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080035-EU

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Sent: Thursday, January 10, 2008 2:10 PM
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Subject: PSC Filing - Undocketed
Attachments: Towns.PetitionforDecStatement.1-10-08.pdf

a. Person responsible for this electronic filing:

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b. Undocketed

In Re: Petition for Declaratory Statement Before the Florida Public Service Commission by the Town of Palm Beach, the Town of Jupiter Island, and the Town of Jupiter Inlet Colony, Florida Concerning Their Rights Under Rule 25-6.115, F.A.C.

c. Document being filed on behalf of the Town of Palm Beach, the Town of Jupiter Island, and the Town of Jupiter Inlet Colony, Florida.

d. There are a total of 28 pages.

e. The document attached for electronic filing is Petition for Declaratory Statement Concerning Rule 25-6.115, Florida Administrative Code.

(see attached file: Towns.PetitionforDecStatement.1-10-08.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

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Declaratory)
Statement Before the Florida Public)
Service Commission by the Town of) DOCKET NO. _____-EI
Palm Beach, the Town of Jupiter)
Island, and the Town of Jupiter Inlet) FILED: JANUARY 10, 2008
Colony, Florida Concerning Their)
Rights Under Rule 25-6.115, F.A.C.)
_____)

080035-EU

PETITION FOR DECLARATORY STATEMENT CONCERNING
RULE 25-6.115, FLORIDA ADMINISTRATIVE CODE

The Town of Palm Beach, Florida, the Town of Jupiter Island, Florida, and the Town of Jupiter Inlet Colony, Florida, collectively referred to herein as the "Towns," pursuant to Section 120.565, Florida Statutes, and Chapter 28-105, Florida Administrative Code ("F.A.C."), hereby file this petition for declaratory statement ("Petition") as to their rights under Commission Rule 25-6.115, F.A.C.

As explained below, certain actions by FPL have left the Towns in substantial doubt as to their rights under Commission Rule 25-6.115, F.A.C., particularly subsections (3) and (11) of that Rule. All three Towns are actively planning to convert all of the existing overhead ("OH") electrical distribution facilities within their corporate limits to underground ("UG") facilities, and accordingly, all three Towns need resolution of their doubts before they can effectively proceed with their UG conversion projects.

Additionally, Palm Beach and Jupiter Inlet Colony have postponed action on their planned or contemplated UG conversion projects while awaiting the Commission's determination of what credits for operational cost savings provided by undergrounding, pursuant to Rule 25-6.115 (11), F.A.C., will be applied in calculating the CIACs for their projects. Because the Commission only initially approved FPL's tariff that provides a credit for certain cost savings as the Governmental Adjustment Factor Waiver ("GAF Waiver") for projects that are begun by October 4, 2008, and because of significant delays by FPL in furnishing a critical value - the value for operational cost differences other than storm restoration cost savings - the Towns now face a time-critical need for the Commission's answers to the questions posed in this Petition.

DECLARATORY STATEMENT SOUGHT

Accordingly, the Towns respectfully request the Commission's declaration that:

1. Where a Town, as a proper and eligible "Local Government Applicant" under FPL's tariffs, commits to perform all construction and installation of the underground facilities with its own staff and contractors, and where the Town pays FPL for preparing the Binding Cost Estimate for the UG project, FPL may not impose on or collect from the Town any corporate overhead costs or so-called "direct engineering, supervision, and support" costs, either directly or indirectly, except (a) such direct costs as the Town pays FPL for the Binding Cost Estimate, which includes engineering design work and preparing engineering drawings for a proposed UG conversion project, and (b) the Town's payments to FPL, pursuant to FPL's Tariff

Section No. 12.2.11.d), at "FPL's current applicable hourly rate for specific engineering personnel time spent for (i) reviewing and inspecting the Applicant's work done, and (ii) developing any separate cost estimate(s) that are either requested by the Applicant . . . or are required by FPL to reflect both the Applicant's and FPL's portions of the work for the purpose of a GAF Waiver calculation"

2. Where a Town proposes to perform all construction and installation of the underground facilities itself, FPL must allow the Local Government Applicant to perform the work involved in removing the existing OH facilities.

