Ruth Nettles

From: Butler, John [John.Butler@fpl.com]

Sent: Friday, October 31, 2008 1:36 PM

To: Filings@psc.state.fl.us

Cc: Ralph Jaeger; Erik Sayler; 'Dgentile@creekgov.net'; 'swright@yvlaw.net'; 'jicolony@bellsouth.net'; 'Tbradford@TownofPalmBeach.com'; 'simpson66@bellsouth.net'; 'barmstrong@ngnlaw.com'; 'dtucker@ngnlaw.com'

Subject: Electronic Filing / Dkt 080522 / FPL's Response to So. Daytona Pet to Intervene

Attachments: Response to City of South Daytona Petition to Intervene FINAL.doc; Response to City of South Daytona Petition to Intervene FINAL.pdf

Electronic Filing

a. Person responsible for this electronic filing:

John T. Butler, Esq.
700 Universe Boulevard
Juno Beach, FL 33408
561-304-5639
John.Butler@fpl.com

b. Docket No. 080522 - EI
In Re: Petition and Complaint of the Municipal Underground Utilities Consortium for Relief from Unfair Charges and Practices of Florida Power & Light Company

c. The Document is being filed on behalf of Florida Power & Light Company.

d. There are a total of 7 pages

e. The document attached for electronic filing is Florida Power & Light Company's Response to Petition of the City of South Daytona to Intervene

John T. Butler
Senior Attorney
Florida Power & Light Company
(561) 304-5639
(561) 691-7135 Fax
John.Butler@fpl.com

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition and Complaint of the Municipal Underground Utilities Consortium for Relief from Unfair Charges and Practices of Florida Power & Light Company.	DOCKET NO. 080522-EI FILED: October 31, 2008

FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO PETITION OF THE CITY OF SOUTH DAYTONA TO INTERVENE

Florida Power & Light Company ("FPL") hereby responds to the Petition of the City of South Daytona to Intervene (the "Petition to Intervene"). FPL does not oppose intervention by the City of South Daytona (the "City") in this docket although FPL notes that, pursuant to Rule, intervenors such as the City take the case as they find it. The Petition to Intervene contains allegations that go well beyond those necessary to support its request for intervention, however, and go instead to the merits of the case. FPL responds briefly to those to allegations below.

To a large extent, the Petition to Intervene reiterates and/or incorporates by reference the allegations, arguments and requests for relief contained in the Petition and Complaint that was filed on August 5, 2008 by the Municipal Underground Utilities Consortium, the Town of Palm Beach, the Town of Jupiter Inlet Colony and the City of Coconut Creek (the "MUUC Petition and Complaint"). Accordingly, FPL incorporates herein by reference the arguments and responses contained in the Answer to the MUUC Petition and Complaint that FPL filed on August 28, 2008.

Improper Restriction of CIAC to Costs That FPL "Actually and Directly Incurs"

As with the MUUC Petition and Complaint, the Petition to Intervene reflects a fundamental difference in approach between how the Commission's rule on contributions-in-aid-of-construction ("CIAC") for underground conversions directs FPL and other electric utilities to calculate the Direct Engineering, Supervision and Support

("DESS") component of CIAC when an applicant does some of the work, and how the Petitioners would like to see the calculation performed. The Commission's Rule 25-6.115, F.A.C., provides explicitly that, when an applicant performs all or part of the work on an underground conversion project, the utility is to reduce the CIAC to reflect only the costs (including overhead assignments) *actually avoided* by the utility as a result, so that the general body of customers are not put in the position of subsidizing the applicant's project. It is in the direct interest of the general body of customers for the Commission to ensure that utilities collect CIAC sufficient to cover the costs that an underground conversion applicant is supposed to pay. Utilities do not record CIAC payments as revenue for the benefit of shareholders; rather, the CIAC payments are used to reduce the cost of the converted underground facilities that will go into rate base. The more that a utility collects as CIAC, the less those facilities will increase rate base and vice versa. Thus, while it is important that the CIAC calculation fairly protect the interests of applicants, it is equally important that the calculation fairly protect the interests of the general body of customers.

