

Matilda Sanders

From: Rhonda Dulgar [rdulgar@yvlaw.net]
 Sent: Friday, March 17, 2006 3:37 PM
 To: Filings@psc.state.fl.us
 Cc: Natalie_Smith@fpl.com; Patrick_Bryan@fpl.com; Wade_Litchfield@fpl.com; Charles Beck; christensen.patty@leg.state.fl.us; mcglathlin.joseph@leg.state.fl.us; Harold Mclean; Jennifer Brubaker; Mary Anne Helton; Rosanne Gervasi; Cochran Keating; swright@yvlaw.net
 Subject: Electronic Filing - Docket 060150-EI
 Attachments: TPBPetitionToIntervene.060150.march17.doc



TPBPetitionT
ervene.06015

a. Person responsible for this electronic filing:

Robert Scheffel Wright
 Young van Assenderp, P.A.
 225 South Adams Street, Suite 200
 Tallahassee, FL 32301
 (850) 222-7206
 swright@yvlaw.net

b. Docket No. 060150-EI

In re: Petition for Approval of Revisions to Contribution-in-Aid-of Construction Definition in Section 12.1 of First Revised Tariff Sheet No. 6.300, by Florida Power & Light Company.

c. Document being filed on behalf of the Town of Palm Beach, Florida.

d. There are a total of 12 pages.

e. The document attached for electronic filing is Petition to Intervene and Petition for Tariff Amendment of the Town of Palm Beach, Florida.

(see attached file: TPBPetitionToIntervene.060150.march17.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
 Secretary to Schef Wright
 Phone: 850-222-7206
 FAX: ~~850-561-6834~~

- CMP _____
- COM _____
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- RCA _____
- SCR _____
- SGA _____
- SEC 1
- OTH Kim P.

DOCUMENT NUMBER-DATE
 02395 MAR 17 06
 FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of)	
Revisions to Contribution-in-Aid-of)	Docket No: 060150-EI
Construction Definition in Section)	
12.1 of First Revised Tariff Sheet)	Filed: March 17, 2006
No. 6.300, by Florida Power & Light)	
Company)	
<hr/>		

**PETITION TO INTERVENE AND PETITION FOR TARIFF AMENDMENT OF
THE TOWN OF PALM BEACH, FLORIDA**

The Town of Palm Beach, Florida ("Palm Beach" or "Town"), pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039, 28-106.205, and 28-106.201, Florida Administrative Code ("F.A.C."), and by and through its undersigned counsel, hereby petitions the Commission (a) for leave to intervene in the above-styled tariff amendment docket and (b) to conduct proceedings within this docket to determine the proper, fair, just, and reasonable contributions in aid of construction for underground conversions pursuant to Florida Power & Light Company's ("FPL") tariffs. In summary, the Town of Palm Beach is a substantial customer of FPL, and the Town has ongoing interests in converting the existing overhead electric distribution lines in Palm Beach to underground service, a transaction that is governed in part by the subject Tariff Sheet No. 6.300 that FPL proposes to amend. Accordingly, the Town has direct and substantial interests in the Commission's decisions regarding proposed amendments to that tariff, and the Town is therefore entitled to intervene in this docket to protect its interests, as well as to ask the Commission to conduct appropriate proceedings to consider whether additional credits, beyond those proposed by FPL, are warranted.

In further support of its Petition to Intervene and Petition

DOCUMENT NUMBER-DATE
02395 MAR 17 06

for Tariff Amendment,¹ the Town of Palm Beach states as follows.

1. The name, address, and telephone number of the Petitioner are as follows:

Town of Palm Beach
ATTN: Thomas G. Bradford, Deputy Town Manager
360 South County Road
Palm Beach, Florida 33401
Telephone (561) 838-5410
Telecopier (561) 838-5411.

