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ORIGINAL

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Thursday, February 15, 2007 9:54 AM
To: John T. Butler; Natalie Smith; Patrick Bryan; R. Wade Litchfield; Charles Beck; Patricia A. Christensen; Joseph A. McGlothlin; Harold Mclean; Filings@psc.state.fl.us; Rosanne Gervasi; Schef Wright
Subject: Electronic Filing - Docket 060150-EI
Attachments: PetitionToIntervene.060150.2-15-07.doc

a. Person responsible for this electronic filing:

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b. Docket No. 060150-EI

In Re: Petition for approval of revisions to contributions-in-aid-of-construction definition in Section 12.1 of First Revised Tariff Sheet No. 6.300, by Florida Power & Light Company.

c. Document being filed on behalf of the Municipal Underground Utilities Consortium.

d. There are a total of 12 pages.

e. The document attached for electronic filing is the Petition to Intervene of the Municipal Underground Utilities Consortium.

(see attached file: PetitionToIntervene.060150.2-15-07.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
 Secretary to Jay LaVia
 Phone: 850-222-7206
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DOCUMENT NUMBER-DATE
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 FPSC-COMMISSION CLERK

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of)	
Revisions to Contribution-in-Aid-of)	Docket No: 060150-EI
Construction Definition in Section)	
12.1 of First Revised Tariff Sheet)	Filed: February 15, 2007
No. 6.300, by Florida Power & Light)	
Company)	
)	

PETITION TO INTERVENE OF
THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM

The Municipal Underground Utilities Consortium (the "MUUC"), pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039, 28-106.205, and 28-106.201, Florida Administrative Code ("F.A.C."), and by and through its undersigned counsel, hereby petitions the Commission for leave to intervene in the above-styled tariff amendment docket. The MUUC is comprised of approximately 30 political subdivisions of the state of Florida (i.e., Florida cities and towns), the majority of which are retail customers of Florida Power & Light Company ("FPL").

In summary, the MUUC's members have ongoing interests in converting the existing overhead ("OH") electric distribution lines in their jurisdictions to underground ("UG") service, a transaction that is governed extensively by the tariff sheets that FPL proposes to amend in this docket. The majority of the MUUC's members would qualify as "Local Government Applicants" within the scope of FPL's proposed tariffs, and thus the interests of the MUUC's members who are FPL customers will be directly affected by the Commission's decisions regarding the proposed tariff amendments. Accordingly, the MUUC is entitled to intervene in this docket to protect its members' interests.

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01529 FEB 15 5
FPSC-COMMISSION CLERK

In further support of its Petition to Intervene, the MUUC states as follows.

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

Municipal Underground Utility Consortium
Attention: Thomas G. Bradford, Deputy Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33401
Telephone (561) 838-5410
Telecopier (561) 838-5411.

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
(850) 222-7206 Telephone
(850) 561-6834 Facsimile
E-Mails - swright@yvlaw.net and jlavia@yvlaw.net

with a courtesy copy to

Thomas G. Bradford, Deputy Town Manager
Town of Palm Beach
360 South County Road
Palm Beach, Florida 33401
Telephone (561) 838-5410
Telecopier (561) 838-5411
E-Mail - Tbradford@TownofPalmBeach.com.

3. The agency affected by this Petition to Intervene is:

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

4. The MUUC is a consortium of cities and towns that was created by that certain "Interlocal Agreement to Promote

Undergrounding of Utility Facilities and Related Implementation Activities" dated June 2006 (the "Interlocal Agreement"). In pertinent part, the Interlocal Agreement provides:

The purpose of this Agreement is to provide a means, pursuant to the provisions of Chapter 163, Florida Statutes, for the Local Governments who are Parties to this Agreement to mutually promote the installation of underground electric and other utility and utility-type facilities, in the public interest; to mutually promote the conversion of existing overhead electric and other utility and utility-type facilities to underground facilities, in the public interest; to promote and ensure, to the maximum extent feasible and practicable, that underground installations and conversions are paid for through appropriate, fair, just, equitable, and reasonable combinations of utility funding and funding by entities, such as the Local Governments, that apply for the installation and conversion of underground facilities; and to mutually participate in and support activities in furtherance of these and related efforts.

The Interlocal Agreement specifically contemplates the MUUC

[p]articipating in any relevant proceedings before any governmental agency having jurisdiction, including, without limitation, rulemaking or other proceedings before the Florida Public Service Commission, legislative activities before the Florida Legislature or before any other legislative or quasi-legislative body in Florida having relevant jurisdiction, and any other relevant proceedings and activities before any court, tribunal, agency, executive, or legislative body having jurisdiction over the subject matter of undergrounding utility and utility-type facilities in Florida.

5. The MUUC's members own and operate numerous municipal facilities and utility equipment. The substantial majority of the MUUC's members purchase retail electric service directly from FPL. A substantial number of the MUUC's members are considering underground utility projects, and accordingly, these members would be Local Government Applicants within the scope of FPL's proposed

tariffs. Some of the MUUC's members have undertaken UG conversion projects since April 4, 2006, and these members would accordingly be entitled to credits for their undergrounding projects consistent with Commission Order No. 06-0339-PCO-EI.

