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From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Monday, December 15, 2008 4:35 PM
To: R. Wade Litchfield; Brian Armstrong; David Tucker; Filings@psc.state.fl.us; Ralph Jaeger; John Butler; Schef Wright
Subject: Electronic Filing - Docket No. 070231-EI
Attachments: MUUC.URD.ProtestOfOrder.070231.12-15-08.doc

a. Person responsible for this electronic filing:

Robert Scheffel Wright
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b. Docket No. 070231-EI

In Re: Petition for Approval of 2007 Revisions to Underground Residential and Commercial Distribution Tariff, by Florida Power & Light Company.

c. Document being filed on behalf of the Muncipal Underground Utilities Consortium and the City of Coconut Creek, Florida.

d. There are a total of 15 pages.

e. The document attached for electronic filing is Petition of The Municipal Underground Utilities Consortium and the City of Coconut Creek, Florida Protesting Order No. PSC-08-0774-TRF-EI and Request for Formal Proceeding.

(see attached file: MUUC.URD.ProtestOfOrder.070231.12-15-08.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

12/15/2008

DOCUMENT NUMBER-DATE

11565 DEC 15 8

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of 2007)
Revisions to Underground Residential)
and Commercial Distribution Tariff, by) DOCKET NO. 070231-EI
Florida Power & Light Company.) FILED: December 15, 2008
_____)

PETITION OF THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM
AND THE CITY OF COCONUT CREEK, FLORIDA PROTESTING
ORDER NO. PSC-08-0774-TRF-EI AND
REQUEST FOR FORMAL PROCEEDING

The Municipal Underground Utilities Consortium (the "MUUC"), and the City of Coconut Creek, Florida ("Coconut Creek"), pursuant to Chapter 120, Florida Statutes, Rule 28-106.201, Florida Administrative Code ("F.A.C."), and the Notice of Further Proceedings set forth in Commission Order No. PSC-08-0774-TRF-EI, and by and through their undersigned counsel, hereby file this Petition Protesting Order No. PSC-08-0774-TRF-EI ("Petition") and requests that the Commission conduct a formal proceeding, including an evidentiary hearing if necessary, to resolve the issues raised in this Petition. In summary, Commission Order PSC-08-0774-TRF-EI approves, subject to affected parties' right to protest, Florida Power & Light Company's ("FPL") Underground Residential Differential ("URD") Tariff and Underground Commercial/Industrial Distribution ("UCD") Tariff (collectively "FPL's URD Tariffs"), which should be modified because they do not fully comply with Commission Rule 25-6.078, F.A.C., and because the resulting charges approved by Order No. 08-0774-TRF-EI are not fair, just, and reasonable.

DOCUMENT NUMBER-DATE

11565 DEC 15 8

FPSC-COMMISSION CLERK

In further support of this Petition, the MUUC and Coconut Creek state as follows.

1. The name, address, and telephone number of Petitioner, the Municipal Underground Utilities Consortium, 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
(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
360 South County Road
Palm Beach, Florida 33401
Telephone (561) 838-5410
Telecopier (561) 838-5411
E-Mail - Tbradford@TownofPalmBeach.com.

3. The name, address, and telephone number of Petitioner, the City of Coconut Creek, Florida, are as follows:

City of Coconut Creek
ATTN: Don Gentile, Project Manager
4800 West Copans Road
Coconut Creek, Florida 33063
Telephone (954) 973-6756
Telecopier (954) 956-1424.

4. 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
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Telephone (954) 973-6756
Telecopier (954) 956-1424
E-Mail - DGentile@coconutcreek.net.

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

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

The Commission's docket number for this matter is No. 070231-EI.

6. The MUUC and Coconut Creek received notice of this matter when they received a copy of Commission Order No. PSC-08-0774-TRF-EI on or about November 24, 2008. Pursuant to that Order, the period for filing this Petition expires on December 15, 2008. Accordingly,

this Petition is timely filed.

Statement of Affected Interests

7. The other party whose interests will be affected by this Petition is Florida Power & Light Company ("FPL"). FPL's address is as follows:

Mr. Wade Litchfield, Esquire
Vice President
Regulatory Affairs
Wade_Litchfield@fpl.com
Florida Power & Light Company
215 South Monroe Street, Suite 801
Tallahassee, FL 32301
(850) 521- 3900 (Office)
(850) 521-3939 (Telecopier)

John T. Butler, Esquire
Senior Attorney
John_Butler@fpl.com
Florida Power & Light
Company
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5137 (Office)
(561) 691-7305 (Telecopier)

8. 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.