3. Where a Town proposes to perform all construction and installation of the underground facilities itself, FPL must offer to provide the necessary materials to the Town at a reasonable cost, which the Towns believe would be the cost of such materials stated by FPL in its Binding Cost Estimate.

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 materials 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.

In further support of their Petition for Declaratory Statement, the Towns of Palm Beach, Jupiter Island, and Jupiter Inlet Colony state as follows.

PROCEDURAL BACKGROUND

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

Town of Palm Beach, Florida
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 the Town of Palm Beach'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 Town of Jupiter Island are as follows:

Town of Jupiter Island
ATTN: The Honorable Charles A. Falcone, Mayor
Post Office Box 7
Hobe Sound, Florida 33475
Telephone (772) 545-0100
Telecopier (772) 545-0188.

4. All pleadings, orders and correspondence should be directed to the Town of Jupiter Island'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

The Honorable Charles A. Falcone, Mayor
Post Office Box 7
Hobe Sound, Florida 33475
Telephone (772) 545-0100
Telecopier (772) 545-0188
E-Mail - cafalcone@comcast.net

5. The name, address, and telephone number of Petitioner,
the Town of Jupiter Inlet Colony, are as follows:

Town of Jupiter Inlet Colony
ATTN: Joann Manganiello, Town Administrator
Administration Building
1 Colony Road
Jupiter Inlet Colony, Florida 33469

6. All pleadings, orders and correspondence should be
directed to the Town of Jupiter Inlet Colony'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

Joann Manganiello, Town Administrator
Town of Jupiter Inlet Colony
Administration Building
1 Colony Road
Jupiter Inlet Colony, Florida 33469
Telephone (561) 746-3787
Telecopier (561) 746-1068
E-Mail - jicolony@bellsouth.net.

7. The agency to which this Petition for Declaratory Statement is directed is the Florida Public Service Commission.

FACTUAL BACKGROUND

The Petitioners

8. The Town of Palm Beach was incorporated in 1911 and has a year-round population of approximately 9,700 and a seasonal population of 25,000 persons. The Town employs approximately 400 people. The Town of Palm Beach owns and operates numerous municipal facilities and lighting equipment, for all of which the Town purchases electric service from FPL. For the past several years, as a potential applicant within the meaning of applicable FPL tariffs, including FPL Tariff Sheets Nos. 6.300 through 6.330, as well as FPL's Underground Facilities Conversion Agreement (Sheets Nos. 9.700 through 9.702) and FPL's Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver (Sheets Nos. 9.725 through 9.727), the Town has been engaged in discussions and negotiations with FPL toward converting the existing overhead ("OH") electric distribution facilities in the Town to underground ("UG") facilities. As a long-established community, much of FPL's distribution system in Palm Beach consists of older, overhead facilities, and the Town is actively working toward the conversion of all OH facilities in the Town to UG facilities. The Town has obtained a ballpark cost estimate from FPL for its Town-wide UG conversion project.

9. The Town had planned to solicit its citizens' interest in proceeding with the contemplated underground conversion project in a bond referendum election in January 2008. However, in substantial part because FPL has not yet provided its proposed value for operational cost differences for OH facilities vs. UG facilities, as required by Rule 25-6.115(11)(b), F.A.C., neither the Palm Beach Town Council nor the Town's citizens have been able to make a fully informed decision on the Town's UG project because of substantial uncertainty as to the project's cost. Accordingly, Palm Beach has now decided that it must wait until at least the fall of 2008 before it can present a fully informed cost estimate to its citizens for their consideration in a referendum for funding the UG conversion project.

