

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

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

DOCKET NO. 080244-EI

ORDER NO. PSC-09-0368-PHO-EI

ISSUED: May 27, 2009

PREHEARING ORDER

BY THE COMMISSION:

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code (F.A.C.), a Prehearing Conference was held on May 18, 2009, in Tallahassee, Florida, before Commissioner Lisa Polak Edgar, as Prehearing Officer.

APPEARANCES:

JOHN T. BUTLER and KENNETH M. RUBIN, ESQUIRES, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408.  
On behalf of Florida Power & Light Company (FPL).

ROBERT SCHEFFEL WRIGHT and JOHN T. LAVIA, III, ESQUIRES, Young van Assenderp, P.A., 225 South Adams Street, Suite 200, Tallahassee, Florida 32301  
On behalf of Municipal Underground Utilities Consortium, et. al. (MUUC).

BRIAN P. ARMSTRONG and MARLENE K. STERN, ESQUIRES, Nabors, Giblin & Nickerson, P.A., 1500 Mahan Drive, Suite 200, Tallahassee, Florida 32308  
On behalf of City of South Daytona (South Daytona).

RALPH R. JAEGER and ERIK L. SAYLER, ESQUIRES, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission (Staff).

MARY ANNE HELTON, Deputy General Counsel, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
Advisor to the Florida Public Service Commission.

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FPSC-COMMISSION CLERK

## **PREHEARING ORDER**

### **I. CASE BACKGROUND**

#### *Docket No. 070231-EI*

On April 2, 2007, Florida Power & Light Company (FPL) filed its underground residential distribution (URD) and underground commercial/industrial distribution (UCD) tariffs. By Order No. PSC-07-0835-TRF-EI, issued October 16, 2007, the Commission proposed to approve these tariffs. However, on November 6, 2007, the Municipal Underground Utilities Consortium (MUUC) and the City of Coconut Creek (Coconut Creek) filed their timely protest of that order. Also, the City of South Daytona (South Daytona) was granted intervention by Order No. PSC-08-0486-PCO-EI, issued August 1, 2008. Although the Order proposing to approve the tariffs was protested, the tariff rates in that Order remained in effect with any charges collected held subject to refund. A formal hearing was scheduled, but was continued to allow FPL to file revised tariff sheets to reflect the changes in Rule 25-6.078, Florida Administrative Code (F.A.C.), which require certain additional operating costs to be taken into consideration.

On April 1, 2008, FPL filed revised URD and UCD tariffs, which it alleged reflected the changes in Rule 25-6.078, F.A.C. By Order No. PSC-08-0774-TRF-EI, issued November 24, 2008, the Commission proposed to approve the April 1, 2008, tariffs in Docket No. 070231-EI. On December 15, 2008, MUUC timely protested Order No. PSC-08-0774-TRF-EI, requesting this matter be set for a formal hearing. On December 16, 2008, South Daytona filed an untimely protest. Pending resolution of the protests, the April 1, 2008, tariffs have remained in effect with any charges collected held subject to refund.

On May 14, 2009, the protesters confirmed that they were withdrawing their objections to the UCD tariffs approved in this docket.

#### *Docket No. 080244-EI*

On April 30, 2008, FPL filed a petition requesting approval of its underground conversion tariffs, in order to implement the requirements of amended Rule 25-6.115, F.A.C. On May 28, 2008, MUUC filed a petition to intervene, which was granted by Order No. PSC-08-0460-PCO-EI, issued on July 17, 2008. On June 6, 2008, South Daytona filed a petition to intervene, which was granted by Order No. PSC-08-0461-PCO-EI, issued on July 17, 2008.

By Order No. PSC-08-0780-TRF-EI, issued November 26, 2008, the Commission proposed to approve these tariffs. On December 17, 2008, MUUC, Coconut Creek, the Town of Palm Beach (Palm Beach), and Town of Jupiter Inlet (Jupiter Inlet) timely protested Order No. PSC-08-0780-TRF-EI, requesting this matter be set for a formal hearing. On December 22, 2008, South Daytona filed an untimely protest. The underground conversion tariffs approved by

Order No. PSC-08-0780-TRF-EI remain in effect with any collections being held subject to refund.

*Consolidation*

By Order No. PSC-09-0114-PCO-EI, issued February 25, 2009, both dockets were consolidated and scheduled for a formal administrative hearing on June 3-4, 2009, with all subsequent filings to be filed in Docket No. 080244-EI.