As in the MUUC Petition and Complaint, the City wants FPL to charge an applicant only for direct costs that can be specifically attributed to the project with the applicant doing the work. FPL refers to this as a "bottom up" approach. Under the "bottom up" approach, applicants who perform the work for a project would not be charged for indirect or allocated costs associated with the project because they are not "direct" costs – even though the Uniform System of Accounts that governs FPL and all other investor-owned electric utilities regulated by this Commission specifically instructs utilities to include indirect and allocated costs in the cost of construction and FPL routinely charges those types of costs for projects where FPL does the work, and even

though FPL needs to charge applicants those types of costs in order to make the general body of customers whole. The City is thus asking the Commission to require FPL to use an approach that would under-recover FPL's costs associated with a project and force the general body of customers to subsidize applicants who elect to perform project work themselves. This would be unfair, unjust, unreasonable and unjustly discriminatory to FPL's general body of customers. The Commission should reject the City's request and affirm that FPL is properly applying Rule 25-6.115.

Misinterpretation of the Uniform System of Accounts

In Paragraphs 26-35 of the Petition to Intervene, the City discusses the Uniform System of Accounts ("USOA") and asserts that FPL has failed to follow Plant Instruction 4 concerning its determination of DESS costs. This misapprehends the direction provided by General Instruction 4, which in fact is entirely consistent with FPL's approach. As FPL has previously explained in response to MUUC's Interrogatory No. 4:

> Each subcategory on the DESS Worksheet is supported by work activities that are captured in Budget Control System (BUCS) work orders. On an annual basis, FPL determines the proportionate amount of planned capital work v. O&M work that these work activities will support – creating a "capital vs. O&M" percentage split. Monthly, the capital costs from all BUCS work orders are aggregated into an Engineering Order (EO). A "loading factor" is then developed by dividing the total capital costs in the EO by the total "eligible base" of capital costs (generally, the direct labor and material costs) for all open Distribution projects. The amount of DESS costs attributable to each individual project is determined by multiplying the loading factor times the eligible costs for that project.

This approach is used for all FPL distribution construction projects, whether they are undertaken to meet FPL's own internal system requirements (the vast majority) or else for underground conversions or other specific customer requests. It yields a consistent, equitable allocation to all such projects and is comparable to how other utilities in Florida allocate distribution construction costs.

Nothing in FPL's approach is inconsistent with the USOA. Plant Instruction 4 that is quoted by the City simply requires that DESS-type costs be charged to projects in such a manner that "each job or unit shall bear its equitable proportion of such costs ...." This is precisely what FPL's allocation accomplishes. The City asserts that FPL has not complied with Plant Instruction 4 because FPL allocates such costs on a "fixed percentage basis and not an equitable per unit basis." As the description above makes clear, however, FPL's allocation of costs is not on a "fixed percentage" basis – it is adjusted annually to reflect the actual proportions of DESS-type costs that are chargeable to capital projects and then allocates them the proportion that each project's costs bear to the costs for all open projects at the time.[1]

The City also appears to complain in Paragraph 34 of the Petition to Intervene that FPL is recovering costs through the DESS allocation that are of a type not specifically spelled out in the USOA Plant Instructions. But this again misreads Plant Instruction 4, which provides for "*all* overhead constructions costs, *such as* engineering, supervision, general office salaries and expenses, construction engineering and supervision by others" should be charged equitably to construction projects. (Emphasis added). Clearly, the intent of Plant Instruction 4 is to be broad and inclusive – if an overhead cost relates to construction activities, it is to be charged equitably to all projects. FPL has properly complied with this mandate in developing and allocating its DESS costs.

---

[1] It is unclear what the City contemplates as an "equitable per unit basis" for allocation. This phrase is not used in Plant Instruction 4. If, as is suggested by Paragraph 33 of the Petition to Intervene, the City is contending that the USOA requires all overhead costs to be allocated on the basis of labor hours expended on the project, there is nothing in the USOA to support that contention.