10. The Town of Jupiter Island has approximately 600 residences, plus Town buildings and facilities and two private clubs. The Town is located on Jupiter Island, a barrier island approximately 10 miles long located adjacent to Hobe Sound, in Martin County, Florida. For the past six years, as a potential applicant within the meaning of applicable FPL tariffs, including Tariff Sheet No. 6.300, the Town has been engaged in discussions and negotiations with FPL toward converting the existing OH electric distribution facilities in the Town to UG facilities. In 2006, in conjunction with FPL, the Town completed a pilot underground conversion project using new, submersible UG switch equipment.

11. In March 2007, Jupiter Island held a referendum and obtained its residents' approval to incur long-term debt in order to fund the cost of underground conversion of all utility lines in the Town. Also in March 2007, Jupiter Island requested a Binding Cost Estimate ("BCE") for the first phase ("Phase A"), out of five phases, of its UG conversion project. The BCE was completed and delivered to the Town in October, 2007. The Town requested a BCE for Phase B, the second phase of the project, on August 10, 2007. Although in the interests of time and schedule Jupiter Island is proceeding now with construction of its Phase A, using its own contractor for the conduit installation and FPL for all other work, the Town has an urgent interest in having the issues raised in this petition resolved quickly so as to definitively establish the total cost of this and further phases of the conversion work.

12. The Town of Jupiter Inlet Colony is a small municipality with 226 homes located on the south end of Jupiter Island, at the Jupiter Inlet. Like the electrical facilities in Palm Beach, FPL's distribution facilities in Jupiter Inlet Colony are old and consist of a significant amount of rear-lot installations. Jupiter Inlet Colony has been working toward its UG conversion project for more than two years and has obtained from FPL a ballpark cost estimate for its contemplated Town-wide UG conversion project. Jupiter Inlet Colony is presently on the verge of requesting a Binding Cost Estimate from FPL for the

entire UG conversion project. In fact, but for FPL's request for detailed surveys of existing underground utilities in the Town, Jupiter Inlet Colony would already have requested a Binding Cost Estimate for converting the entire Town to UG service. Based on conversations among Jupiter Inlet Colony officials and officials of Palm Beach and other municipalities, Jupiter Inlet Colony expects that it will want to pursue its rights under Rule 25-6.115, F.A.C., and FPL's Tariff Section No. 12.2.11 to do all of the construction and installation (and removal) work for its UG conversion project through Town-hired contractors.

Standing

13. Each of the Town of Palm Beach, the Town of Jupiter Island, and the Town of Jupiter Inlet Colony is subject to the Commission's rules and subject to FPL's tariffs that are governed by those rules and that address the issues raised in this Petition for Declaratory Statement. Each has been negotiating with FPL toward an underground conversion project pursuant to applicable Commission rules and FPL tariffs. Each is, or will be, an applicant for service pursuant to FPL's tariffs applicable to CIACs for government-sponsored underground conversion projects. Jupiter Island completed a pilot project in 2006 under the applicable rules and tariffs, has in hand a Binding Cost Estimate and is beginning construction of the first

substantial phase (Phase A) of its Town-wide UG conversion project, and has requested a Binding Cost Estimate for Phase B, the second phase of its Town-wide UG conversion project. Palm Beach and Jupiter Inlet Colony have both requested and received ballpark cost estimates from FPL as necessary preliminary steps toward their UG projects. Jupiter Inlet Colony is presently undertaking additional survey work required by FPL as a prerequisite to requesting its BCE.

General Process for UG Conversion Projects

14. Pursuant to the Commission's rules and FPL's tariffs, a local government interested in pursuing an underground conversion project will usually request a "ballpark cost estimate" from FPL. If the ballpark cost estimate appears feasible to the local government, it will then request a "Binding Cost Estimate" from FPL.

