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Subject: Filing: Petition of the City of South Daytona, Florida Protesting Order No. PSC-08-0774-TRF-EI and Request for Formal Proceeding
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Docket No.: 070231-EI

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

Party: City of South Daytona

No. of Pages: 8

Name of Document: Petition of the City of South Daytona, Florida Protesting Order No. PSC-08-0774-TRF-EI and Request for Formal Proceeding

DOCUMENT NUMBER - DATE

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12/16/2008

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)
Florida Power & Light Company.)
_____)

DOCKET NO. 070231-EI
FILED: December 15, 2008

**PETITION OF THE CITY OF SOUTH DAYTONA, FLORIDA PROTESTING
ORDER NO. PSC-08-0774-TRF-EI AND
REQUEST FOR FORMAL PROCEEDING**

The City of South Daytona ("City"), 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-08-0774-TRF-EI, and by and through their undersigned counsel, hereby file this Petition Protesting Order No. PSC-08-0774-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-08-0774-TRF-EI approves, subject to affected parties' right to protest, Florida Power & Light Company's ("FPL") Underground Residential Differential ("URD") Tariff and Underground Commercial/Industrial Distribution ("UCD") Tariff (collectively "FPL's URD Tariffs"), which should be modified because they do not fully comply with Commission Rule 25-6.078, F.A.C., and because the resulting charges approved by Order No. 08-0774-TRF-EI are not fair, just, and reasonable.

In further support of this Petition, the City states as follows.

1. The name, address, and telephone number of Petitioner, the City of South Daytona, is as follows:

City of South Daytona
Attn: Joseph W. Yarbrough, City Manager
City of South Daytona
P.O. Box 214960
South Daytona, Florida 32121
Telephone: (386) 322-3010
Facsimile: (386) 322-3008
E-mail: jyarbrough@southdaytona.org

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2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Brian P. Armstrong, Esq.
David G. Tucker, Esq.
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
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Telephone: (850) 224-4070
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with a courtesy copy to:

Scott E. Simpson, Esq.
Korey, Sweet, McKinnon, Simpson and Vukelja
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Telephone: (386) 677-3431
Facsimile: (386) 673-0748
E-Mail: simpson66@bellsouth.net

3. 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.

4. The City received notice of this matter when it received a copy of Commission Order No. PSC-08-0774-TRF-EI on or about November 24, 2008. Pursuant to that Order, the period for filing this Petition expires on December 15, 2008. Accordingly, this Petition is timely filed.

Statement of Affected Interests

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

Mr. Wade Litchfield, Esquire
Vice President
Regulatory Affairs
Wade_Litchfield@fpl.com

John T. Butler, Esquire
Senior Attorney
John_Butler@fpl.com
Florida Power & Light

Florida Power & Light Company
215 South Monroe Street, Suite 801
Tallahassee, FL 32301
(850) 521- 3900 (Office)
(850) 521-3939 (Telecopier)

Company
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5137 (Office)
(561) 691-7305 (Telecopier)

6. Petitioner, the City of South Daytona, is a city located in Volusia County, Florida. The City has a land area of approximately four square miles with approximately 13,000 residents and varied businesses. Housing is primarily single-family homes, condominiums, and townhouses. South Daytona has recently completed a first phase of undergrounding and has plans for development and redevelopment projects within the City that will include undergrounding of many miles of existing distribution lines and possibly the installation of new UG distribution lines

7. Rule 25-6.078, F.A.C., which governs the CIACs applicable for new construction, 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.

8. Standing. The City'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, the City’s substantial interests, as a party that has applied and expects 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.

9. The City has an ongoing interest 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.

10. Disputed Issues of Material Fact. The City believes 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 and UCD CIAC tariffs comply fully 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: Are FPL’s URD and UCD CIAC tariff charges fair, just and reasonable?

ISSUE 3: Do the URD and UCD charges proposed by FPL reflect the full value of service restoration cost savings provided by underground facilities?

