

Ruth Nettles

From: John_Butler@fpl.com
Sent: Wednesday, June 18, 2008 2:55 PM
To: Filings@psc.state.fl.us
Cc: Ralph Jaeger; swright@yvlaw.net; Erik Saylor; dtucker@ngn-tally.com
Subject: Re: Electronic Filing for Docket No. 080244-EI/Florida Power & Light Company's Response to Petition to Intervene of the City of South Daytona Beach
Attachments: response to City of SDB petition to intervene.doc

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 080244-EI

In re: Florida Power & Light Company's Petition for Approval of Underground Conversion Tariff Revisions.

c. The document is being filed on behalf of Florida Power & Light Company.

d. There is a total of 5 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response to Petition to Intervene of the City of South Daytona Beach

(See attached file: response to City of SDB petition to intervene.doc)

DOCUMENT NUMBER- DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Underground Conversion Tariff Revisions.) Docket No. 080244-EI
)
) Filed: June 18, 2008

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE
TO PETITION TO INTERVENE OF THE
CITY OF SOUTH DAYTONA BEACH**

Florida Power & Light Company ("FPL") hereby responds to the Petition to Intervene that was filed on June 5, 2008 by the City of South Daytona Beach (the "City").¹

FPL does not object to the City's intervention in this docket. However, pursuant to Rule 25-22.039, F.A.C., the City must take this proceeding as it finds it. Issues 3 and 5 in the City's Petition to Intervene are inconsistent with this requirement, because they purport to expand the proceeding beyond its proper scope. Accordingly, if the City is allowed to intervene, it should not be permitted to pursue those issues here.²

This proceeding was initiated by FPL to seek approval of tariff sheet revisions that would implement the requirement of Rule 25-6.115(11)(a) 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

¹ The certificate of service for the City's Petition to Intervene indicates that it was served electronically on FPL. However, the electronic service was inadvertently directed to individuals other than the two representatives of FPL identified in FPL's April 30 petition initiating this docket. Accordingly, counsel for the City agreed that FPL's response to the Petition to Intervene is due on June 18.

² The City's Issues 3 and 5 are identical to Issues 3 and 5 raised in MUUC's May 28, 2008 Petition to Intervene, and FPL's objections to those issues expressed herein are the same as to the corresponding issues raised by MUUC.

05185 JUN 18 8

from overhead to underground distribution facilities. All of the tariff revisions that FPL has proposed are strictly related to implementation of that rule requirement.

The City has identified seven “potential issues of material fact that will be decided in this proceeding.” Petition to Intervene, at 4-5. FPL has no objection to Issues 1, 2, 4, 6 and 7. However, the City’s Issues 3 and 5 do not reasonably relate to the inclusion of the Net Present Value of operational costs in the CIAC determination and should be rejected.

Issue 3: Will FPL’s proposed ASRC [i.e., avoided storm restoration costs] credits provide appropriate incentives to municipalities to undertake OH-to-UG conversion projects? Rule 25-6.115(11)(a) does not require, or even contemplate, that the operational cost differential for storm restoration costs be evaluated on the basis of whether it provides “appropriate incentives.” The rule requirement relates to the actual cost difference between restoring service following a storm for overhead versus underground distribution facilities. If FPL’s proposed tariff sheet revisions appropriately reflect this cost differential, they satisfy the rule and should be approved. The City is improperly attempting to interject into that cost determination the separate and distinct issue of what constitutes appropriate incentives. FPL’s proposed tariff revisions do not raise this issue, and Rule 25-6.115(11)(a) does not suggest any basis upon which the issue could or should be resolved. The purpose of this proceeding is to determine whether *FPL’s proposed tariff revisions properly implement Rule 25-6.115(11)(a)*. Issue 3 is irrelevant to that purpose.

Issue 5: Are the eligibility criteria set forth in FPL’s proposed tariff fair, just, reasonable, and appropriate? Again, the City strays outside the ambit of this proceeding. With one narrow exception, nothing in FPL’s proposed revisions to the underground

conversion tariff affects the eligibility criteria contained in that tariff. The exception is FPL's proposed addition of three different tiers of ASRC credits, with the applicable tier depending upon the size of an underground conversion project. However, FPL believes that the City's Issues 1 and 2 adequately address any concerns the City might have over the size thresholds that define eligibility for the three tiers.³ FPL expects that the City would use Issue 5 instead to raise broader questions about the eligibility criteria in the underground conversion tariff, in particular those that define eligibility for the Governmental Adjustment Factor Waiver. Those questions would not be relevant to the Commission's determination of whether FPL's proposed tariff revisions properly implement Rule 25-6.115(11)(a), and the City should not be permitted to expand the scope of FPL's proceeding by raising them here.

The City's Petition to Intervene also contains references to FPL's URD and UCD tariffs that are clearly irrelevant to this docket, which FPL expects were inadvertently carried forward from a prior petition to intervene that the City filed in Docket No. 070231-EI. Specifically, the final sentence of ¶ 10 and all of the first paragraph under the heading "Conclusion and Relief Requested" inappropriately refer to the URD and UCD tariffs rather than the UG conversion tariffs that are at issue here.

WHEREFORE, FPL respectfully requests that the Commission, if it grants the City's Petition to Intervene, strictly limit the City's intervention to issues *directly relevant* to the tariff revisions that FPL has proposed to implement Rule 25-6.115(11)(a), and *consistent therewith*, (1) reject the City's Issues 3 and 5 as unnecessary and inappropriate

³ Issue 1 asks "Is the 25% credit for Avoided Storm Restoration Costs associated with large-scale UG conversions proposed by FPL fair, just and reasonable?" The Petition to Intervene states that this issue is not in dispute. Issue 2 asks "Are the smaller credits for Avoided Storm Restoration Costs associated with small-scale and medium-scale UG conversions proposed by FPL fair, just and reasonable?"

to this proceeding; and (2) deny the City's requests for relief in this docket with respect to FPL's URD and UCD tariffs.

Respectfully submitted,

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By: /s/ John T. Butler
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CERTIFICATE OF SERVICE
Docket No. 080244-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic delivery on the 18th day of June, 2008, to the following:

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