15. The CIAC formula for government-sponsored UG conversion projects is described in the Commission's Rules and set forth in detail in FPL's tariffs. Basically, the CIAC is equal to the cost of the new UG facilities, minus the cost of equivalent OH facilities (constructed in accordance with the utility's storm hardening plan), plus the cost of removing the existing OH facilities, plus the Net Book Value of any removed facilities, minus the salvage value of removed facilities, and plus or minus the net present value of differences in

operational costs, specifically including differences in storm restoration costs, as between UG and OH facilities. FPL's GAF Waiver is basically a generalized, system-average credit of 25 percent of the otherwise applicable CIAC, based on FPL's estimated storm restoration cost savings to be realized on a net present value basis over the life of the UG facilities.¹

16. In order to qualify for the credit provided by FPL's GAF Waiver tariff, the Town must request and pay for, at a minimum, the Binding Cost Estimate for the "all work by FPL" scenario; this is, of course, necessary to calculate the critical values needed to compute the basic CIAC and also the GAF Waiver amount. The local government may request additional Binding Cost Estimates for different allocations of the work, e.g., where the Town would install all of the conduit and concrete facilities and FPL would do the remainder of the work.

17. Commission Rule 25-6.115(3), F.A.C., gives applicants the right to do all or part of the construction and installation work for UG conversion projects themselves. FPL's Tariff Section No. 12.2.11.d) confers the same right. Once the Town decides which, if any, components of the work it will perform itself (i.e., through Town-engaged contractors approved by FPL),

¹ As the Commission described it, the GAF Waiver "provides a short-cut for eligible governments and may expedite construction in those areas. We recognize that the 25 percent is an average. Some projects may provide greater or lesser savings to ratepayers." Order No. 07-0442-TRF-EI at 14.

it executes written agreements with FPL, including a Right-of-Way Agreement, and pays FPL the required CIAC, and the project proceeds. Pursuant to FPL's Tariff Section No. 12.2.11.d), the Town must also pay to FPL "FPL's current applicable hourly rate for engineering personnel for all time spent for (i) reviewing and inspecting the Applicant's work done, and (ii) developing any separate cost estimate(s) that are either requested by the Applicant . . . or are required by FPL to reflect both the Applicant's and FPL's portions of the work for the purpose of a GAF Waiver calculation" Based on representations by FPL personnel, the Towns understand that FPL's current hourly rate for engineering time is \$70 per hour,² which the Towns also understand to include allocated overhead-type costs added onto the engineer's basic hourly salary or wage rate. Thus, the Town will have to pay extra for additional Binding Cost Estimates for different work-allocation scenarios,³ and the Town will also have to pay directly for FPL's actual engineering time spent reviewing and inspecting the Town's work; the Towns do not object to these tariff provisions.

² This rate for FPL engineering personnel may (or may not) change over time; regardless, the level of the rate is not a disputed issue and is not critical to the Town's requested declaratory statements.

³ The Towns believe that no additional Binding Cost Estimate would be required for the scenario in which a Town performs all construction work on its UG project.

History of FPL's Treatment of Corporate Overheads

18. In 2004 and 2005, the Town of Palm Beach negotiated with FPL toward, designed, and obtained a contractor's bid to construct, a demonstration undergrounding project for a few blocks of Royal Poinciana Way ("RPW"), a short but major road in the Town. When it came time to finalize the RPW Project, FPL adjusted its cost estimates and demanded that the Town pay all of FPL's corporate overheads associated with the UG work, even though the Town would be doing all such work; this dramatically increased the Town's cost for the planned pilot project and in fact rendered it a meaningless exercise. As a result, this killed the RPW Project.

19. In March 2007, the Town of Jupiter Island requested and in October 2007 received two Binding Cost Estimates from FPL for the first phase ("Phase A") of its UG conversion project: one estimate was for FPL doing all work, and the other was for the Town to contract for the conduit and concrete installation work, which comprises more than half of the total cost of Phase A, with FPL doing the remainder (basically furnishing materials, pulling conductor, and making connections). When FPL furnished the requested Binding Cost Estimates in October 2007, it proposed to impose and collect from the Town, by including in the CIAC calculations, exactly the same amount of corporate overheads (also designated by FPL as "direct engineering,