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes (F.S.). This hearing will be governed by said Chapter, and Rules 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality

shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the court reporter shall be retained in the Office of Commission Clerk's confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

#### V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

The parties shall avoid duplicative or repetitious cross-examination. Further, friendly cross-examination will not be allowed. Cross-examination shall be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Any party conducting what appears to be a friendly cross-examination of a witness should be prepared to indicate why that witness's direct testimony is adverse to its interests.

VI. ORDER OF WITNESSES

Each witness whose name is preceded by a plus sign (+) will present direct and rebuttal testimony together.

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Thomas R. Koch	FPL	1, 2, 3, 4, 5, and 6
Peter J. Rant	MUUC	1, 2, 3, 4, 5, and 6
Lloyd D. Shank, Jr.	MUUC	1, 2, 3, 4, 5, and 6
<u>Rebuttal</u>		
Thomas R. Koch	FPL	1, 2, 3, 4, 5, and 6
John McEvoy	FPL	1, 2, 4, and 5

VII. BASIC POSITIONS

**FPL:** FPL submitted proposed revisions to its URD Tariff in Docket No. 070231-EI in compliance with Rule 6.078, and the revised FPL Tariff was approved by the Commission on November 24, 2008 in Order No. PSC-08-0774-TRF-EI. Similarly, FPL submitted proposed revisions to its UG Conversion Tariff in compliance with Rule 25-6.115, and the revised FPL Tariff was approved by the Commission on November 26, 2008 in Order No. PSC-08-0780-TRF-EI. FPL continues to support the Commission's approval of both the URD and the UG Conversion Tariffs.

**MUUC:** Underground electric distribution facilities provide significant operational cost savings benefits, significant reliability benefits, and substantial public interest benefits vs. overhead facilities. While FPL's credit for the avoided storm restoration costs savings associated with larger, GAF-eligible, UG projects is reasonable, FPL's proposed charges for UG installations, both for new underground installations (in Docket No. 070231-EI) and for underground conversions (in Docket No. 080244-EI) fall short of recognizing and giving full credit for non-storm-related operational costs savings. FPL's calculations of the operational cost differential, including FPL's calculation of capital cost differences, for UG vs. OH facilities are systematically biased against UG facilities by using cost data for FPL's existing UG system or fleet, more than half of which is more than 20 years old. Proper calculation of the operational cost differential for the new UG facilities that would, necessarily, be installed today,

indicates that instead of FPL's proposed \$11,400 debit charge per pole-line mile against UG conversion projects, FPL's tariff should include a credit reducing UG CIACs by \$122,189 per pole-line mile in addition to the storm restoration cost differential. Comparable adjustments should also be made in FPL's URD charges.

FPL's proposed Tier 2 charges are unfair and unjust because they would result in applicants whose projects were near the breakpoints paying inappropriate CIACs or URD charges (a form of CIAC). This inequity is easily remedied by use of a formula that would calculate the actual UG charges for Tier 2 applicants on the basis of the number of units or length of facilities involved. Mr. Rant proposes a "curved" formula, but a straight-line or "linear" formula would also be reasonable.

For the foregoing reasons, FPL's tariffs, as proposed, are unfair, unjust, and unreasonable, and fail to provide full credit for the estimated cost savings provided by undergrounding. This, in turn, is contrary to the public interest because it will likely result in fewer and smaller undergrounding projects being undertaken, thereby exposing the public to additional losses from storms and from other events involving overhead facilities.

**SOUTH**

**DAYTONA:** Adopts the basic position of the MUUC.

**STAFF:** Staff's final positions will be based upon all the evidence in the record.

**VIII. ISSUES AND POSITIONS**

**ISSUE 1:** Are FPL's proposed "tiered" URD charges appropriate, and if not, how should the charges for installations of different sizes be stated in FPL's tariff?

**POSITIONS**

**FPL:** FPL's proposed tiered URD charges are appropriate. (KOCH, MCEVOY).

**MUUC:** No. FPL's proposed "tiered" charges are not appropriate because they inappropriately charge Tier 2 customers near the break points between Tier 1 and Tier 2, and between Tier 2 and Tier 3 amounts that are not reflective of the costs and benefits of undergrounding projects within Tier 2. For example, it is obvious that the costs and benefits of a UG project covering 195 lots are much closer to those of a 200-lot project, which would qualify for the larger Tier 1 credit, than to an average for projects between 86 and 199 units.

**SOUTH**

**DAYTONA:** Adopts the position of the MUUC.

**STAFF:** No position pending further development of the record.

**ISSUE 2:** Taking into account the requirements of Rules 25-6.078 and 25-6.0342, F.A.C., what should FPL's URD charges be?

