

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to modify tariff sheet No. 4.010 regarding underground commercial and industrial services by Progress Energy Florida, Inc.	DOCKET NO. 080200-EI ORDER NO. PSC-09-0265-TRF-EI ISSUED: April 27, 2009
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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 APPROVING PROPOSED TARIFF

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code (F.A.C.).

BACKGROUND

On April 4, 2008, Progress Energy Florida, Inc. (PEF or Utility) filed a proposed revision to Tariff Sheet 4.010, concerning the definition of the point of delivery, or the demarcation point between customer and utility facilities. The change clarifies that, for nonresidential customers, the Utility will not install facilities beyond the point of delivery which is defined as the pad-mounted transformer serving the customer. The filing was predicated on discussions with Commission staff concerning two customer inquiries.

On December 11, 2007, we received an inquiry from the City of St. Petersburg concerning PEF's refusal to replace a commercial underground secondary electric line that PEF had installed in Maximo Park, a park owned by the City of St. Petersburg.¹ The Utility patched the line to maintain service to the customer but informed the customer that it was responsible for replacement of the line, as PEF no longer installed such facilities.

¹ Consumer Request No. 764779C, filed by David Reed on behalf of the City of St. Petersburg, filed January 14, 2008.

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FPSC-COMMISSION CLERK

On April 11, 2008, we received a complaint from Mr. Mike Handley,² contesting PEF's policy to no longer replace existing nonresidential underground service facilities. Mr. Handley represented that existing customers were not notified of the policy change and were then faced with significant unexpected costs to replace the lines themselves when their service failed. Mr. Handley stated he knew of four customers who had spent large sums to upgrade and repair underground electric services as a result of this policy change, but the complaint did not provide the customer names or any details of the situations.

Progress indicated that it ceased installing new underground electric lines for commercial and industrial customers in 1994. Commercial and Industrial (C/I) customers wishing to receive underground electric service subsequent to 1994 were required to install their own service lines and facilities, subject to PEF approval. This change, however, was made through alterations to PEF's Requirements for Electric Service and Meter Installations Handbook (Handbook), not through a tariff revision. The Handbook is a supplemental appendix to the Utility's tariff that is incorporated by reference as part of the tariff, but which is not formally reviewed or approved by the Commission.

On July 13, 2007, PEF again revised its Requirements for Handbook which added language in Section III, Part D3, subsection (d), stating that, in addition to not installing new underground C/I services, existing commercial and industrial underground electric services would no longer be replaced by the Utility. PEF stated that this change was made to bring clarity to its previous statement that the Utility would not install new commercial and industrial underground electric service. Again, no change was made in the Utility's filed tariffs.

On April 4, 2008, PEF agreed to file this policy as part of its underground tariffs. Third Revised Tariff Sheet 4.010 brings the Utility's tariffed requirements for installation of commercial underground services into conformity with the earlier changes made to PEF's Handbook.

On June 4, 2008, we issued Order No. PSC-08-0375-PCO-EI, suspending the proposed change to PEF's Tariff Sheet 4.010. On November 1, 2008, PEF waived the 8-month time requirement for approval of tariffs in Section 366.06(3), Florida Statutes (F.S.). That same statute requires that we take final action on a tariff filing within 12 months, which expired February 4, 2009. By correspondence dated March 20, 2009, PEF agreed to waive the 12-month date.

There are two issues associated with PEF's policy change for underground C/I installations: (1) is PEF's policy to not install nonresidential services appropriate, and (2) given that the policy was not formally approved by this Commission, what relief, if any, is appropriate for customers affected by the new requirement to install or replace existing services upon failure.

² Consumer Request No. 774800C, filed by Mike Handley, on behalf of himself, Charles Spitzer, and Joe Bolesina, filed April 11, 2008. Mr. Handley represented himself as a consultant, not a customer affected by the change in policy. He alleged that he knew of customers affected but did not provide any customer-specific information that staff could evaluate.

The first addresses the appropriateness of the policy. The second deals with treatment of customers affected by the change prior to our formal approval.

We have jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and, 366.06, F.S.

DISCUSSION AND DECISION

Currently, Tariff Sheet 4.010 defines the point of delivery as “[t]he point of attachment where the Utility’s service drop is connected to the Customer’s service entrance.” This definition has been in place since 1962. The proposed tariff adds the following language: “[f]or underground service other than residential, the Customer’s service entrance shall include conductors and raceway to a point designated by the Utility, generally the pad-mounted transformer closest to the building.” This brings the Utility’s tariffs into conformance with the 1994 change to its Handbook regarding underground C/I services.