supervision, and support" costs). The amount of these corporate overheads was \$740,287 in both scenarios, regardless of the fact that the Town was proposing to do more than half of the work (on a dollar-cost basis) in the chosen scenario. Pursuant to subsequent discussions between the Town and FPL, FPL modified its estimates of the Phase A costs to account for the fact that FPL now believes that it will incur less costs associated with the "maintenance of traffic" ("MOT") work component of the project. However, in this revised Binding Cost Estimate, the corporate overheads that FPL proposes to impose on the Town (by increasing the CIAC that the Town would pay) where the Town performs the conduit and concrete work, which accounts for more than half the total project cost, are virtually as high as those allocated where FPL would do all work.

20. With the Royal Poinciana Way experience behind them, Palm Beach and Jupiter Island raised the corporate overheads issue in the Commission's rulemaking proceedings³ addressing these issues. The Commission eventually adopted language drafted by the Commission Staff that became Rule 25-6.115(11)(b), F.A.C., which provides as follows:

(b) If the applicant chooses to construct or install all or a part of the requested facilities, all utility

³ Docket No. 060172-EU, In Re: Proposed Rules Governing Placement of New Electric Distribution Facilities Underground, and Conversion of Existing Overhead Distribution Facilities To Underground Facilities, To Address Effects of Extreme Weather Events.

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.

From the words themselves and Staff's explanations, it was the Towns' understanding that the intent of the rule language was to prevent the practice that FPL had employed in the Royal Poinciana Way project, where it proposed to charge corporate overheads on work performed by the Town itself.

21. Subsequently, earlier in 2007, the Towns thought that the issue had been fully resolved with agreement between FPL and the Towns that FPL would not impose corporate overheads on Town-performed UG work. The basis for this understanding was correspondence from FPL's attorney, who wrote the following to the Towns' attorney on March 7, 2007:

FPL believes that there is agreement on calculating and applying corporate overheads. But to clarify, FPL's CIAC binding estimates will include all direct FPL or FPL-contracted costs and all appropriate overheads related to those costs. The estimate will not include any allocated corporate overheads on work contracted by the Applicant.

The last sentence certainly appeared to resolve the issue with clarity, and appeared to be consistent with Rule 25-6.115(11) (b), F.A.C.; thus, upon receiving FPL's Binding Cost Estimates with identical corporate overhead allocations, both in the case where FPL would perform all of the UG work and in the case where

the Town would perform more than half of the work, Jupiter Island officials were indeed shocked.

**RULES AND STATUTES PURSUANT TO WHICH
THE DECLARATORY STATEMENT IS SOUGHT**

22. The Commission's rules primarily applicable to this Petition include Rules 25-6.115(3) and 25-6.115(11), F.A.C. These are reproduced in their entirety here.

(3) Nothing in the tariff shall prevent the applicant from constructing and installing all or a portion of the underground distribution facilities provided:

(a) Such work meets the investor-owned utility's construction standards;

(b) The investor-owned utility will own and maintain the completed distribution facilities; and

(c) Such agreement is not expected to cause the general body of ratepayers to incur additional costs.

* * *

(11) For purposes of computing the charges required in subsections (8) and (9):

(a) The utility shall include the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the 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.

23. The Towns are entitled by several provisions of Florida Statutes to CIACs that are fair, just, reasonable, not unjustly discriminatory, and not unjustly preferential. These sections include Sections 366.03, 366.05(1), 366.06(1)&(2), and

366.07(1), Florida Statutes. Together with the Rules, these sections of the Florida Statutes entitle the Towns to the declaratory statement requested in this Petition.

NEED FOR THE DECLARATORY STATEMENT

24. Before proceeding further to request Binding Cost Estimates for their planned UG projects, the Towns need clear resolution of the issues presented in this Petition for Declaratory Statement, because the Commission's resolution of these issues will determine the structure of the Towns' requests. The issue with the greatest cost impact on the Towns is the corporate overheads issue. If it is resolved as the Towns believe it should be, i.e., that FPL may not impose or collect charges for corporate overhead costs from the Towns where the Towns do all of the construction work for their UG projects (other than such costs as are included in the Towns' payments for Binding Cost Estimates and for specific engineering work paid for pursuant to FPL's tariffs), then the Towns will likely proceed by doing their projects through their contractors. If it is decided otherwise, the Towns may make different decisions, which may include using their own contractors, engaging FPL to do the work, or curtailing or abandoning their projects.