6. Statement of Affected Interests. In this docket, the Commission will, at least initially, decide whether to approve FPL's requested amendments to its tariffs; the Commission will also determine certain values used in calculating CIACs applicable for OH-to-UG conversion projects, eligibility criteria for certain credits, and other matters. This tariff sets forth the formula by which contributions in aid of construction ("CIACs") for conversion of OH to UG facilities are calculated. FPL's proposed amendment will, if approved, provide for a credit of twenty-five percent (25%) of the otherwise applicable CIAC to be granted by FPL to Local Government Applicants for OH-to-UG conversions "upon mutual agreement of the local government and the utility" and subject to the condition that all existing OH facilities be included in the requested conversion project. The proposed credit is intended to recognize only the estimated avoided storm restoration costs associated with tropical storms and hurricanes, i.e., restoration costs that FPL projects it would avoid by virtue of its distribution facilities having been converted to UG facilities. Since the substantial majority of the MUUC's members are local governments who are considering UG conversion projects, their substantial interests will be directly affected by the Commission's actions in this docket.

7. Standing to Intervene. The MUUC's substantial interests

are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Here, a substantial number of the MUUC's members are directly subject to FPL's proposed tariffs. Moreover, the MUUC's members have ongoing interests in converting the existing OH lines in their respective jurisdictions to UG service, a transaction that is governed in part by the subject tariff. Thus, the interests that the MUUC seeks to protect are of sufficient immediacy to warrant intervention, and the MUUC's interests in having the Commission determine the fair, reasonable, equitable, and appropriate UG CIACs are clearly within the scope of interests that this proceeding is designed to protect.

8. Associational Standing. Under Florida law, to establish standing as an association representing its members' substantial interests, an association such as the MUUC must demonstrate three things:

- a. that a substantial number of its members, although not necessarily a majority, are substantially affected by the agency's decisions;

- b. that the intervention by the association is within the association's general scope of interest and activity; and
- c. that the relief requested is of a type appropriate for an association to obtain on behalf of its members.

Florida Home Builders Ass'n v. Dep't of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982). The MUUC satisfies all of these "associational standing" requirements. A substantial majority of the MUUC's members are local governments in FPL's service area and receive retail electric service from FPL. The MUUC exists to represent its members' interests in a number of venues, including the Florida Public Service Commission: indeed, the Interlocal Agreement creating the MUUC specifically contemplates the MUUC's participation in a proceeding such as this. Finally, the relief requested--intervention and lower UG CIACs than proposed by FPL--is across-the-board relief that will apply to all of the MUUC's members in the same way; therefore, the requested relief is of the type that is appropriate for an association to obtain on behalf of its members.

9. Disputed Issues of Material Fact. When FPL initiated this docket in February 2006, the proposed credit was essentially the only issue posed. In the intervening year, however, the Commission has adopted extensive rules that govern the calculation of UG CIACs and certain of the cost values to be used in those calculations. The Commission's new rules became effective on February 2, 2007. In September 2006, FPL, anticipating the

Commission's rule amendments, filed an amended petition and further proposed tariff amendments, subject to the anticipated effectiveness of the Commission's new Undergrounding and Infrastructure Hardening rules. FPL's September proposal includes the formula set forth in the rules, as well as the 25% CIAC credit.

Also in the intervening year, the MUUC has funded a study of the cost-effectiveness of OH-to-UG conversions, Cost-Effectiveness of Undergrounding Electric Distribution Facilities in Florida, issued in November 2006 and prepared for the MUUC by PowerServices, Inc., an engineering consulting firm whose principals have extensive experience with underground conversion projects. This study was delivered electronically to FPL and the Commission Staff on November 6, 2006, and filed in this docket on November 13 by the Town of Palm Beach and the Town of Jupiter Island, two of the MUUC's members who were previously granted intervention in this docket. As might be expected with complicated and interrelated tariff provisions that address numerous costs and benefits associated with undergrounding, the MUUC and FPL are not in complete agreement on all of FPL's proposed tariff provisions. The MUUC does support the proposed 25% credit value for the estimated avoided storm restoration cost component of FPL's CIAC calculation, and the MUUC also supports (subject to normal prudence criteria) FPL's request that the Commission recognize the additional investment that would be made by FPL in UG facilities as new plant in service. However, as relates to the total CIAC calculation, the MUUC believes that

greater credits than FPL's proposed 25% credit - which is intended to address only estimated avoided storm restoration costs associated with tropical storms and hurricanes - are warranted. Additionally, the MUUC has concerns with several tariff implementation issues, including the eligibility criteria set forth in FPL's proposed "Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver" on proposed Revised Sheet No. 9.725. The MUUC and FPL have begun and are continuing to negotiate in good faith toward resolution of these and other issues in efforts (a) to resolve as many issues as possible as early as possible, and (b) to clearly define any remaining areas of disagreement.

