

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of underground
conversion tariff revisions, by Florida Power &
Light Company.

DOCKET NO. 080244-EI
ORDER NO. PSC-08-0461-PCO-EI
ISSUED: July 17, 2008

ORDER GRANTING THE PETITION TO INTERVENE BY THE CITY OF SOUTH
DAYTONA, FLORIDA

On April 30, 2008, Florida Power & Light Company (FPL) filed a petition, requesting approval of its Third Revised Tariff Sheet 6.300, Third Revised Tariff Sheet 9.720, Original Tariff Sheet 9.721 and Original Tariff Sheet 9.722, in order to implement the requirement of Rule 25-6.1 15(11)(a), Florida Administrative Code (F.A.C.), that FPL "include the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the facilities" in determining the Contribution in Aid of Construction (CIAC) to be paid by applicants for conversion from overhead to underground distribution facilities.

Petition for Intervention

By petition, dated June 6, 2008, the City of South Daytona, Florida, (City) has requested permission to intervene in this docket relating to FPL's proposed revisions to its tariffs governing conversions of overhead (OH) facilities to underground (UG) facilities. The City is located in Volusia County, Florida, covers approximately four square miles, and has approximately 13,000 residents. The City and its residents are served by FPL.

The City's Petition asserts the City is currently engaged with FPL in projects to convert existing OH distribution into UG distribution and the City has recently completed the first phase of an undergrounding project. The City has plans for development and redevelopment projects within the City that will include undergrounding for many miles of existing distribution lines and possibly the installation of new UG distribution lines. The City is attempting to partner with FPL to ensure that these projects are completed as cost-effectively as possible. The City asserts that the charges and credits authorized in FPL's proposed tariff will affect the substantial interests of the City and its residents.

The City's Petition adopts the seven issues of material fact which the Municipal Underground Utilities Consortium (MUUC) raised in its May 28, 2008, Petition to Intervene. The City seeks to reserve the right to raise additional issues in accordance with the Commission's rules and procedural orders issued in this case.

FPL's Response

In its timely response, dated June 18, 2008, FPL does not object to the City's petition to intervene in this docket. FPL asserts that, pursuant to Rule 25-22.039, F.A.C., the City must take

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this proceeding as it finds it; Issue 3¹ and Issue 5² are inconsistent with this requirement; and, if these issues are included, it will expand the proceeding beyond its proper scope. Accordingly, if the City is allowed to intervene, FPL asserts that the City should not be permitted to pursue those issues here.

Standard for Intervention

Pursuant to Rule 25-22.039, F.A.C., persons other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties, may petition for leave to intervene. Petitions for leave to intervene must be filed at least five days before the evidentiary hearing, must conform with Rule 28-106.201(2), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding. Intervenors take the case as they find it.

In order to establish standing, the intervenor must satisfy the two-prong standing test in Agrico Chem. Co. v. Dep't of Env'tl. Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show: (1) he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing; and (2) his substantial injury is of a type or nature which the proceeding is designed to protect. See id. The first aspect of the test deals with the degree of injury; the second deals with the nature of the injury. See id. The intervenor's "injury in fact" must be both real and immediate, not speculative, conjectural, or hypothetical. See Int'l Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990); Village Park Mobile Home Ass'n, Inc. v. State Dep't of Bus. Regulation, 506 So. 2d 426, 433-34 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987).

Analysis & Ruling

Having reviewed the Petition, it appears that the City has established standing to intervene because its interests may be substantially affected by this proceeding. Additionally, FPL concedes the City may intervene. Therefore, this Petition shall be granted. Regarding the issues of material fact raised by the City to which FPL objects, it should be noted that the City's intervention shall be limited to issues directly relevant to the tariffs that are the subject of this docket and, if necessary, a decision on the relevant issues will be made at a later date. Pursuant to Rule 25-22.039, F.A.C., MUUC takes the case as it finds it.

Therefore, it is

ORDERED by Commissioner Nathan A. Skop, as Prehearing Officer, that the Petition to Intervene filed by the City of South Daytona, Florida, is hereby granted with the limitations discussed above. It is further

¹ Issue 3: Will FPL's proposed Avoided Storm Restoration Costs (ASRC) credits provide appropriate incentives to municipalities to undertake OH-to-UG conversion projects?

² Issue 5: Are the eligibility criteria set forth in FPL's proposed tariff fair, just, reasonable, and appropriate?

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to:

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By ORDER of Commissioner Nathan A. Skop, as Prehearing Officer, this 17th day of
July, 2008.



NATHAN A. SKOP
Commissioner and Prehearing Officer

(SEAL)

ELS

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 or judicial review of Commission orders that is available under Sections 120.57 or 120.68, 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 or judicial review 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.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.