

ORIGINAL

**Ruth Nettles**

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**Sent:** Thursday, August 02, 2007 8:24 AM  
**To:** Beth Keating; James Meza; James D. Beasley; Lee L. Willis; Jeffrey Stone; Russell Badders; Nancy Sims; Charles Falcone; Richard Jackson; Maria Browne; Susan Masterton; Bill Walker; John T. Butler; Douglas Sale; Martin Rollins; Gene Adams; John T. Burnett; Paul Lewis, Jr.; Adam Teitzman; Filings@psc.state.fl.us; Keino Young; Lorena Holley; Susan Ritenour; Paula Brown; Donald Hubbs; Thomas Bradford; David Christian; Dulaney O'Roark; Dennis Hayward; Schef Wright  
**Subject:** Electronic Filing - Docket 070301-EI  
**Attachments:** MUUC.PetitiontoIntervene.8-2-07.doc

- a. Person responsible for this electronic filing:

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- b. Docket No. 070301-EI

In Re: Approval of Florida Power & Light Company's Storm Hardening Plan Pursuant to Rule 25-6.0342, F.A.C.

- c. Document being filed on behalf of the Municipal Underground Utilities Consortium.  
 d. There are a total of 12 pages.  
 e. The document attached for electronic filing is Petition to Intervene of the Municipal Underground Utilities Consortium.

(see attached file: MUUC.PetitiontoIntervene.8-2-07.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar  
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DOCUMENT NUMBER-DATE

06622 AUG-26

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In Re: Approval of Florida Power )  
& Light Company's Storm Hardening ) DOCKET NO. 070301-EI  
Plan Pursuant to Rule 25-6.0342, F.A.C.) FILED: AUGUST 2, 2007  
\_\_\_\_\_)

PETITION TO INTERVENE OF  
THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM

The Municipal Underground Utilities Consortium (the "MUUC"), 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 for leave to intervene in the above-styled docket. The MUUC is comprised of approximately 30 political subdivisions of the state of Florida (i.e., Florida cities and towns), the vast majority of which are retail customers of Florida Power & Light Company ("FPL").

In summary, the vast majority of the MUUC's members are FPL customers that have ongoing interests in converting existing overhead ("OH") electric distribution lines in their jurisdictions to underground ("UG") service, as well as in the overall reliability of the electric service that they purchase from FPL. Accordingly, the substantial interests of the MUUC's members in reliable electric service and in the implications of FPL's Plan for these members' desired UG conversion projects will be determined by these proceedings, and the MUUC is accordingly entitled to intervene in this docket to protect its members' interests.

In further support of its Petition to Intervene, the MUUC states as follows.

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

Municipal Underground Utilities Consortium  
Attention: Thomas G. Bradford, Deputy Town Manager  
Town of Palm Beach  
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  
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with a courtesy copy to

Thomas G. Bradford, Deputy Town Manager  
Town of Palm Beach  
360 South County Road  
Palm Beach, Florida 33401  
Telephone (561) 838-5410  
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E-Mail - [Tbradford@TownofPalmBeach.com](mailto:Tbradford@TownofPalmBeach.com).

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

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

4. The MUUC is a consortium of cities and towns that was created by that certain "Interlocal Agreement to Promote

Undergrounding of Utility Facilities and Related Implementation Activities" dated June 2006 (the "Interlocal Agreement"). In pertinent part, the Interlocal Agreement provides:

The purpose of this Agreement is to provide a means, pursuant to the provisions of Chapter 163, Florida Statutes, for the Local Governments who are Parties to this Agreement to mutually promote the installation of underground electric and other utility and utility-type facilities, in the public interest; to mutually promote the conversion of existing overhead electric and other utility and utility-type facilities to underground facilities, in the public interest; to promote and ensure, to the maximum extent feasible and practicable, that underground installations and conversions are paid for through appropriate, fair, just, equitable, and reasonable combinations of utility funding and funding by entities, such as the Local Governments, that apply for the installation and conversion of underground facilities; and to mutually participate in and support activities in furtherance of these and related efforts.

The Interlocal Agreement specifically contemplates the MUUC

[p]articipating in any relevant proceedings before any governmental agency having jurisdiction, including, without limitation, rulemaking or other proceedings before the Florida Public Service Commission, legislative activities before the Florida Legislature or before any other legislative or quasi-legislative body in Florida having relevant jurisdiction, and any other relevant proceedings and activities before any court, tribunal, agency, executive, or legislative body having jurisdiction over the subject matter of undergrounding utility and utility-type facilities in Florida.

5. The MUUC's members own and operate numerous municipal facilities and utility equipment. The substantial majority of the MUUC's members purchase retail electric service directly from FPL. A substantial number of the MUUC's members are

considering underground utility projects, and accordingly, these members would be Local Government Applicants within the scope of FPL's tariffs applicable to UG conversion projects; these are in turn subject to being directly impacted by Commission Rule 25-6.115(9), F.A.C., which requires that estimated OH construction costs used in calculating CIACs shall be based on the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening.

6. Statement of Affected Interests. In this docket, the Commission will decide whether to approve FPL's Storm Hardening Plan. FPL's implementation of this Plan will impact the reliability of electric service throughout FPL's service area, including the geographic areas of the vast majority of the MUUC's member municipalities, and will also directly impact the Contributions in Aid of Construction ("CIACs") to be paid by the MUUC's members in connection with their UG conversion projects. The impact on CIACs naturally flows from Commission Rule 25-6.115(9), F.A.C., which requires that estimated OH construction costs used in calculating CIACs shall be based on the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening. Accordingly, the substantial interests of the MUUC's members in reliable electric service and in appropriately calculated CIACs are subject to determination by the Commission's actions in this docket.