25. The Towns need these issues resolved quickly because they need time to request and receive their Binding Cost

Estimates, review those estimates and make informed decisions, and get their agreements with FPL executed before October 4, 2008.⁴

ANALYSIS

26. The questions presented here are clear-cut. Subject to the Commission's decision on this petition, the Towns propose to perform all construction and installation of the UG facilities that will serve their Towns and citizens, as is their right specifically guaranteed by Commission Rule 25-6.115, F.A.C., and by FPL Tariff Section No. 12.2.11. In summary, FPL will be paid for designing and engineering the projects through the Towns' payments for Binding Cost Estimates, and FPL will be paid for its engineers' time inspecting and reviewing the Towns' work. In these particular circumstances, FPL does not incur any corporate overhead costs in connection with the construction and installation work performed by the Towns and the Towns' contractors, and accordingly, FPL cannot fairly or reasonably propose to collect any such corporate overhead charges from the Towns. It is FPL's burden to identify any direct costs incurred

⁴ Because, as noted above in the specific case of the Town of Palm Beach, a significant source of delay has been FPL's failure to deliver its value for "other operational cost" differences, the Towns are also attempting to negotiate with FPL toward a mutually sponsored request to extend the "revisitation" date, presently October 4, 2008, for the GAF Waiver. If that effort is not successful, then at least the Town of Palm Beach will likely file its own petition asking the Commission to extend that date.

as part of a UG conversion project and to include them as direct costs in its estimates.

27. Additionally, the Towns also propose to perform all of the work associated with removing existing OH facilities. This removal work is naturally and functionally a part of the UG conversion work, and accordingly, the Commission's rule should be interpreted to consider the OH removal work to be part of, and treated as part of, the construction and installation of the UG facilities. The Towns also request the Commission's declaration that FPL must charge for FPL-supplied materials at the same costs shown for such materials in FPL's BCE and CIAC calculations, and that, where a Town does all work itself, FPL will be required to pay the Towns for the cost of equivalent OH facilities, plus the GAF Waiver credit, plus any other O&M cost differential credits, and plus or minus any other applicable credits or debits.

Corporate Overhead Costs

28. It is self-evident that FPL should not be permitted to apply corporate overhead costs on work that it does not perform. As proposed by the Towns in this Petition, the Towns would perform all work associated with their UG conversion projects, other than (a) some of the initial engineering design work that FPL would normally perform - and be paid for - in the course of preparing Binding Cost Estimates and (b) an FPL engineer's time

to review and inspect the Town's work as it progresses (for which FPL will also be paid directly pursuant to its tariff).

29. The Towns challenge FPL's attempted application of Rule 25-6.115(3)(c), F.A.C., set forth in paragraph 22 above, to impose FPL corporate overhead costs on Town-constructed UG conversion projects. The Towns believe that FPL's claim for application of the same (or virtually the same) overhead charges when the Town performs the work is based on a comparison with what they would charge if they, FPL, performed the conversion work, an irrelevant comparison. **Surely no Town can reasonably or fairly be required to pay for portions of FPL's overhead costs that would be incurred even if the Town did not undertake the project!** These are costs that are not incurred as a result of the Town's choosing to undertake the underground conversion, but are inherent in FPL's regular business operation. The Town's residents already pay their share of these overhead costs through their retail rates paid to FPL. The Town should only be required to pay FPL for recovery of any additional direct costs incurred by FPL as a result of the Town's conversion project.

