

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Complaint of Wood Partners against  
Florida Power & Light Company concerning  
contributions-in-aid-of-construction charges  
for underground distribution facilities.

DOCKET NO. 040789-EI  
ORDER NO. PSC-05-1033-PAA-EI  
ISSUED: October 21, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman  
J. TERRY DEASON  
RUDOLPH "RUDY" BRADLEY  
LISA POLAK EDGAR

NOTICE OF PROPOSED AGENCY ACTION  
ORDER DENYING COMPLAINT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

On September 24, 2003, Wood Partners, developers of Alta Pines Apartments ("Alta Pines") in the City of Palm Beach Gardens ("City"), submitted a complaint (Request No. 558917E) against Florida Power & Light Company ("FPL") concerning the level of contribution-in-aid-of-construction ("CIAC") required by FPL to provide underground facilities to serve Alta Pines. At the request of Wood Partners, our staff conducted an informal conference concerning this complaint on February 25, 2004. The complaint was not resolved at or following the informal conference. By this Order, we deny Wood Partners' complaint. We have jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.07, Florida Statutes.

In May 2002, Wood Partners requested information from FPL concerning establishment of underground service for Alta Pines, a proposed 264-unit complex located on approximately 25 acres in the City of Palm Beach Gardens. FPL had existing distribution facilities located on Central Boulevard and Military Trail, which bounded the western and eastern sides of the proposed apartment complex. In evaluating Wood Partners' request, FPL determined that, with the addition of Alta Pines, the reliability of its distribution system in the region would require adding a feeder connectivity segment along Grandiflora Road, just south of Alta Pines. FPL finalized its underground design on August 23, 2002, based on plans provided by Wood Partners.

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FPL requested that Wood Partners provide a utility easement as required by Rule 25-6.076, Florida Administrative Code.

The City prohibited placement of underground distribution facilities along Grandiflora Road and along the southernmost perimeter of the apartment complex because the area is designated as a preserve. Thus, the initial underground design could not be implemented. On December 22, 2002, representatives of FPL, the City, and Wood Partners explored the extent of preserve requirements associated with Alta Pines and reached a consensus that FPL's feeder segment would be constructed underground on a utility easement to be provided across the middle of the Alta Pines site. Mr. Donaldson Hearing, a consultant for Wood Partners, memorialized these design changes in a December 23, 2002, letter to the City.

From that point, various aspects of the development project moved forward. FPL and Wood Partners exchanged information concerning the utility easement and construction design on several occasions. After receiving the utility easement from Wood Partners on June 11, 2003, and finalizing all details concerning the construction design for the underground facilities, FPL provided its final cost estimate of \$53,419.30 to Wood Partners on September 2, 2003. FPL's estimate was intended to reflect the cost differential associated with providing the required underground facilities as opposed to overhead facilities. FPL's cost estimate was comprised of the following charges:

Feeder Segment and Two Switchgear Packages	\$58,472.50
Various Credits for Trenching and Installations by Wood Partners	(14,152.20)
Two Looped Primary Lateral Risers	1,484.00
Service to a Lift Station	7,914.00

To ensure the progress of the Alta Pines project, Wood Partners paid this amount, although it did so "under protest." On September 24, 2003, Wood Partners submitted its complaint concerning FPL's charges. Wood Partners contends that the \$53,419.30 charge from FPL should be refunded because the feeder connectivity segment and two switch cabinets are not needed to provide adequate and reliable electric service to Alta Pines and were not requested by Wood Partners. Wood Partners asserts that FPL should be responsible for the costs of these facilities because the facilities are associated with serving other sites and regional growth matters not specific to Alta Pines.

In response, FPL asserts that its charges to Wood Partners were consistent with its Commission-approved tariff and Commission rules. FPL states that in determining what work was required and in determining appropriate charges, it reviewed the reliability needs for both the development (Alta Pines) and the region, as it would do in similar cases. FPL concluded that construction of the feeder segment and two switch cabinets were necessary to maintain normal reliability of that part of its system serving the area that includes Alta Pines. FPL notes that it would not have assessed charges if it was able to install overhead facilities. However, because the City's development order to Wood Partners required all utilities associated with the Alta

Pines project to be placed underground, FPL states that it charged Wood Partners the cost differential between underground and overhead facilities, pursuant to Commission rules.

Because Wood Partners was required by the City of Palm Beach Gardens to place all utilities associated with the Alta Pines project underground, Wood Partners applied to FPL for construction of an underground distribution system for Alta Pines. Such applications are governed by Part V of Chapter 25-6, Florida Administrative Code, entitled "Rules for Residential Electric Underground Service." Among those rules, Rule 25-6.078 requires each utility to file a written policy, subject to this Commission's review and approval, that states 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. FPL's policy with respect to multiple-occupancy residential buildings, like those involved in the Alta Pines project, is reflected in Section 10.6 of its Commission-approved tariff. Of particular relevance is Section 10.6.2 of the tariff:

Contribution by Applicant – When feeder mains on tracts of land upon which multiple-occupancy buildings will be constructed are deemed necessary by the Company to provide and/or maintain adequate service, [and] an underground installation is requested by the Applicant, or required by a governmental agency having the authority to do so, the Applicant shall contribute the differential costs provided in Section 10.3.2.b) and 10.3.3.c). There will be no contribution from the Applicant with respect to construction of underground distribution facilities other than feeder mains so long as the Company is free to construct such extensions in the most economical manner, and reasonably full use is made of the tract of land upon which the multiple-occupancy residential buildings will be constructed. Other conditions will require special arrangements.

Sections 10.3.2.b) and 10.3.3.c) of FPL's tariff specify how differential costs shall be calculated. The rule and tariff provisions discussed above reflect this Commission's long-standing policy that, where practical, persons who "cause" costs to be incurred should bear the burden of those costs.

Wood Partners does not dispute FPL's calculation of the cost differential between construction of an underground versus overhead system. Rather, Wood Partners contends that it should be responsible only for the cost differential associated with providing underground electric service directly to Alta Pines but should not be responsible for the cost differential associated with facilities used to serve regional system reliability needs, i.e., the feeder connectivity segment and two switch cabinets. However, pursuant to its tariff, FPL concluded that these facilities were necessary not just to serve Alta Pines, but to maintain normal reliability for that part of its system serving the area that includes Alta Pines - a conclusion that Wood Partners does not appear to dispute and that we find no basis to dispute. Based on FPL's review, the level of service reliability to Alta Pines customers as well as adjacent customers would be inadequate under FPL's system standards if these facilities were not installed. Thus, we find that charging Wood Partners for the cost differential associated with these facilities is consistent with Section 10.6.2 of FPL's tariff.

In conclusion, we find that FPL acted in compliance with its approved tariff when it charged Wood Partners \$53,419.30 as the cost differential associated with construction of underground electric facilities at Alta Pines. Accordingly, no refund is due to Wood Partners.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the complaint of Wood Partners against Florida Power & Light Company concerning the level of contribution-in-aid-of-construction required by FPL to provide underground facilities to serve the Alta Pines development (Request No. 558917E) is denied. It is further


ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto. It is further

ORDERED that in the event this Order becomes final, this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of October, 2005.

BLANCA S. BAYÓ, Director  
Division of the Commission Clerk  
and Administrative Services

By:

  
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Kay Flynn, Chief  
Bureau of Records

( S E A L )

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 11, 2005.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.