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

Robert Scheffel Wright, Attorney at Law
John T. LaVia, III, Attorney at Law
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
(850) 222-7206 Telephone
(850) 561-6834 Facsimile
E-Mails - swright@yvlaw.net and jlavia@yvlaw.net

with a courtesy copy to

Thomas G. Bradford, Deputy Town Manager
Town of Palm Beach, Florida
360 South County Road
Palm Beach, Florida 33401
Telephone (561) 838-5410
Telecopier (561) 838-5411
E-Mail - TBradford@townofpalmbeach.com.

¹ The Town recognizes that it could separately petition for the additional tariff amendments that the Town believes are warranted and then move to consolidate that proceeding with this docket. However, given that the same tariff sheet is involved and that the determination of the issues will involve the same common core of operative facts, separate filings would be administratively inefficient, and accordingly, the Town is seeking its proposed additional relief herein.

3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

4. The Town of Palm Beach was incorporated in 1911 and has a year-round population of approximately 10,000 and a seasonal population of 30,000 persons. The Town employs approximately 400 people. The Town of Palm Beach owns and operates numerous municipal facilities and lighting equipment, for all of which the Town purchases electric service from FPL. For the past several years, as a potential applicant within the meaning of applicable FPL tariffs, including Tariff Sheet No. 6.300, the Town has been engaged in discussions and negotiations with FPL toward converting the existing overhead ("OH") electric distribution facilities in the Town to underground ("UG") facilities. As a long-established community, much of FPL's distribution system in Palm Beach consists of older, overhead facilities, and the Town is actively working toward the conversion of all OH facilities in the Town to UG facilities. The Town is planning to solicit its citizens' interest in proceeding with the contemplated underground conversion project in an election to be held in November 2006. Additionally, the Town is working with other cities and towns toward engaging consulting engineers to conduct an appropriate, thorough, life-cycle cost and reliability analysis of underground distribution facilities as compared to overhead facilities designed to withstand Category 3, 4, and 5 winds. Because this study will require some time to complete, the Town commits to work with the Commission, the Staff, FPL, and other interested parties toward establishing a workable schedule for these proceedings.

5. Statement of Affected Interests. In this docket, the Commission will, at least initially, decide whether to approve FPL's requested amendment to its tariff sheet. This tariff sets forth the formula by which contributions in aid of construction ("CIACs") for conversion of OH to UG facilities are calculated. FPL's proposed amendment will, if approved, provide for a credit of twenty-five percent (25%) of the otherwise applicable CIAC to be granted by FPL to local government applicants for OH-to-UG conversions "upon mutual agreement of the local government and the utility" and subject to the condition that all existing OH facilities be included in the requested conversion project. The Town supports allowing the proposed amendments to Tariff Sheet No. 6.300 to become effective immediately, as a transitional measure, while the Commission conducts proceedings to determine the proper levels of CIACs and incentives for undergrounding. Additionally, the Town does not object to FPL's request that the Commission recognize the additional investment that would thus be made by FPL in UG facilities as new plant in service. However, the Town believes that greater credits than FPL's proposed 25% credit are warranted and respectfully asks the Commission for a hearing to determine the proper method of calculating OH-to-UG conversion CIACs, when all appropriate costs, benefits, and other relevant factors are taken into consideration. (To the extent that the Commission might deem it necessary for the Town to invoke the Commission's jurisdiction pursuant to Section 366.07, Florida Statutes, the Town hereby complains that FPL's UG conversion CIACs, even with the proposed 25% credit, are not fair, just, and

reasonable, and asks the Commission to conduct the requested proceedings to rectify this unfair situation.) To guard against the argument that the Town's request (i.e., that the tariff be amended to provide for greater credits in the CIAC calculation process than the 25% credit proposed by FPL) exceeds the scope of FPL's petition for its proposed specific tariff amendment, the Town respectfully incorporates its Petition for Tariff Amendment into this pleading.

6. Standing to Intervene. The Town of Palm Beach's substantial interests are of sufficient immediacy to entitle it 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, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor 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 Town is directly subject to the tariff that FPL seeks to amend. Thus, the interests that the Town seeks to protect are of sufficient immediacy to warrant intervention, and the Town's interests in having the Commission determine the fair, reasonable, equitable, and appropriate UG CIACs are clearly within the scope of interests that this proceeding is designed to protect.

