to Address the Commission.

The towns note that they are actively planning to convert their existing overhead (OH) electrical distribution facilities to underground (UG). They petition for resolution of doubts concerning their rights under, inter alia, subsections (3) and (11) of Rule 25-6.115, F.A.C. Rule 25-6.115(3) states, in pertinent part:

> Nothing in the tariff shall [prevent] the applicant from constructing and installing all or a portion of the underground distribution facilities provided:
>
> . . . (c) Such agreement is not expected to cause the general body of ratepayers to incur additional costs.

Rule 25-6.115(11) states, in pertinent part:

> For purposes of computing the charges [to be paid to the utility for the conversion to underground facilities]
>
> . . . (b) If the applicant chooses to construct or install all or a part of the requested facilities, all utility costs, including overhead assignments, avoided by the utility due to the applicant assuming responsibility for construction shall be excluded from the costs charged to the customer, or if the full cost has already

been paid, credited to the customer. At no time will the costs to the customer be less than zero.

Though the background facts of the petition generally concern the conversion of overhead facilities to underground,[1] the controversy centers on the credits due or not due the towns for choosing to perform the construction work themselves. These credits can be claimed as offsets to the contributions in aid of construction (CIAC) owed by the towns to the utility for the conversion of facilities from overhead to underground. The towns note that the Governmental Adjustment Factor (GAF), which provides a discount on the CIAC owed to the utility by governmental entities for their undergrounding projects, is currently scheduled to expire October 4, 2008. This adds to the towns' need for an expedited resolution of the CIAC calculation matters raised by the Petition.

On February 15, 2008, the utility involved in the towns' underground conversion projects, Florida Power & Light Company (FPL), filed a Petition to Intervene and a Response to Petition for Declaratory Statement concerning Rule 25-6.115, F.A.C.

On April 3, 2008, we issued Order No. PSC-08-0218-DS-EU, granting FPL's Petition to Intervene, disposing of three points sought by petitioners for a declaratory statement and deferring Point 4. Negotiations between the parties and discussions with our staff concerning Point 4 have resulted in the filing on April 18, 2008 of an Agreed Motion to Amend Request for Declaratory Statement containing the newly-drafted language for Point 4, which is addressed herein. We have jurisdiction pursuant to Section 120.565, F.S.

Discussion

The newly drafted language at issue is a follows:

> The applicant shall be entitled to payment for, and the utility may include in rate base, credits for any applicable adjustments (credits) to the CIAC calculation for the cost of the hypothetical overhead construction, and the net present value of the operational cost differential related to the underground construction as defined in Rule 25-6.115, F.A.C. At no time, however, will FPL's payments to an applicant be greater than the costs FPL would have expected to incur had FPL performed all of the construction itself.

As to the original version of Point 4, discussed at the March 18, 2008 Agenda Conference,[2] FPL objected that:

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[1] The Petition provides a lengthy overview of the undergrounding conversion process which, while useful as context for the issues raised, is non-controversial and need not be restated here.

[2] The following was the original version of Point 4: "Where a town performs all construction and installation of the underground facilities itself, FPL will, upon transfer of the facilities to FPL, pay the town an amount equal to the Overhead Credit, plus the GAF Waiver Credit, plus the Other O&M Differential Cost Credit, less material costs and any engineering service costs directly incurred with work on the project over and above the work performed in preparation of the Binding Cost Estimate."

> If the towns are contending that Rule 25-6.115 should be interpreted to require net payments be made to an applicant in the event that the itemized credits exceed the itemized costs, then that contention is directly contrary to Rule 25-6.115(11)(b), which provides that "[a]t no time will the costs to the customer be less than zero."

FPL does not object to the redrafted language. In this docket, we reviewed the language in Rule 25-6.115, F.A.C., and the intent of the sentence, "at no time will the cost to the customer be less than zero." We believe the intent of the quoted sentence was to protect the general body of ratepayers from having to bear the costs of undergrounding projects which exceeded the benefits they received. We believe that the language in newly drafted Point 4 presented above, which states that at no time will FPL's payments to an applicant be greater than the costs FPL would have expected to incur had FPL performed all of the construction itself, appropriately captures and represents the safeguard intended by us to be provided by the rule. Since the redrafted language is thus consistent with the rule, we grant the Petition for Declaratory Statement as to redrafted Point 4. We further note that the redrafted language listing the components of the CIAC calculation has resolved FPL's and our concerns as to that issue as well. Compare, n. 2.

Conclusion

Based on the above, we grant the Petition for Declaratory Statement as to newly drafted Point 4 as set out above.

In view of the foregoing, it is

ORDERED that the petition for declaratory statement by the Town of Palm Beach, Town of Jupiter Island, and Town of Jupiter Inlet Colony is granted as to redrafted Point 4 as set out in the body of this Order. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 8th day of May, 2008.

ANN COLE
Commission Clerk

(SEAL)

RCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Office of Commission Clerk, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.