ISSUE 4: Should new developments within a municipality that are served with UG facilities and that are contiguous with areas converted from OH to UG pursuant to Rule 25-6.115 and Section 12 of FPL's Tariff, and also that are constructed by a Local Government Applicant pursuant to Section 11 of FPL's Tariff, count toward satisfying the size minimums for obtaining the maximum GAF or ASRC credits under FPL's Tariffs?

ISSUE 5: What is the appropriate relief for City and other affected persons and parties in this case?

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

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

- a. FPL's URD and UCD CIAC charges do not fully comply with the requirements of Commission Rule 25-6.078, F.A.C., because the FPL's calculations misstate the value of the Net Present Value of operational costs other than Avoided Storm Restoration Costs in favor of Overhead facilities, resulting in the URD charges being too high, and therefore unfair, unjust, and unreasonable. Among other things, the City believes that the FPL's asserted differences between operation and maintenance costs for UG vs. OH facilities is understated because FPL does not take account of the better O&M performance of new UG facilities as compared to the system-average cost values that FPL used in its calculations.
- b. FPL's "tiered" approach to calculating the URD charges results in substantial discrepancies between value provided from undergrounding and charges paid by projects near the breakpoints in FPL's defined subdivision size tiers. Accordingly, FPL's tariff should be changed, e.g., by incorporating a simple arithmetic formula instead of FPL's proposed discrete, hard-and-fast breakpoint structure, to provide fairer charges for projects that are near the breakpoints.
- c. The charges proposed by FPL do not reflect the full value of service restoration cost savings provided by underground facilities because they do not give full credit for weather-related restoration cost savings other than those associated with named tropical storms and hurricanes.
- d. Having larger areas served by UG facilities provides roughly equivalent value, regardless of the composition of those areas as between new, greenfield UG facilities and UG facilities that have been converted from OH facilities. Accordingly, Local Governments and other Applicants that apply for and install UG service for new developments should be allowed to count any such new-UG-construction areas toward satisfying the size minimums under FPL's GAF tariff.¹

¹ This issue may or may not be appropriate to this docket, in that it does not relate directly to the tariff amendments approved by Order No. 08-0774-TRF-EI. Even so, the City believes that this is an important issue that the Commission must resolve in order to ensure that large-scale UG projects that consist of both UG conversions and new UG construction are treated fairly and accorded the full value that such combination new-and-conversion projects provide. As with the issue relating to Applicant-constructed new UG construction mentioned in footnote 1 above, the City wishes to identify this issue for the Commission and to state that it will file an appropriate petition to put this issue before the Commission for resolution along with all other outstanding issues relating to CIACs for underground electric service.

12. Statutes and Rules That Entitle the City to the Relief Requested. The applicable statutes and rules that entitle the City 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.

13. Statement Explaining How the Facts Alleged By the City 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 are subject to being determined by the Commission's actions in these proceedings.

14. 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 and that they fully reflect all cost savings provided by UG facilities, those charges will be unfair, unjust, unreasonable, and unduly 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 they do not give full credit for the operational cost savings provided by UG facilities vs. OH facilities, and also in that they do not provide full value for weather-related restoration cost savings realized by UG facilities other than those associated with named tropical storms and hurricanes.

Accordingly, the Commission should conduct a formal proceeding, including an evidentiary hearing, and to issue appropriate orders that FPL amend its tariffs to ensure that FPL's URD and UCD charges comply fully with the Commission's rules, that those charges provide credits for undergrounding that fully recognize all operational and storm restoration cost savings provided by

undergrounding, and that FPL's charges and practices with regard to the subject tariffs are fair, just, reasonable, and non-discriminatory, 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 size minimums under FPL's GAF tariff.

WHEREFORE, the City of South Daytona, Florida respectfully asks the Florida Public Service Commission to conduct a formal proceeding to investigate this matter, and to issue appropriate orders requiring FPL to amend its tariffs as requested above and granting such other relief that the Commission deems appropriate.

Respectfully submitted this 15th day of December, 2008.

s/ David G. Tucker

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Attorneys for the City of South Daytona

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 15th day of December, 2008:

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Bill Walker
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

Florida Power & Light Company
Bryan S. Anderson
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s/ David G. Tucker
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