

Ruth Nettles

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Tuesday, November 06, 2007 11:00 AM
To: Bill Feaster; Bryan Anderson; Filings@psc.state.fl.us
Subject: Electronic Filing - Docket 070231-EI
Attachments: MUUC.URD.TariffProtest.11-6-07.doc

a. Person responsible for this electronic filing:

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b. Docket No. 070231-EI

In Re: Petition for Approval of 2007 Revisions to Underground Residential and Commercial Distribution Tariff, by Florida Power & Light Company.

c. Document being filed on behalf of the Muncipal Underground Utilities Consortium and the City of Coconut Creek, Florida.

d. There are a total of 14 pages.

e. The document attached for electronic filing is Petition of The Municipal Underground Utilities Consortium and the City of Coconut Creek, Florida Protesting Order No. PSC-07-0835-TRF-EI and Request for Formal Proceeding.

(see attached file: MUUC.URD.TariffProtest.11-6-07.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
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Phone: 850-222-7206
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DOCUMENT NUMBER - DATE

10073 NOV-6 5

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of 2007)
Revisions to Underground Residential)
and Commercial Distribution Tariff, by) DOCKET NO. 070231-EI
Florida Power & Light Company.) FILED: November 6, 2007
_____)

PETITION OF THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM
AND THE CITY OF COCONUT CREEK, FLORIDA PROTESTING
ORDER NO. PSC-07-0835-TRF-EI AND
REQUEST FOR FORMAL PROCEEDING

The Municipal Underground Utilities Consortium (the "MUUC"), and the City of Coconut Creek, Florida ("Coconut Creek"), pursuant to Chapter 120, Florida Statutes, Rule 28-106.201, Florida Administrative Code ("F.A.C."), and the Notice of Further Proceedings set forth in Commission Order No. PSC-07-0835-TRF-EI, and by and through their undersigned counsel, hereby file this Petition Protesting Order No. PSC-07-0835-TRF-EI ("Petition") and requests that the Commission conduct a formal proceeding, including an evidentiary hearing if necessary, to resolve the issues raised in this Petition. In summary, Commission Order PSC-07-0835-TRF-EI proposes approval of Florida Power & Light Company's ("FPL")

Underground Residential Differential ("URD") Tariff and Underground Commercial/Industrial Distribution ("UCD") Tariff (collectively "FPL's Tariffs"), which should be rejected because they do not comply with Commission Rule 25-6.078, F.A.C., which became effective approximately two months before FPL's petition that initiated this docket. Because any affected party was entitled to the benefit of the Commission's applicable rules upon their becoming effective, the

FPSC-COMMISSION CLERK

10073 NOV-6 5

MUUC and Coconut Creek believe that any applications for service subject to these rules should receive that benefit - in the form of properly calculated and applied Contributions in Aid of Construction ("CIACs") - as of the rules' effective date, not merely effective with the date of this protest or the date of the Commission's order.

In further support of this Petition, the MUUC and Coconut Creek state as follows.

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

Municipal Underground Utilities 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 name, address, and telephone number of Petitioner, the City of Coconut Creek, Florida, are as follows:

City of Coconut Creek
ATTN: Sheila N. Rose, AICP, Development Services Director
4800 West Copans Road
Coconut Creek, Florida 33063
Telephone (954) 973-6756
Telecopier (954) 956-1424.

4. 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
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E-Mails - swright@yvlaw.net and jlavia@yvlaw.net

with a courtesy copy to

Sheila N. Rose, AICP, Development Services Director
4800 West Copans Road
Coconut Creek, Florida 33063
Telephone (954) 973-6756
Telecopier (954) 956-1424
E-Mail - SRose@coconutcreek.net.

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

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

The Commission's docket number for this matter is No. 070231-EI.

6. The MUUC and Coconut Creek received notice of this matter when they received a copy of Commission Order No. PSC-07-0835-TRF-EI on or about October 18, 2007. Pursuant to Order No. PSC-07-0835-TRF-EI, the period for filing this Petition expires on November 6,

2007. Accordingly, this Petition is timely filed.

Statement of Affected Interests

7. The other party whose interests will be affected by this Petition is Florida Power & Light Company ("FPL"). FPL's address is as follows:

Mr. William G. Walker, III
Vice President
Regulatory Affairs
Bill_Walker@fpl.com
Florida Power & Light Company
215 South Monroe Street, Suite 801
Tallahassee, FL 32301
(850) 521- 3900 (Office)
(850) 521-3939 (Telecopier)

Bryan S. Anderson
Senior Attorney
Bryan_Anderson@fpl.com
Florida Power & Light
Company
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5137 (Office)
(561) 691-7305 (Telecopier)

8. 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.