7. Standing to Request Additional Tariff Amendments.

Factually, the Town of Palm Beach is a direct customer of FPL, purchasing retail electric service pursuant to several of FPL's retail rate schedules, an "applicant" within the meaning of, and subject to, FPL's existing First Revised Tariff Sheet No. 6.300, and a "local government" within the meaning of FPL's proposed revisions to that tariff sheet. Standing to request amendment of a tariff (which is, substantively, to complain that a public utility's rates are not fair, just, and reasonable) that affects a customer, or an applicant subject to a tariff, is determined by the same Agrico standards discussed above. Here, the Town satisfies the Agrico standing criteria in that it is an applicant subject to the tariff, it has been negotiating with FPL for several years toward the conversion of existing OH facilities in the Town to UG facilities, and it will be obliged to pay the tariffed rate, or the rate determined by a formula set forth in the tariff, for any conversion that it decides to undertake. As noted above, the Town is proceeding toward putting this issue on the ballot, in order to seek its citizens' opinions on the undergrounding project, in the election to be held this coming November. At present, all indications are that Palm Beach's citizens will vote decisively to approve the UG conversion project. Thus, the Town needs the Commission's action in the near future - this year - in order to have the appropriate CIACs determined before the Town proceeds with its contemplated UG conversion project.

8. Disputed Issues of Material Fact. The Town of Palm Beach believes that the disputed issues of material fact in this

proceeding will include, but will not necessarily be limited to, the following.

- ISSUE 1:** Is the 25% credit proposed by FPL fair, just, and reasonable?
- ISSUE 2:** Will FPL's proposed incentive provide an appropriate incentive to municipalities to undertake OH-to-UG conversion projects?
- ISSUE 3:** Should FPL be allowed to include the amount that it pays for new UG facilities in its plant in service accounts?
- ISSUE 4:** What, if any, other conditions does FPL plan to impose on local governments, like the Town of Palm Beach, in order for FPL to give its "mutual agreement" to a conversion project in order for the local government to qualify for the 25% credit?
- ISSUE 5:** What is the meaning of the proposed tariff requirement that "all existing facilities within the area designated for conversion must be included by the Applicant in the requested conversion project?" Is this requirement fair and reasonable?
- ISSUE 6:** What are the appropriate costs and benefits to FPL's general body of ratepayers associated with OH-to-UG conversions, and how should those be reflected in the calculation of UG conversion CIACs?
- ISSUE 7:** What is the appropriate level of incentive credit to be applied against in calculating OH-to-UG conversion CIACs?
- ISSUE 8:** Should FPL be allowed to include indirect and general costs (commonly referred to as "overhead" costs in an accounting sense) as part of the CIAC cost imposed on municipalities when such municipalities do the OH-to-UG conversion projects themselves (either with municipal employees or with an FPL-approved contractor), as is their right pursuant to Rule 25-6.115(3), F.A.C., and FPL's Tariff Section 12.2.11 on First Revised Sheet No. 6.330?
- ISSUE 9:** Should FPL's tariffs be amended to include provisions favoring the use of rights-of-way, as opposed to private easements, where practicable for the location of

underground distribution facilities?

The Town reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure in this case.

9. Statement of Ultimate Facts Alleged. The Town of Palm Beach alleges the following ultimate facts entitling it to the relief requested herein.

- a. The Town of Palm Beach is a substantial retail customer of FPL.
- b. The Town of Palm Beach is an "Applicant" within the meaning of FPL's UG CIAC tariffs.
- c. The Town of Palm Beach is a "local government" within the meaning of FPL's proposed amended UG CIAC tariff.
- d. FPL's existing UG conversion CIACs are not fair, just, and reasonable.
- e. FPL's proposed 25% credit is a step in the right direction, but it does not reflect all benefits to FPL's general body of customers associated with underground conversions, and accordingly it does not result in UG conversion CIACs that are fair, just, and reasonable.
- f. Neither FPL's existing UG conversion CIACs nor its proposed amended UG conversion CIACs, including the proposed 25% incentive credit, provide sufficient or appropriate incentives to local governments to undertake UG conversion projects.
- g. The benefits of UG conversions to FPL's general body of customers include, at a minimum and without limitation: (a) the avoided cost of equivalent new OH facilities, calculated based upon the cost of such OH facilities necessary to withstand at least the "extreme wind" (Category 3 gusts) criteria prescribed by the National Electrical Safety Code; (b) the avoided vegetation management costs associated with OH facilities; and (c) a reasonable value for avoided costs of having to replace OH facilities at very high costs in a hurricane restoration environment.
- h. FPL's practice of attempting to impose on local governments,

