

**Marguerite Lockard**

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**From:** Jennifer\_DeValerio@fpl.com on behalf of John\_Butler@fpl.com  
**Sent:** Monday, February 11, 2008 3:52 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Ralph Jaeger; swright@yvlaw.net; jlavie@yvlaw.net; dtucker@ngnlaw.com; barmstrong@ngnlaw.com  
**Subject:** Electronic Filing for Docket No. 070231-EI / FPL's Agreed Motion for Continuance of Protest and Request for Formal Proceeding of the Municipal Underground Utilities Consortium and the City of Coconut Creek, Florida  
**Attachments:** Motion for Continuance of MUUC Protest FINAL.doc

**Electronic Filing**

**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.** The document is being filed on behalf of Florida Power & Light Company.

**d.** There are a total of **5** pages, including an attached certificate of service.

**e.** The document attached for electronic filing is Florida Power & Light Company's Agreed Motion for Continuance of Protest and Request for Formal Proceeding of the Municipal Underground Utilities Consortium and the City of Coconut Creek, Florida

*(See attached file: Motion for Continuance of MUUC Protest FINAL.doc)*

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for approval of 2007 )  
revisions to underground residential )  
and commercial distribution tariff, )  
by Florida Power & Light Company )

Docket No. 070231-EI

Filed: February 11, 2008

**AGREED MOTION FOR CONTINUANCE OF PROTEST AND REQUEST FOR  
FORMAL PROCEEDING OF THE MUNICIPAL UNDERGROUND UTILITIES  
CONSORTIUM AND THE CITY OF COCONUT CREEK, FLORIDA**

Pursuant to 28-106.204, F.A.C., Florida Power & Light Company (“FPL”) hereby respectfully moves this Commission for a continuance of the protest and request for formal proceeding filed by the Municipal Underground Utilities Consortium (“MUUC”) and the City of Coconut Creek, Florida (“Coconut Creek”) (the “MUUC Protest”), and in support thereof states:

1. On April 2, 2007, FPL filed revisions to its underground residential distribution (“URD”) tariff and underground commercial/industrial distribution (“UCD”) tariff (collectively, the “April 2007 Tariffs”). These tariffs were filed to comply with the “10% or more” filing requirement of Rule 25-6.078(3), F.A.C.<sup>1</sup> On October 16, 2007, the Commission issued Order No. PSC-07-0835-TRF-EI (the “Tariff Order”), approving the April 2007 Tariffs. The MUUC Protest was filed and served on November 6, 2007. On November 20, 2007, FPL moved to dismiss the MUUC Protest. Order No. PSC-08-0011-PCO-EI, dated January 3, 2008 established the procedure for a hearing on the MUUC Protest. The Commission is scheduled to rule on FPL’s motion to dismiss at its February 12, 2008 agenda conference.

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<sup>1</sup> If the cost differential for underground service varies from the Commission-approved differential in the URD tariff by plus or minus 10% or more, the utility must file a written policy and supporting data and analyses as prescribed in Sections (1), (4) and (5) of Rule 25-6.078 on or before April 1 of the following year.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

2. Two of the principal bases for the MUUC Protest are that the calculation of the April 2007 Tariffs did not take into account (i) differences in the net present value of operational costs between overhead and underground facilities, as contemplated by Rule 25-6.078(4), F.A.C., or (ii) the added cost of building the hypothetical overhead system to hardening standards, as contemplated by Rule 25-6.078(2), F.A.C. Those requirements were added to Rule 25-6.078 by amendments that became effective in February 2007. When FPL filed the April 2007 Tariffs, FPL did not have the necessary information to adjust the tariff calculations for either the operational cost differential or the impact on overhead system costs of hardening standards. In fact, the order approving FPL's storm hardening standards did not become final until January of this year.<sup>2</sup>

3. FPL is now in a position to revise its URD and UCD Tariffs to address the operational cost differential and the impact of the hardening standards and is prepared to revise the April 2007 Tariffs accordingly. In fact, if FPL's energies are not diverted to preparing testimony and otherwise moving toward hearing on the MUUC Protest, FPL will be able to file the revised tariffs on or before April 1, 2008, consistent with the cycle for reviewing and revising the tariffs contemplated in Rule 25-6.078.

4. Accordingly, FPL proposes that the hearing on the MUUC Protest that is presently scheduled for June 11-12, 2008, together with all associated pre-hearing matters including but not limited to ruling on FPL's motion to dismiss, the filing of testimony and the conduct of discovery, be continued so that FPL can file, on or before April 1, 2008, revisions to

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<sup>2</sup> Order No. PSC-07-1023-FOF-EI was issued on December 28, 2008 in Docket No. 070301-EI. It was subject to appellate challenge for 30 days thereafter.

the April 2007 Tariffs to address the operational cost differential and the impact of the hardening standards. The continuance would thenceforth remain in effect until the Commission has ruled on the newly revised tariffs and the period for protest thereof has passed. If MUUC or another party then chooses to protest the newly revised tariffs, an updated procedural order would be issued at that time to reschedule the hearing and associated prehearing matters, with respect to which FPL and the MUUC are in conceptual agreement that they will cooperate toward expedited handling and resolution of any such future protest; provided, however, that MUUC and Coconut Creek agree not to seek resolution in such a proceeding of the following issue, which appeared in Paragraph 15 of the MUUC Protest:

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?

FPL will not oppose MUUC's and/or Coconut Creek's seeking to initiate a separate proceeding where the relevant tariffs affected by the proposed expansion of the Governmental Adjustment Waiver credit to undergrounding in new developments and new construction would be addressed, but FPL does not waive any rights with respect to substantive positions it might take on that proposed expansion.

5. MUUC and Coconut Creek support the granting of this motion for continuance. FPL has also attempted to contact counsel for the City of South Daytona Beach, which has petitioned to intervene. As of the time this motion was filed, however, FPL was unable to do so.

**WHEREFORE**, FPL respectfully requests that the Commission continue the hearing and prehearing matters presently scheduled for the MUUC Protest, in order to allow FPL to file

revised URD and UCD tariffs that address the operational cost differential and the impact of the hardening standards as described herein.

Respectfully submitted,

John T. Butler, Esq.  
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By: /s/ John T. Butler  
John T. Butler  
Fla. Bar No. 283479

**CERTIFICATE OF SERVICE**  
**Docket No. 070231-EI**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic delivery on the 11<sup>th</sup> day of February, 2008, to the following:

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