

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)
_____)

**PETITION TO INTERVENE AND PETITION FOR TARIFF AMENDMENT OF
THE TOWN OF JUPITER ISLAND, FLORIDA**

The Town of Jupiter Island, Florida ("Jupiter Island" 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 Jupiter Island is a substantial customer of FPL, and the Town has ongoing interests in converting the existing overhead electric distribution lines in Jupiter Island 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

for Tariff Amendment,¹ the Town of Jupiter Island states as follows.

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

Town of Jupiter Island
ATTN: Donald R. Hubbs, Assistant Town Manager
Post Office Box 7
Hobe Sound, Florida 33475
Telephone (772) 545-0100
Telecopier (772) 545-0188.

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

The Honorable Charles Falcone, Commissioner
Post Office Box 7
Hobe Sound, Florida 33475
Telephone (772) 545-0100
Telecopier (772) 545-0188
E-Mail - cafalcone@adelphia.net

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 Jupiter Island has approximately 625 residences, plus Town buildings and facilities and a private club. The Town is located on Jupiter Island, a barrier island approximately 10 miles long located adjacent to Hobe Sound, in Martin County, Florida. The Town of Jupiter Island owns and operates municipal facilities and lighting equipment, for all of which the Town purchases electric service from FPL. For the past few 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. In fact, to the best of the Town's knowledge, the Town of Jupiter Island is the first municipality to request and pay for a "binding cost estimate" from FPL for the contemplated OH-to-UG conversion project. The Town is actively working toward the conversion of all OH facilities in the Town to UG facilities.

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 the proposed amendments to Tariff Sheet No. 6.300 becoming 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 Jupiter Island'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 Jupiter Island is a direct customer of FPL, 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. 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 Jupiter Island 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 Jupiter Island, 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 Jupiter Island alleges the following ultimate facts entitling it to the relief requested herein.

- a. The Town of Jupiter Island is a substantial retail customer of FPL.
- b. The Town of Jupiter Island is an "Applicant" within the meaning of FPL's UG CIAC tariffs.
- c. The Town of Jupiter Island 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 toward 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 Jupiter Island to the Relief Requested. The applicable statutes and rules that entitle the Town of Jupiter Island to the relief requested 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 Jupiter Island 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 Jupiter Island 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 Jupiter Island, 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 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
Jupiter Island, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Town of Jupiter Island'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