in its CIAC calculations, FPL's "indirect and general" (overhead-type) costs in cases where local governments perform or contract for UG conversion projects themselves, is not fair, just, or reasonable and results in substantial disincentives to local governments to undertake beneficial UG conversion projects.

- i. FPL has recently indicated its willingness to work with local governments to allow the use of rights-of-way, as opposed to easements, where feasible for the location of underground facilities. This practice should be codified in FPL's tariffs.

10. Statutes and Rules That Entitle the Town of Palm Beach to the Relief Requested. The applicable statutes and rules that entitle the Town of Palm Beach to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.03, 366.04(1), 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes, and Rule 25-22.039 and Chapter 28-106, Florida Administrative Code.

11. Statement Explaining How the Facts Alleged By the Town of Palm Beach Relate to the Above-Cited Rules and Statutes In Compliance With Section 120.54(5)(b)4.f, Florida Statutes. Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. As a substantial retail customer of FPL and as a municipal government directly subject to FPL's tariffs relating to OH-to-UG conversions, the Town is entitled to intervene herein. The above-cited sections of Chapter 366 relate to the Commission's jurisdiction over FPL's rates and service, and the Commission's statutory mandate to ensure that FPL's rates - here, FPL's UG CIACs - are fair, just, and reasonable. The facts alleged here by the Town demonstrate (a) that the Commission's decisions herein will have a significant impact on FPL's UG CIACs,

(b) that the Commission should investigate and fix the fair, just, reasonable, and appropriate UG CIACs for FPL, at least insofar as those CIACs are applicable to the Town's contemplated OH-to-UG conversion project, and (c) accordingly, that these statutes provide the basis for the relief requested by the Town herein.

CONCLUSION AND RELIEF REQUESTED

The Town of Palm Beach is a substantial customer of FPL and an "Applicant" and a local government subject to FPL's existing and proposed UG CIAC tariffs. In furtherance of the Town's ongoing efforts to obtain conversion of existing OH facilities to UG facilities on fair, just, reasonable, appropriate, and cost-effective terms, the Town is entitled to intervene in this docket, and to seek additional relief in the form of lower UG CIACs than those proposed by FPL.

WHEREFORE, the Town of Palm Beach, Florida respectfully requests the Florida Public Service Commission to enter its order GRANTING its Petition to Intervene, GRANTING its Petition for Tariff Amendment, ordering that appropriate proceedings be held regarding the level of FPL's UG CIACs and the terms and conditions of FPL's UG CIAC tariffs, and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on the Town's representatives indicated in paragraph 2 above.

Respectfully submitted this 17th day of March, 2006.

Robert Scheffel Wright
Florida Bar No. 966721
John T. LaVia, III
Florida Bar No. 853666
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
(850) 222-7206 Telephone
(850) 561-6834 Facsimile

Attorneys for the Town of Palm Beach,
Florida

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing Town of Palm Beach's Petition to Intervene and Petition for Tariff Amendment has been furnished by electronic Mail and U.S. Mail this 17th day of March, 2006, to the following:

Jennifer Brubaker
Mary Anne Helton
William Cochran Keating, IV
Roseanne Gervasi
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Harold A. McLean
Charles J. Beck
Joseph A. McGlothlin
Patty Christensen
Office of the Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399

R. Wade Litchfield
Bryan Anderson
Patrick Bryan
Natalie F. Smith
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408

Attorney