9. The MUUC's members own and operate numerous municipal facilities and utility equipment. The substantial majority of the MUUC's members, including Coconut Creek, purchase retail electric service directly from FPL. A substantial number of the MUUC's members are considering underground ("UG") utility projects, and accordingly, these members are subject to FPL's tariffs applicable to underground electric distribution facilities and service. Most or all of the MUUC's members, including Coconut Creek, have development services divisions or departments, whose duties include working with developers and citizens to further the community's interests in orderly development of their areas. Some development activities include reconstruction and rejuvenation projects that include underground electric distribution conversion projects pursuant to FPL's tariffs and Commission Rule 25-6.115, F.A.C., which governs CIACs for such UG conversion projects. Other development activities include either new "greenfield" development or projects where entire areas or subdivisions are removed and are to be redeveloped with new construction; in either of these cases,

underground service is subject to Commission Rule 25-6.078, F.A.C., and FPL's URD CIAC tariffs promulgated pursuant to that rule.

10. Petitioner, the City of Coconut Creek, is a city located in Broward County, Florida. The City has a land area of approximately 12 square miles with approximately 50,000 residents and 1,400 businesses. Housing is primarily single-family homes, condominiums, and townhouses within professionally landscaped communities. Coconut Creek is widely recognized as a well-planned community with a unique environmental consciousness, including an abundance of trees, waterways, attractive landscaped roads, beautiful parks, and butterfly gardens, all reflective of the City's progressive planning approach to creating a unique life-style for its residents and businesses. Coconut Creek has plans for development and redevelopment projects within the City that will include undergrounding of more than nine miles of existing distribution lines and the installation of new UG distribution lines in new development areas. The City is attempting to partner with developers - and with FPL - to ensure that these projects are completed as cost-effectively as possible. Among other things, the City has requested that FPL, subject to the City's commitment to be responsible for payment of applicable CIACs, include new-development areas as part of the City's contiguous areas for qualification for FPL's Governmental Adjustment Factor waiver (a 25 percent credit against otherwise applicable CIACs) and also that FPL provide the same or a similar credit for new construction that properly reflects

the storm restoration cost savings, and other operational cost savings (e.g., avoided tree-trimming and pole inspection costs) that having such areas served by UG facilities will provide to FPL and its general body of customers, consistent with the Commission's rules.

11. Rule 25-6.078, F.A.C., which governs the CIACs applicable for new construction, was amended effective February 1, 2007. This rule provides in pertinent part as follows:

25-6.078 Schedule of Charges.

(1) Each utility shall file with the Commission a written policy that shall become a part of the utility's tariff rules and regulations on the installation of underground facilities in new subdivisions. Such policy shall be subject to review and approval of the Commission and shall include an Estimated Average Cost Differential, if any, and shall state the basis upon which the utility will provide underground service and its method for recovering the difference in cost of an underground system and an equivalent overhead system from the applicant at the time service is extended. The charges to the applicant shall not be more than the estimated difference in cost of an underground system and an equivalent overhead system.

(2) For the purpose of calculating the Estimated Average Cost Differential, cost estimates shall reflect the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening.

* * *

(4) Differences in Net Present Value of operational costs, including average historical storm restoration costs over the life of the facilities, between underground and overhead systems, if any, shall be taken into consideration in determining the overall Estimated Average Cost Differential. Each utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

12. Standing. The MUUC's and Coconut Creek's substantial interests are of sufficient immediacy to entitle them 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, a petitioner must demonstrate that its substantial interests will be affected by the proceeding. Specifically, a petitioner 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, Coconut Creek's substantial interests, as the party attempting to apply for new UG construction with appropriate CIACs calculated consistently with the Commission's rules, are directly and substantially affected by the Commission's decision in this case; at a minimum, allowing FPL to implement its URD CIAC charges without complying with Commission Rule 25-6.078, F.A.C., will result in Coconut Creek, or developers or citizens in Coconut Creek, subsidizing FPL and other FPL customers by providing cost-avoidance benefits for which the Commission's rules contemplate credit being given, without receiving such credit.

13. Additionally, a substantial number of the MUUC's members are directly subject to FPL's Tariffs. Moreover, the MUUC's members have ongoing interests in reliable electric service, in converting existing OH lines in their respective jurisdictions to UG service,

and in ensuring that new construction within their jurisdictions is served by UG electric facilities, consistent with the express policies and goals announced by FPL in its Storm Secure Initiatives in January 2006. The charges for both new UG service and for UG conversions are, of course, directly impacted by FPL's tariffs.

14. 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 -- proper amendment of FPL's tariffs and implementation so as to provide all affected municipalities and other parties the timely benefit of the Commission's rules applicable to FPL's tariffs at issue here -- 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.

15. Disputed Issues of Material Fact. The MUUC and Coconut Creek believe that the disputed issues of material fact in this proceeding will include, but will not necessarily be limited to, the following.

- ISSUE 1:** Do FPL's URD CIAC tariffs comply with Commission Rule 25-6.078, F.A.C., which requires, among other things, that those tariffs take into account "Differences in Net Present Value of operational costs, including average historical storm restoration costs over the life of the facilities, between underground and overhead systems, if any, . . . in determining the overall Estimated Average Cost Differential?"
- ISSUE 2:** Do FPL's URD and UCD CIAC tariff charges reflect the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening?
- ISSUE 3:** Taking into account the avoided storm restoration cost savings and other operational cost savings provided by wide-area (e.g., subdivision or greater) UG installations, and taking into account the requirements of Commission Rule 25-6.0342, F.A.C., what should FPL's URD and UCD CIACs be?
- ISSUE 4:** Should new developments within a municipality qualify for the Governmental Adjustment Waiver credit, where the Local Government is willing to be the applicant for service in order to ensure that the wide-area benefits of undergrounding are realized, consistent with the purposes of the GAF tariff and FPL's Storm Secure Initiatives?