**POSITIONS**

**FPL:** Taking into account the requirements of Rules 25-6.078 and 25-6.0342, F.A.C., FPL's URD charges should be those reflected on FPL's Tariff Sheets identified as Exhibit TRK-1 to the prefiled testimony of Thomas R. Koch, as approved by the Commission. (KOCH, MCEVOY).

**MUUC:** FPL's URD charges should be as shown in REVISED Exhibit PJR-13 to the testimony of Peter J. Rant, P.E.

**SOUTH**

**DAYTONA:** Adopts the position of the MUUC.

**STAFF:** No position pending further development of the record.

**ISSUE 3:** What relief, if any, should be provided to customers who have previously paid the URD charges approved in Order Nos. PSC 07-0835-TRF-EI and PSC-08-0774-TRF-EI, in the event that the Commission determines pursuant to Issues 1 and 2 that FPL's URD charges should be lower than approved under the terms of those Orders?

**POSITIONS**

**FPL:** In the event the Commission determines that FPL's URD charges should be lower than those previously approved in the Orders identified in Issue 3, customers who paid the URD charges approved in Order No. PSC 07-0835-TRF-EI and Order No. PSC-08-0774-TRF-EI would be entitled to receive a refund, the parameters of which would be determined by the Commission's rulings in this Docket. (KOCH)

**MUUC:** If the Commission determines that FPL's URD charges should be lower than approved in the subject orders, then any applicants and customers who paid the higher current charges should be refunded the difference between what they paid and the final charges determined to be appropriate by the Commission.

**SOUTH**

**DAYTONA:** Adopts the position of the MUUC.

**STAFF:** No position pending further development of the record.

**ISSUE 4:** Are FPL's proposed "tiered" CIAC charges for UG conversions appropriate, and if not, how should the charges for conversion projects of different sizes be stated in FPL's tariff?

**POSITIONS**

**FPL:** FPL's tiered CIAC charges for UG conversions are appropriate. (KOCH, MCEVOY)

**MUUC:** No. FPL's proposed "tiered" charges are not appropriate because they inappropriately charge Tier 2 customers near the break points between Tier 1 and Tier 2, and between Tier 2 and Tier 3 amounts that are not reflective of the costs and benefits of undergrounding projects within Tier 2. For example, it is obvious that the costs and benefits of a UG project covering 195 lots are much closer to those of a 200-lot project, which would qualify for the larger Tier 1 credit, than to an average for projects between 86 and 199 units.

**SOUTH**

**DAYTONA:** Adopts the position of the MUUC.

**STAFF:** No position pending further development of the record.

**ISSUE 5:** Taking into account the requirements of Rule 25-6.115, what should FPL's CIAC charges for conversions of existing overhead facilities to underground service be?

**POSITIONS:**

**FPL:** Taking into account the requirements of Rules 25-6.115, F.A.C., FPL's URD charges should be those reflected on FPL's Tariff Sheets identified as Exhibit TRK-1 to the prefiled testimony of Thomas R. Koch, as approved by the Commission. (KOCH, MCEVOY)

**MUUC:** The CIAC charges for conversions of existing overhead facilities to underground service should be as set forth and described in Mr. Rant's testimony. Basically, the CIAC charges should be as proposed by FPL except that: (a) instead of a \$11,400 debit charge per pole-line mile against UG conversion projects, FPL's tariff should include a \$122,189 credit per pole-line mile reducing the UG CIAC



charges; and (b) the charges for Tier 2 projects should be adjusted as described in the testimony of Mr. Rant.

**SOUTH**

**DAYTONA:** Adopts the position of the MUUC.

**STAFF:** No position pending further development of the record.

**ISSUE 6:** What relief, if any, should be provided to customers who have previously paid the conversion CIAC charges approved in Order No. PSC 08-0780-TRF-EI, in the event that the Commission determines pursuant to Issues 4 and 5 that FPL's CIAC charges should be lower than approved under the terms of that Order?

**POSITIONS:**

**FPL:** In the event the Commission determines that FPL's CIAC charges should be lower than those previously approved in the Order identified in Issue 6, customers who paid the CIAC charges approved in Order Nos. PSC 08-0780-TRF-EI would be entitled to receive a refund, the parameters of which would be determined by the Commission's rulings in this Docket. (KOCH)

**MUUC:** If the Commission determines that the UG conversion CIAC charges should be less than those approved, subject to protest, in Order No. PSC-08-0870, then all Applicants who paid the higher charges should receive refunds of the difference between the amounts paid and the amounts due per the charges approved by the Commission as a result of this proceeding.