The proposed tariff change makes C/I customers responsible for all conduit, facilities, and hookup costs beyond the PEF-designated point of delivery, usually the pad-mounted transformer. The pad-mounted transformer is the point where the lines come down from PEF’s overhead transmission and distribution system and meet the underground conduit coming out of the ground from the customer’s location. All current C/I customers, even those whose underground service beyond the designated point of delivery was installed and owned by the Utility, will be responsible for the full replacement cost of their underground conduit and equipment when the conduit or equipment fails or wears out. PEF will continue to maintain the lines it installed until maintenance is no longer feasible and replacement is the only viable option.

Prior to this filing, PEF’s tariff did not specifically address the demarcation point for underground service for commercial customers. Prior to 1994, PEF’s Handbook allowed the designated Point of delivery to be in a company-owned distribution box or in a pad-mounted transformer. In practice, PEF often ended its responsibility at the transformer, but could and did move the point of delivery for specific customers beyond the pad-mounted transformer. In 1994, PEF modified the following language in its Handbook to state that “The Utility will no longer run underground services.”³ The effect of this modification was to define the point of delivery as the pad-mounted transformer, and cease installing any facilities such as underground conduit and equipment on the customer’s side of the transformer.

PEF changed the Handbook in 1994 in response to problems arising from the traditional ability of C/I customers to designate their point of delivery. PEF states that, over time, the Utility experienced problems with utility-owned conduit and equipment located beyond its pad-mounted transformers, most notably, frequent requests for reconfiguration of underground services, reliability issues from cut-ins due to construction projects on the customer’s property, and determination of fault for outages. These requests required increased customer-specific

³ 1994 Requirements for Electric Service and Meter Installations Handbook, Section III, Part D3, subsection (d).

maintenance costs which resulted in higher overall maintenance costs which were then passed on to all ratepayers. PEF determined that it was better, from a reliability and cost perspective for all customers, for the Utility to have a standardized connection policy by fixing the point of delivery at the pad-mounted transformer.

Based on responses from the other three major investor owned utilities, PEF's decision to require C/I customers pay for underground facilities beyond the transformer appears similar to the policies of the other utilities. While Florida Power & Light Company and Gulf Power Company do install some facilities beyond the transformer, both utilities limit the size of customer for which they will install any underground conduit and equipment beyond the point of delivery. Tampa Electric Company does not install facilities beyond the point of delivery for reasons similar to those of PEF.

The proposed tariff change strengthens the definition for the point of delivery and is appropriate from both a cost and reliability standpoint. PEF's maintenance and design responsibility now stops at a clearly defined point of delivery, the pad-mounted transformer, and transfers the responsibility for underground service conduit and equipment for C/I customers on the customer's property to the individual customers. This reduces maintenance costs to all customers by reducing the time spent repairing or reconfiguring facilities on the customer's side of the transformer, where such costs were incurred solely to the benefit the specific customer. Customers continue to have maximum flexibility to design and configure their connection as they see fit, subject to the standards of PEF without the need to coordinate with the Utility on construction or debate the cause or responsibility for outages on the customer's side of the delivery point. Therefore, we find it appropriate to approve the proposed tariff.

The Handbook is a supplemental volume that contains technical definitions and engineering requirements for residential and commercial customers wishing to interconnect with the Utility's distribution system. It is often provided to contractors and developers and is available on the Utility's website. The Handbook is incorporated by reference in the Utility's tariffs, but, unlike the regular tariff sheets, the Handbook is not approved or reviewed. When PEF changed the responsibility for replacement for underground conduit and facilities by C/I customers in 1994, it did so by changing the language in the Handbook.

Rule 25-6.033(2)(a)(9), F.A.C., states that rules covering customers' construction requirements must be filed with the Commission. PEF's tariff does contain language on the definition of point of delivery, as required. That general language was then clarified in the Handbook. In most instances, the Handbook addresses specific construction standards required by governmental entities or generally accepted construction practices, which we would have little reason to dispute. While a formal tariff change may have been preferred, there is a legitimate question about whether the failure to include the more explicit policy in the tariff as well as in the Handbook rises to the level of a violation of Rule 25-6.033, F.A.C.