7. Standing to Intervene. The MUUC'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, a substantial number of the MUUC's members are directly subject to FPL's proposed tariffs. Moreover, the MUUC's members have ongoing interests in reliable electric service and in converting existing OH lines in their respective jurisdictions to UG service, the charges for which are directly impacted by the effects of FPL's Plan. Thus, the interests that the MUUC seeks to protect are of sufficient immediacy to warrant intervention, and the MUUC's interests in having the Commission act on FPL's Plan so as to ensure electric service reliability and the proper calculation of CIACs for UG conversion projects are clearly within the scope of interests that this proceeding is designed to protect.

8. Associational Standing. Under Florida law, to establish standing as an association representing its members'

substantial interests, an association such as the MUUC must demonstrate three things:

- a. that a substantial number of its members, although not necessarily a majority, are substantially affected by the agency's decisions;
- b. that the intervention by the association is within the association's general scope of interest and activity; and
- c. that the relief requested is of a type appropriate for an association to obtain on behalf of its members.

Florida Home Builders Ass'n v. Dep't of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982). The MUUC satisfies all of these "associational standing" requirements. A substantial majority of the MUUC's members are local governments in FPL's service area and receive retail electric service from FPL. The MUUC exists to represent its members' interests in a number of venues, including the Florida Public Service Commission: indeed, the Interlocal Agreement creating the MUUC specifically contemplates the MUUC's participation in a proceeding such as this. Finally, the relief requested -- intervention and an appropriate decision on FPL's Storm Hardening Plan, including the impacts of that Plan on FPL's CIACs for UG conversion projects -- is across-the-board relief that will apply to all of the MUUC's members in the same way; therefore, the requested relief is of the type that is

appropriate for an association to obtain on behalf of its members.

9. Disputed Issues of Material Fact. The MUUC 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 FPL's proposed Storm Hardening Plan reasonable?

**ISSUE 2:** Does FPL's Plan comply with all requirements of Rule 25-6.0342, F.A.C.?

**ISSUE 3:** Should the Commission require any modifications to FPL's Plan in the public interest?

**ISSUE 4:** Should FPL's Storm Hardening Plan be approved, approved with modifications, or rejected?

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

8. Statement of Ultimate Facts Alleged. The MUUC alleges the following ultimate facts entitling it to the relief requested herein.

- a. The vast majority of the MUUC's members are substantial retail customers of FPL.
- b. As substantial retail customers of FPL, the vast majority of the MUUC's members have substantial interests in the reliability of their electric service and in the impacts of FPL's Plan, as that Plan may be approved or modified by the Commission, on FPL's charges (CIACs) for UG conversion projects that are being contemplated or planned by a significant number of the MUUC's members.
- c. The substantial interests of the MUUC's members in reliable electric service and in having FPL's Storm Hardening Plan designed and structured so as to promote the public interest are subject to determination in this proceeding.

d. As reflected in its preliminary comments filed in this docket jointly with the Town of Jupiter Island and the Town of Palm Beach, the MUUC believes that certain improvements should be made in FPL's Plan, including more active pursuit of undergrounding as a hardening measure, especially where undergrounding opportunities may be identified in connection with road-widening, relocation, upgrade, and similar projects; encouragement of and commitment to using rights-of-way to the maximum extent feasible for the placement of UG facilities as a storm hardening measure; and support of submersible underground equipment.

9. Statutes and Rules That Entitle the MUUC to the Relief Requested. The applicable statutes and rules that entitle the MUUC to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.03, 366.04(5), and 366.05(1), Florida Statutes, and Rules 25-6.0342 and 25-22.039 and Chapter 28-106, Florida Administrative Code.

10. Statement Explaining How the Facts Alleged By the MUUC Relate to the Above-Cited Rules and 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. Section 366.03, Florida Statutes, requires each public utility to furnish sufficient, adequate, and efficient service; Section 366.04(5), Florida Statutes, gives the Commission jurisdiction over the planning, development, and maintenance of the grid to assure adequate and reliable service; and Section 366.05(1), Florida Statutes, gives the Commission jurisdiction to require improvements and additions to utility facilities to promote the convenience and welfare of the public. As substantial retail customers of FPL, the substantial interests of the MUUC's members in the reliability of FPL's

distribution system (and transmission system) are sufficient to establish standing in this proceeding. Moreover, as municipal governments directly subject to FPL's CIAC tariffs relating to OH-to-UG conversions, and thus also subject to the impacts that the approval of FPL's Storm Hardening Plan will have on such CIACs, the substantial interests of the MUUC's members are further subject to determination in this proceeding, and the MUUC is entitled to intervene herein.

**CONCLUSION AND RELIEF REQUESTED**

The Municipal Underground Utilities Consortium is an association consisting of a substantial number of municipalities that are substantial retail customers of FPL and local governments subject to FPL's CIAC tariffs applicable to UG conversion projects. Based on their substantial interests in the reliability of FPL's distribution system (and transmission system), as those interests may be affected by FPL's Storm Hardening Plan, and further based on the substantial interests of the MUUC's members in the impacts that FPL's Plan will have on CIACs to be paid by the MUUC's member cities and towns for UG conversion projects, the MUUC is entitled to intervene in this docket.

**WHEREFORE**, the Municipal Underground Utilities Consortium respectfully requests the Florida Public Service Commission to enter its order GRANTING its Petition to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on the MUUC's representatives indicated in paragraph 2 above.

Respectfully submitted this 2nd day of August, 2007.

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**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail and U.S. Mail on this 2nd day of August, 2007, on the following:

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