**SOUTH**

**DAYTONA:** Adopts the position of the MUUC.

**STAFF:** No position pending further development of the record.

IX. **EXHIBIT LIST**

<u>Witness</u>	<u>Proffered</u> <u>By</u>		<u>Description</u>
<u>Direct</u>			
Thomas R. Koch	FPL	TRK-1	URD and UCD Tariff Filings (3 Filings)
Thomas R. Koch	FPL	TRK-2	URD – Operational Cost Differential Analysis

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Thomas R. Koch	FPL	TRK-3	Overhead to Underground Conversion Tariff Filings (2 filings)
Thomas R. Koch	FPL	TRK-4	Overhead to Underground Conversion – Operational Cost Differential Analysis
Peter J. Rant	MUUC	PJR-1	Resume of Peter J. Rant, P.E.
Peter J. Rant	MUUC	PJR-2	2006 PowerServices report entitled <u>Cost Effectiveness of Undergrounding Electric Distribution Facilities in Florida</u>
Peter J. Rant	MUUC	PJR-3	Updated PowerServices analyses (including REVISED Table C-1 thereof, submitted on 05/7/2009)
Peter J. Rant	MUUC	PJR-4	White Paper – Utility Puts TR-XLE and EPR Cables to the Test, by Shattuck and Hartlein
Peter J. Rant	MUUC	PJR-5	Presentation – Technical Trends in Medium Voltage URD Cable Materials and Design by Dudas
Peter J. Rant	MUUC	PJR-6	Presentation entitled Community of Captiva Island, Florida PowerServices, Inc. Report Supporting Information by R.L. Willoughby
Peter J. Rant	MUUC	PJR-7	FPL’s 2006 Storm Restoration Cost worksheet (that derived the original 25% GAF)
Peter J. Rant	MUUC	PJR-8	FPL’s URD worksheet package
Peter J. Rant	MUUC	PJR-9	FPL’s UG conversion worksheet package
Peter J. Rant	MUUC	PJR-10	FPL’s responses to MUUC’s Sept 2008 Data Requests

<u>Witness</u>	<u>Proffered By</u>		<u>Description</u>
Peter J. Rant	MUUC	PJR-11	FPL's responses to MUUC's March 2009 Interrogatories
Peter J. Rant	MUUC	PJR-12	Formula for solving the "tiers" issue
Peter J. Rant	MUUC	PJR-13	Proposed URD Charges (REVISED 5/7/2009)
Lloyd D. Shank, Jr.	MUUC	LDS-1	Resume of Lloyd D. Shank, Jr., P.E.
<u>Rebuttal</u>			
Thomas R. Koch	FPL	TRK- 5	Non-storm Operational Costs Differential – Updated MUUC Study v. FPL-Adjusted
Thomas R. Koch	FPL	TRK-6	Updated MUUC Study table I-8A (Revised 5/6/2009 – corrected arithmetic errors and updated assumptions)
Thomas R. Koch	FPL	TRK-7	Table I-8 Escalation Rate Detail
Thomas R. Koch	FPL	TRK-8	Updated MUUC Study Revised Table C-1 (Revised 5/6/2009 – corrected arithmetic errors and updated cost adjustments)
Thomas R. Koch	FPL	TRK-9	Updated MUUC Study Second Revised Supplemental Exhibit PJR-13
Thomas R. Koch	FPL	TRK-10	Reduced Accident Litigation and Awards Comparison (Confidential)
Thomas R. Koch	FPL	TRK-11	URD Non-Storm Operational Cost Differential – Updated MUUC Study v FLL-Adjusted

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

The parties have also stipulated that Staff's Composite Exhibit 2, consisting of FPL's responses to Staff's four sets of data requests, less the confidential portion of FPL's response to Staff's Second Data Request in Docket No. 070231-EI and First Data Request in Docket No. 080244-EI (No. 15), should be admitted as Composite Exhibit 2.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

FPL is seeking confidential treatment for Thomas R. Koch's Exhibit TRK-10, Reduced Accident Litigation and Awards Comparison attached to his rebuttal testimony filed on May 15, 2009.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages and shall be filed at the same time.


XIV. RULINGS

Opening statements, if any, shall not exceed seven minutes per party.

It is therefore,

ORDERED by Commissioner Lisa Polak Edgar, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Lisa Polak Edgar, as Prehearing Officer, this 27th day of May, 2009.

  
LISA POLAK EDGAR  
Commissioner and Prehearing Officer

( S E A L )

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 25-22.0376, 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.