30. The Towns also challenge FPL's interpretation of Rule 25-6.115(3)(c), where again FPL attempts to interpret the Rule such that overheads may be charged in the case where the Town does the work because, FPL asserts, FPL's overhead costs or charges would not **decrease** as a result of "their agreement" to

let the Town do the UG conversion work. But of course **FPL's corporate overhead costs neither increase nor decrease as a result of the project**, no matter who does the work, and in fact, no matter whether the particular project is done at all! The burden should be on FPL to identify the specific direct costs that it incurs as a result of the Town's conversion project, and the Town can legitimately be required to pay only those direct costs. This will assure that the Town pays only the costs that its project causes, and that the general body of ratepayers will not incur additional costs, thus satisfying Rule 25-6.115(3)(c), F.A.C.

31. As noted above, FPL also describes its corporate overhead costs as "direct engineering, supervision, and support" costs. Under the Towns' particular circumstances described herein, no additional engineering costs, direct or otherwise, will be incurred by FPL other than such amounts that will be paid for by the Towns pursuant to Tariff Section No. 12.2.11.d). Under the Towns' particular circumstances, where the Towns will engage contractors to perform all of the work, FPL will not provide any supervision of the Towns' contractors. Under the Towns' particular circumstances, where the Towns' contractors will perform all of the work, FPL will provide no support for the Towns' work or the Towns' contractors' work. Accordingly, it would be inappropriate, unfair, unjust, and unreasonable for

FPL to impose any such corporate overhead charges or, as characterized by FPL, "direct engineering, supervision, and support" costs⁶, on the Towns.

32. The Towns will, of course, abide by the Commission's Rules and comply with FPL's tariffs: accordingly, they will pay FPL for the Binding Cost Estimates for their UG conversion projects in accordance with FPL's Tariff Section No. 12.2.3. The Binding Cost Estimate pays FPL for designing the UG project and produces engineering drawings for use in the construction of the UG project. In practical terms, the Towns expect that they - the Towns - will incur additional engineering design costs in connection with their UG projects, and that they will work with FPL engineers, for whose time they will pay "FPL's current hourly rate" in accordance with FPL Tariff Section No. 12.2.11.d), to ensure that any revised design and engineering is fully consistent with FPL's design standards and specifications, all applicable codes, and all other requirements. The Towns will also pay "FPL's current hourly rate" for FPL's engineers'

⁶ Based on explanations by FPL personnel as well as on FPL's characterizations of other payments required of a Town (specifically the payment for the Binding Cost Estimate and the direct payment for FPL engineers to review and inspect the Town's UG work as it progresses), the Towns understand that there are in fact no truly "direct" costs of any kind included in these cost values. As noted above, a Town pays for the costs of engineering each UG conversion project through its payment for the Binding Cost Estimate, and it is self-evident that FPL does not supervise and does not support a Town's contractors.

time spent reviewing and inspecting the Towns' work, also as provided by FPL Tariff Section No. 12.2.11.d).

33. Any other result, e.g., where FPL would (as it attempted in connection with Palm Beach's Royal Poinciana Way project) impose corporate overhead costs on any of the Towns where the Towns are performing all work, will result in **subsidization of FPL's general body of customers by the paying Town!** Because corporate overhead costs are already being recovered through FPL's rates paid by all customers, including the Towns and their residents as FPL customers, and because they are and will be unchanged whether particular UG conversion projects are performed by FPL, by the Towns, or done at all, if a Town is required to pay for any part of these costs, such payment will result in subsidization of FPL and/or its other customers by reducing their share of the costs inappropriately. The Commission's rules cannot be interpreted to produce this unfair, unreasonable, and discriminatory result.

34. Moreover, allowing FPL to collect such corporate overhead costs from Towns would abrogate, negate, and undo the Towns' rights that the Commission's Rules and FPL's tariffs are supposed to guarantee them. Significantly, such treatment would also be a substantial disincentive to undergrounding, contrary to the Commission's policies and FPL's avowed support for undergrounding in its Storm Secure Plan.