Requiring a Complex and Convoluted Description of the DESS Methodology in FPL's Tariff

The City also asks the Commission to require FPL to amend its tariffs "to set out a transparent methodology so that local governments and others will be able to verify how the DESS costs are being determined and assessed." Petition to Intervene, at page 16. This request for relief has no counterpart in the MUUC Petition and Complaint. As a matter of procedure, FPL questions whether it is proper or wise to permit an intervenor to change the nature of the relief sought by the petitioning party.

Beyond the procedural considerations, however, the City's proposal must be rejected as unworkable. Unlike the provision of a standardized form of electric services, where it is feasible and appropriate to specify in the tariff exactly what the rates for those services will be, the charging of CIAC is necessarily a case-by-case exercise that depends on the details of each construction project to which it applies. The Commission's rules and FPL's tariff already specify the general principles and approach applicable to the calculation of CIAC for underground conversions. However, trying to lay out all of the elements of the CIAC (including the DESS), how they will be applied, and how they will vary depending on how much of what type of project work an applicant might undertake would either result in a tangled web of "if step A results in B, then move to step C" permutations or else the need to specify a long and confusing list of exceptions.[2]

[2] The Federal Income Tax return forms and supporting schedules come to mind.

While FPL disagrees with MUUC's approach for determining the DESS when applicants perform project work and believes that approach should be rejected for the reasons stated in FPL's Answer, MUUC has done a good job of clearly stating its views. FPL has likewise clearly stated the reasons for its opposition to the MUUC approach and why FPL's current approach is consistent with the Commission's rules and the USOA and is fair to both applicants and the general body of customers. Accordingly, FPL is confident that the decision which results from this proceeding will make it clear to all concerned how CIAC is to be calculated when applicants perform project work. No further elaboration in the form of standardized tariff formulae or schedules will be necessary or appropriate.[3]

WHEREFORE, FPL respectfully requests that, if the Commission grants the City's Petition to Intervene, it reject the City's substantive requests for relief for the reasons set forth herein and in FPL's August 28, 2008 Answer to the MUUC Petition and Complaint.

Respectfully submitted,

John T. Butler, Esquire
Senior Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
Telephone: (561) 304-5639
Facsimile: (561) 691-7135

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

[3] FPL would not object to including in its underground conversion tariff an express reference to the final order in the proceeding, so that FPL personnel and applicants will be conveniently directed to guidance on the calculation of CIAC where applicants perform project work.

CERTIFICATE OF SERVICE
Docket No. 080522-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery on the 31st day of October, 2008, to the following:

Ralph Jaeger, Esq.
Erik Sayler, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850
850-413-6234
E-Mail: RJaeger@PSC.STATE.FL.US
E-Mail: esayler@PSC.STATE.FL.US

City of Coconut Creek
Don Gentile, Engineering Depart
4800 West Copans Road
Coconut Creek, FL 33063
Phone: 954-973-6756
FAX: 954-956-1424
Dgentile@creekgov.net

Robert Scheffel Wright, Esq.
Young van Assenderp, P.A.
Attorneys for **MUUC**
225 South Adams Street, Suite 200
Tallahassee, FL 32301
Phone: 850-222-7206
FAX: 561-6834
Email: swright@yvlaw.net

Town of Jupiter Inlet Colony
Joann Manganiello, Town Admin.
Administration Building
1 Colony Road
Jupiter Inlet Colony, FL 33469
Phone: 561-746-3787
FAX: 561-746-1068
Email: jicolony@bellsouth.net

Town of Palm Beach
Thomas G. Bradford,
Deputy Town Manager
360 South County Road
West Palm Beach, FL 33401
Phone: 561-838-5410
FAX: 561-838-5411
Email: Tbradford@TownofPalmBeach.com

Brian Armstrong/David Tucker
1500 Mahan Drive, Ste 200
Tallahassee, FL 32308
Attorneys for City of S. Daytona Bch
Email: barmstrong@ngnlaw.com

Scott E. Simpson
Granada Oaks Prof. Building
595 West Granada Blvd., Ste A
Ormond Beach, Fl 32174
Email: simpson66@bellsouth.net

By: */s/ John T. Butler*
John T. Butler