Pending the outcome of these negotiations, the MUUC identifies the following as potential issues of material fact that will be decided in this proceeding. The MUUC believes that those items marked with an asterisk (*) are not in dispute.

- ISSUE 1:** Is the 25% GAF Waiver Credit proposed by FPL fair, just, and reasonable?*
- ISSUE 2:** Will FPL's proposed incentive provide an appropriate incentive to municipalities to undertake OH-to-UG conversion projects?
- ISSUE 3:** Should FPL be allowed to include the amount that it pays for new UG facilities in its plant in service accounts?*
- ISSUE 4:** Are the eligibility criteria set forth in FPL's proposed tariff fair, just, reasonable, and appropriate?
- ISSUE 5:** What are the appropriate costs and benefits to be considered and reflected in the calculation of OH-to-UG conversion CIACs?
- ISSUE 6:** What is the appropriate level of credit to be applied against in calculating OH-to-UG conversion CIACs?

ISSUE 7: How should the CIACs for OH-to-UG conversions be calculated when municipalities undertake OH-to-UG conversion projects themselves (either with municipal employees or with an FPL-approved contractor), as is their right pursuant to Rule 25-6.115(3), F.A.C., and FPL's Tariff Section 12.2.11 on First Revised Sheet No. 6.330?

ISSUE 8: Is FPL's proposed City/County Right-of-Way Agreement for Underground Conversions fair, just, reasonable, and appropriate?

Since, as noted above, the MUUC and FPL are continuing to discuss issues, the MUUC is unable to state at this time what all potential disputed issues of material fact may be. Accordingly, the MUUC reserves all rights to raise additional issues in accordance with the Commission's rules and any Order Establishing Procedure issued in this case.

10. Statement of Ultimate Facts Alleged. The MUUC alleges the following ultimate facts entitling it to the relief requested herein.

- a. A substantial majority of the MUUC's members are retail customers of FPL.
- b. All of the MUUC's members are local governments located within FPL's service area, and accordingly, the majority of the MUUC's members are or may be "Local Government Applicants" within the meaning of FPL's UG CIAC tariffs.
- c. FPL's proposed 25% credit is a reasonable and appropriate value to be used to reflect average estimated avoided restoration costs associated with tropical storms and hurricanes in calculating CIACs for OH-to-UG conversions on FPL's system.
- d. Additional credits that would reduce the otherwise applicable CIACs for OH-to-UG conversions are fair, just, reasonable, and appropriate, and such additional credits will provide additional incentives to local governments to undertake UG conversion projects.
- e. Certain provisions of FPL's proposed City/County Right-of-Way

Agreement for Underground Conversions are not fair, just, and reasonable.

11. Statutes and Rules That Entitle the MUUC to the Relief Requested. The applicable statutes and rules that entitle the MUUC to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.03, 366.04(1), 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes, and Rules 25-6.115 and 25-22.039, Florida Administrative Code, and Chapter 28-106, F.A.C.

12. Statement Explaining How the Facts Alleged By the MUUC Relate to the Above-Cited Rules and Statutes In Compliance With Section 120.54(5)(b)4.f, Florida Statutes. Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. Since a substantial number of the MUUC's members are municipal governments that are retail customers of FPL and actual or potential Local Government Applicants subject to FPL's tariffs relating to OH-to-UG conversions, the MUUC is entitled to intervene herein. The above-cited sections of Chapter 366, Florida Statutes, relate to the Commission's jurisdiction over FPL's rates and service, and the Commission's statutory mandate to ensure that FPL's rates - here, FPL's UG CIACs - are fair, just, and reasonable. The facts alleged here by the MUUC demonstrate (a) that the Commission's decisions herein will have a significant impact on the implementation of FPL's OH-to-UG CIACs and thus on the MUUC's members, (b) that a substantial number of the MUUC's members are or will be affected by the Commission's determinations in this docket, and (c) accordingly, that these statutes provide

the basis for the relief requested by the MUUC herein.

CONCLUSION AND RELIEF REQUESTED

A substantial number of the Municipal Underground Utilities Consortium's members are customers of FPL and local governments subject to FPL's existing and proposed OH-to-UG CIAC tariffs. The MUUC is entitled to intervene in this docket, and to seek relief in the form of OH-to-UG CIACs that fully reflect the benefits provided by OH-to-UG conversions and that are fully compliant with the Commission's rules and statutes.

WHEREFORE, the Municipal Underground Utilities Consortium respectfully requests the Florida Public Service Commission to enter its order GRANTING its Petition to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on the MUUC's representatives indicated in paragraph 2 above.

Respectfully submitted this 15th day of February, 2007.

s/Robert Scheffel Wright
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Attorneys for the Municipal Underground
Utilities Consortium

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing MUUC's Petition to Intervene has been furnished by electronic Mail and U.S. Mail this 15th day of February, 2007, to the following:

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