ISSUE 5: What is the appropriate relief for Coconut Creek, the MUUC, and other affected persons and parties in this case?

The MUUC and Coconut Creek reserve all rights to raise additional issues in accordance with the Commission's rules and any procedural order that may be issued in this case.

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

- a. FPL's URD and UCD CIAC charges do not comply with the specific requirements of Commission Rule 25-6.078, F.A.C., that require those charges to be computed taking into consideration "Differences in Net Present Value of operational costs, including average historical storm restoration costs over the life of the facilities, between underground and overhead systems, if any, . . . in determining the overall Estimated Average Cost Differential." Calculations in the appendices to FPL's filing for both high-density and low-density subdivisions, as well as for commercial installations, show that no such cost differences were taken into account in calculating FPL's proposed charges.
- b. FPL's URD and UCD CIAC charges may not reflect the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening. Earlier conversations with FPL personnel indicate that these impacts - of FPL's Storm Hardening Plan requirements for construction to Extreme Wind Loading criteria - are taken into account in all such calculations, but conversations with Commission Staff leave this matter unclear.
- c. FPL's URD and UCD CIAC charges must reflect the value of avoided storm restoration costs and avoided operational costs associated with UG facilities, which are likely greater than 25 percent of the otherwise applicable CIAC charges that FPL proposes to apply pursuant to its tariffs filed in this docket. Otherwise, the cities, developers, and individual customers who pay these charges will be subsidizing FPL and its general body of customers by providing cost-savings benefits, for which Commission rules require that credit be given, without receiving such required credits. FPL's filings in this docket do not show that any such cost-savings benefits are reflected in the proposed charges, and conversations with Commission Staff indicate that they were apparently not taken into account.

- d. Municipalities that are willing to apply for UG service for new developments, in order to ensure the realization of the benefits of wide-area undergrounding, should be allowed to do so and to count any such areas as part of qualifying UG conversion projects under FPL's GAF tariff.

17. Statutes and Rules That Entitle the MUUC and Coconut Creek 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, 366.05(1), 366.06(1), and 366.07, Florida Statutes, and Rules 25-6.078 and 25-22.039 and Chapter 28-106, Florida Administrative Code.

18. Statement Explaining How the Facts Alleged By the MUUC and Coconut Creek Relate to the Above-Cited Rules and Statutes. Chapter 120, Florida Statutes, provides for a point of entry into administrative proceedings for persons whose substantial interests are subject to determination by, or adversely affected by, agency action. Here, the interests of the City of Coconut Creek, plus the interests of all other MUUC members who have development services departments that would desire to support new UG installations in partnership with developers, and with FPL, are subject to being determined, and to being affected adversely, by allowing FPL's proposed URD and UCD tariffs to remain in effect without complying with the Commission's rules. Additionally, the above-cited sections of Chapter 366 generally provide that the Commission must ensure that all tariffs, rates, and charges are fair, just, reasonable, and non-discriminatory. Unless the Commission ensures that the URD and UCD charges imposed by FPL are in full compliance with the

Commission's rules, those charges will be unfair, unjust, unreasonable, and non-discriminatory.

CONCLUSION AND RELIEF REQUESTED

FPL's proposed URD and UCD CIAC charges for new underground installations do not comply with the requirements of Commission Rule 25-6.078, F.A.C., in that, at a minimum, they do not take account of differences in storm restoration costs and other operational costs, as expressly required by that Rule, which has been in effect since February 1, 2007, more than two months before FPL filed the CIAC charges and tariffs that are the subject of this docket. Moreover, municipalities that wish to support UG installations in new developments within their jurisdictions should be allowed to be the applicant for such service. The Commission should conduct a formal proceeding to ensure that the URD and UCD charges are fair, just, reasonable, and non-discriminatory, that municipalities should be able to apply for new UG service in partnership with developers, and that municipalities should be allowed to count new "greenfield" areas that are contiguous with areas being converted from OH to UG service toward meeting the project minimums under FPL's GAF tariff.

WHEREFORE, the Municipal Underground Utilities Consortium and the City of Coconut Creek, Florida respectfully ask the Florida Public Service Commission to conduct a formal proceeding to investigate this matter, and to issue appropriate orders granting the relief requested in this docket and such other relief that the Commission deems appropriate.

Respectfully submitted this 6th day of November, 2007.

S/John T. LaVia, III
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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 was furnished to the following, by electronic and U.S. Mail, on this 6th day of November, 2007

Florida Power & Light Company
Mr. Bill Walker
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

Florida Power & Light Company
Bryan S. Anderson
700 Universe Blvd.
Juno Beach, FL 33408-0420

S/John T. LaVia, III
Attorney