

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: April 24, 2008

TO: Office of Commission Clerk (Cole)

FROM: Office of the General Counsel (Bellak, Gervasi)
Division of Economic Regulation (Kummer)

RCB *RS* *S.M.C.*
CSH *198*

RE: Docket No. 080035-EU – Petition for declaratory statement concerning rights under Rule 25-6.115, F.A.C. by Town of Palm Beach, Town of Jupiter Island, and Town of Jupiter Inlet Colony.

AGENDA: 05/06/08 – Regular Agenda – Petition for Declaratory Statement -Parties may participate at the Commission’s discretion

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 07/08/08 (Final order must be issued by this date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\WP\080035.RCM.DOC

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Case Background

On January 10, 2008, the towns of Palm Beach, Jupiter Island, and Jupiter Inlet Colony (towns) filed a petition for declaratory statement pursuant to Section 120.565, Florida Statutes (F.S.), and Chapter 28-105, Florida Administrative Code. Also on January 10, 2008, the towns filed a Request for Oral Argument and Alternative Motion for Leave to Address the Commission.

The towns note that they are actively planning to convert their existing overhead (OH) electrical distribution facilities to underground (UG). They petition for resolution of doubts

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concerning their rights under, *inter alia*, subsections (3) and (11) of Rule 25-6.115, F.A.C. Rule 25-6.115(3) states, in pertinent part:

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

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

Rule 25-6.115(11) states, in pertinent part:

For purposes of computing the charges [to be paid to the utility for the conversion to underground 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.

Though the background facts of the petition generally concern the conversion of overhead facilities to underground,¹ the controversy centers on the credits due or not due the towns for choosing to perform the construction work themselves. These credits can be claimed as offsets to the contributions in aid of construction (CIAC) owed by the towns to the utility for the conversion of facilities from overhead to underground. The towns note that the Governmental Adjustment Factor (GAF), which provides a discount on the CIAC owed to the utility by governmental entities for their undergrounding projects, is currently scheduled to expire October 4, 2008. This adds to the towns' need for an expedited resolution of the CIAC calculation matters raised by the Petition.

On February 15, 2008, the utility involved in the towns' underground conversion projects, Florida Power & Light Company (FPL), filed a Petition to Intervene and a Response to Petition for Declaratory Statement concerning Rule 25-6.115, F.A.C.

On April 3, 2008, the Commission issued Order No. PSC-08-0218-DS-EU, granting FPL's Petition to Intervene and disposing of three points sought by petitioners for a declaratory statement by the Commission, and deferring Point 4. Negotiations between the parties and discussions with staff concerning Point 4 have resulted in the filing on April 18, 2008 of an Agreed Motion to Amend Request for Declaratory Statement containing the newly-drafted language for Point 4, which is addressed herein. The Commission has jurisdiction pursuant to Section 120.565, F.S.

¹ The Petition provides a lengthy overview of the undergrounding conversion process which, while useful as context for the issues raised, is non-controversial and need not be restated here.

Discussion of Issues

Issue 1: Should the Commission grant the towns' Petition for declaratory statement as to newly drafted Point 4?

Recommendation: Yes, the Commission should grant the Petition as to newly drafted Point 4.

Staff Analysis: The newly drafted language at issue is as follows:

The applicant shall be entitled to payment for, and the utility may include in rate base, credits for any applicable adjustments (credits) to the CIAC calculation for the cost of the hypothetical overhead construction, and the net present value of the operational cost differential related to the underground construction as defined in Rule 25-6.115, F.A.C. At no time, however, will FPL's payments to an applicant be greater than the costs FPL would have expected to incur had FPL performed all of the construction itself.

As to the original version of Point 4, discussed at the March 18, 2008 Agenda Conference,² FPL objected that:

If the towns are contending that Rule 25-6.115 should be interpreted to require net payments be made to an applicant in the event that the itemized credits exceed the itemized costs, then that contention is directly contrary to Rule 25-6.115(11)(b), which provides that "[a]t no time will the costs to the customer be less than zero."

FPL does not object to the redrafted language. During discussions in this docket, staff reviewed the language in Rule 25-6.115, F.A.C., and discussed the intent of the sentence, "at no time will the cost to the customer be less than zero." Staff believes the intent of the quoted sentence was to protect the general body of ratepayers from having to bear the costs of undergrounding projects which exceeded the benefits they received. Based on those discussions, staff believes that the language in newly drafted Point 4 presented above, which states that at no time will FPL's payments to an applicant be greater than the costs FPL would have expected to incur had FPL performed all of the construction itself, appropriately captures and represents the safeguard intended by staff to be provided by the rule. Since the redrafted language is thus consistent with the rule, staff recommends that the Petition for Declaratory Statement be granted as to redrafted Point 4. Staff further notes that the redrafted language listing the components of the CIAC calculation has resolved FPL and staff's concerns as to that issue as well. Compare, n. 2.

² The following was the original version of Point 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 material 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."

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Conclusion

Based on the above, the Commission should grant the Petition for Declaratory Statement as to newly drafted Point 4 as set out above.

Issue 2: Should this docket be closed?

Recommendation: Yes, this docket should be closed.

Staff Analysis: If the Commission either grants or denies the Petition, the docket may be closed.

RCB