As noted above, this tariff modification was a direct result of our investigation of two customer inquiries. The first was filed by Mr. David Reed, on behalf of the City of St. Petersburg. Underground facilities serving a city park failed and PEF informed the City that PEF no longer installed or replaced commercial underground services. Additional information was

requested from PEF on the complaint but a decision or recommendation was never rendered. On May 13, 2008, the City of St. Petersburg withdrew its complaint and the investigation was closed.

Mr. Handley's complaint took a different approach. He does not allege that he is directly affected by the policy change, but represents that he knows of customers who have been affected. He begins by stating that the change had been discussed in 2003 by a committee of utility and non-utility members selected by PEF to review the Handbook as a whole. Mr. Handley and his two co-complainants were members of this review committee. According to Mr. Handley, the decision to cease installing or replacing C/I underground services was discussed and rejected by the committee, yet PEF included the provision.

Mr. Handley then asserts that the customers with PEF-installed facilities became responsible for the underground service when PEF adopted the policy not to replace existing services. This, according to Mr. Handley, places the customer immediately in violation of the National Electric Code (NEC) because the line built by PEF was built to the National Electrical Safety Code (NESC) which has less stringent requirements, while customer-owned facilities must meet the NEC. Second, when the line fails the customer faces significant unanticipated costs, because PEF did not notify customers of the change in policy.

With respect to the rejection of the concept by the review committee, the Handbook on page 1 describes the process for review. That statement notes that "changes were made only after a subject had been considered from all points of view." Clearly, PEF considered the review committee's suggestions as helpful but not dispositive of its policy. Thus, the rejection of the committee's recommendation does not rise to a rule violation or the Utility's tariffs.

Mr. Handley's statement that the customer is in immediate jeopardy of violation of the NEC and local codes as of the date the policy changed seems to be misplaced as well. To the extent possible, PEF will continue to maintain any C/I service it installed until the service must be replaced, so there is no immediate transfer of responsibility to the customer due to the change in the Handbook. PEF stated that, as a practical matter, there is little maintenance that can be done on an underground line, other than replacement. If a service installed by PEF fails, PEF will make a temporary connection, if possible, until the customer can repair the underground service, so that the customer can maintain service pending replacement of the underground line. Although it is true that the service installed by the customer will need to be constructed to NEC standards, it is difficult to quantify what that cost difference would be, compared to the cost to PEF under the NESC. PEF estimates that its costs to install underground services range from approximately \$1,000 to \$2,500. Mr. Handley provided no supporting documentation for the \$30,000 to \$50,000 estimates cited in his complaint.

It should be noted that, in the fifteen years since PEF changed its policy on C/I underground facilities, we have not received any complaints regarding this matter until we received the complaints filed by the City of St. Petersburg and Mr. Handley. The City of St. Petersburg has reached a settlement with PEF and has withdrawn its complaint. Mr. Handley's concerns have been discussed above.

It may have been preferable for PEF to formally amend its tariff to reflect this change. However, PEF's existing tariff language does address the point of delivery as required by rule. It was not unreasonable for PEF to believe that the Handbook change was sufficient to implement what it saw as a construction practice not specifically addressed in the tariff. As a result of the prior modifications to the PEF Requirements for Electric Service and Meter Installations Handbook, there is no basis to grant the relief. All current C/I customers, even those whose underground service beyond the designated point of delivery was installed and owned by the Utility, will be responsible for the full replacement cost of their underground conduit and equipment when the conduit or equipment fails or wears out. PEF will continue to maintain the lines it previously installed until maintenance, in PEF's sole discretion, is no longer feasible and replacement is the only viable option.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Progress Energy Florida, Inc.'s proposed revision to Tariff Sheet No. 4.010, is hereby approved as set forth herein. It is further

ORDERED that all current Commercial and Industrial customers of the Progress Energy Florida, Inc, shall be responsible for the full replacement cost of their underground conduit and equipment as set forth herein. It is further

ORDERED that the tariff shall become effective on March 17, 2009. It is further

ORDERED that if no protest is received, a consummating order shall be issued and this docket shall be administratively closed. If a protest is filed within 21 days of the issuance of the order, this tariff shall remain in effect, with any revenues held subject to refund, pending resolution of the protest.

By ORDER of the Florida Public Service Commission this 27th day of April, 2009.



ANN COLE
Commission Clerk

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NOTICE OF FURTHER PROCEEDINGS

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The Commission's decision on this tariff is interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action files a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on May 18, 2009.

In the absence of such a petition, this Order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.