Removal Work

35. The Towns believe that it is implicit in both the Commission's Rules and FPL's tariffs that a Town or City that is doing all of the "construction and installation" work should also be able to do the removal work itself. Additionally, in practical terms, the removal work is typically not a large component of a UG project dollar-wise,⁷ and it also seems to make common sense for the Town or City to handle that part of the work where it would also be doing all of the construction and installation. Accordingly, as a simple matter of rule interpretation, the Towns seek the Commission's declaratory statement that they may do the OH removal work themselves. Of course, the Towns are willing to work with FPL to ensure compliance with all applicable engineering and safety practices so that the OH facilities being removed are safely and appropriately de-energized and secured.

⁷ In FPL's most recent Binding Cost Estimate submitted to Jupiter Island for the FPL-does-all-the-work scenario, the total cost of removal work, including FPL's allocated corporate overheads, was less than 10 percent of the total project cost.

Materials Costs

36. The Towns request the Commission's declaration that, where a Town desires to do any or all of the construction and installation of the UG facilities itself, FPL is required to furnish materials at an appropriate cost, such as the cost at which FPL prices the materials in its current Binding Cost Estimates and CIAC calculations.

37. It makes obvious common sense that FPL would furnish the materials for the Towns' UG projects, since FPL will be taking ownership of the new UG facilities when they are complete. By requesting this declaratory statement, the Towns desire to confirm that the basis on which they are to be charged for necessary materials is fair, just, and reasonable. Otherwise, the Towns believe that, consistent with their rights to perform all construction and installation of the UG facilities, they would also have the right to purchase materials directly from other suppliers. Of course, the Towns would use only materials specifically approved by FPL.

Fair Credit to Municipalities That Perform All Work Themselves

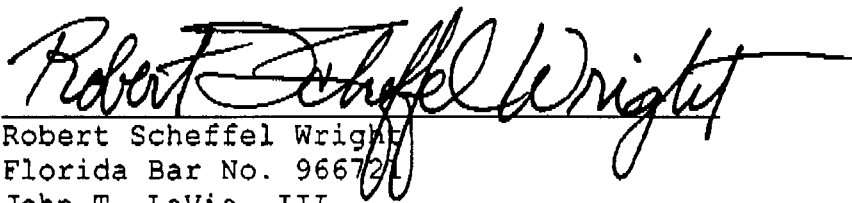
38. The last sentence in Rule 25-6.115(11)(b), F.A.C., "At no time will the costs to the customer be less than zero", could be interpreted in a manner inconsistent with the Rule policy to allow the Town to perform all the work itself, together with the OH Credit, GAF Waiver Credit, and (not yet specified) Other O&M

Credit. In order for the Town to get these credits, if the Town performs all the work, FPL must make a significant payment to the Town when the facilities are transferred to them. The Towns request the Commission's declaratory statement on this issue in order to avoid any potential ambiguity with respect to Commission Rule 25-6.115(11)(b), F.A.C., which provides that at no time will the costs to the customer be less than zero. The Towns seek the Commission's declaration that where a Town performs all construction and installation (and, as applicable, removal) work for a UG conversion project, and then contributes the completed UG facilities to FPL, FPL will be required to remit to the Town an amount equal to the cost of equivalent OH facilities plus the GAF Waiver credit, plus any other O&M differential cost credits, less the cost of materials provided by FPL and less any direct engineering service costs (e.g., costs for FPL engineering personnel to review and inspect the Town's work) that are over and above work performed in preparing the BCE and for which the Town has not already paid. The Towns believe that this is the appropriate treatment to ensure that the Towns get the proper credit for the values provided to FPL, consistent with the Commission's Rules and FPL's tariffs, in return for contributing the completed UG facilities to FPL.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, for the reasons set forth above, the Town of Palm Beach, the Town of Jupiter Island, and the Town of Jupiter Inlet Colony respectfully request that the Commission issue its order granting the declaratory statements requested in this Petition.

Respectfully submitted this 10th day of January, 2008.



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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 10th day of January, 2008.


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