9. The MUUC's members own and operate numerous municipal facilities and utility equipment. All of the MUUC's currently active members, including Coconut Creek, purchase retail electric service directly from FPL. A substantial number of the MUUC's members are considering underground ("UG") utility projects, and accordingly, these members are subject to FPL's Tariffs applicable to underground electric distribution facilities and service. Most of the MUUC's members, including Coconut Creek, have development services divisions or departments, whose duties include working with developers and citizens to further the community's interests in orderly development of their areas. Some development activities include reconstruction and rejuvenation projects that include underground electric distribution conversion projects pursuant to FPL's tariffs and Commission Rule 25-6.115, F.A.C., which governs Contributions in Aid of Construction ("CIACs") for such UG conversion projects. Other development activities include either new "greenfield" development or projects where entire areas or subdivisions are razed and are to be redeveloped with new

construction; in either of these cases, underground service is subject to Commission Rule 25-6.078, F.A.C., and FPL's URD CIAC tariffs promulgated pursuant to that rule.¹

10. Petitioner, the City of Coconut Creek, is a city located in Broward County, Florida. The City has a land area of approximately 12 square miles with approximately 50,000 residents and 1,400 businesses. Housing is primarily single-family homes, condominiums, and townhouses within professionally landscaped communities. Coconut Creek is widely recognized as a well-planned community with a unique environmental consciousness, including an abundance of trees, waterways, attractive landscaped roads, beautiful parks, and butterfly gardens, all reflective of the City's progressive planning approach to creating a unique life-style for its residents and businesses. Coconut Creek has plans for development and redevelopment projects within the City that will include conversion of more than nine miles of existing OH

¹ It is not completely clear whether new UG construction performed by Applicants is subject to Rule 25-6.078, which, strictly interpreted, applies to FPL's URD charges. FPL's URD charges are the subject of Section 10 of FPL's Tariff, but new Applicant-constructed UG projects are subject to Section 11 of FPL's Tariff. The MUUC and Coconut Creek believe that the same credits for operational cost savings benefits, including avoided storm restoration costs, provided by undergrounding must be afforded to all UG construction, whether new or conversion, and whether FPL-constructed or Applicant-constructed. For purposes of this Petition, the MUUC wishes to identify this issue and alert the Commission that, consistent with the MUUC's ongoing efforts to get all issues relating to UG CIACs resolved once and for all, the MUUC will seek to have this issue resolved either in this Docket No. 070231-EI, in the companion Docket No. 080244-EI, or in another new docket that the MUUC will initiate if necessary.

distribution lines to UG facilities and the installation of new UG distribution lines in new development and redevelopment areas. The City is attempting to partner with developers - and with FPL - to ensure that these projects are completed as cost-effectively as possible. Among other things, the City has requested that FPL, subject to the City's commitment to be responsible for payment of applicable CIACs, include new-development areas as part of the City's contiguous areas for qualification for FPL's Governmental Adjustment Factor waiver, which is the same as the Tier 1 Avoided Storm Restoration Cost ("ASRC") factor, a 25 percent credit against otherwise applicable CIACs.

11. Rule 25-6.078, F.A.C., which governs the CIACs applicable for new construction, provides in pertinent part as follows:

25-6.078 Schedule of Charges.

(1) Each utility shall file with the Commission a written policy that shall become a part of the utility's tariff rules and regulations on the installation of underground facilities in new subdivisions. Such policy shall be subject to review and approval of the Commission and shall include an Estimated Average Cost Differential, if any, and shall state the basis upon which the utility will provide underground service and its method for recovering the difference in cost of an underground system and an equivalent overhead system from the applicant at the time service is extended. The charges to the applicant shall not be more than the estimated difference in cost of an underground system and an equivalent overhead system.

(2) For the purpose of calculating the Estimated Average Cost Differential, cost estimates shall reflect the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening.

* * *

(4) Differences in Net Present Value of operational costs, including average historical storm restoration

costs over the life of the facilities, between underground and overhead systems, if any, shall be taken into consideration in determining the overall Estimated Average Cost Differential. Each utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

12. Standing. The MUUC's and Coconut Creek's substantial interests are of sufficient immediacy to entitle them 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, a petitioner must demonstrate that its substantial interests will be affected by the proceeding. Specifically, a petitioner 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, Coconut Creek's substantial interests, as a party that has applied and expects to apply for new UG construction with appropriate CIACs calculated consistently with the Commission's rules, are directly and substantially affected by the Commission's decision in this case.

13. Additionally, a substantial number of the MUUC's members are directly subject to FPL's Tariffs. Moreover, the MUUC's members have ongoing interests in reliable electric service, in converting existing OH lines in their respective jurisdictions to UG service, and in ensuring that new construction within their jurisdictions is

served by UG electric facilities, consistent with the express policies and goals announced by FPL in its Storm Secure Initiatives in January 2006. The charges for both new UG service and for UG conversions are, of course, directly impacted by FPL's Tariffs.

14. 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 -- proper amendment of FPL's Tariffs and implementation so as to provide all affected municipalities and other parties the full benefit of the Commission's rules applicable to FPL's Tariffs at issue here -- 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.

15. Disputed Issues of Material Fact. The MUUC and Coconut Creek believe that the disputed issues of material fact in this proceeding will include, but will not necessarily be limited to, the following.

- ISSUE 1:** Do FPL's URD and UCD CIAC tariffs comply fully with Commission Rule 25-6.078, F.A.C., which requires, among other things, that those tariffs take into account "Differences in Net Present Value of operational costs, including average historical storm restoration costs over the life of the facilities, between underground and overhead systems, if any, . . . in determining the overall Estimated Average Cost Differential?"
- ISSUE 2:** Are FPL's URD and UCD CIAC tariff charges fair, just and reasonable?
- ISSUE 3:** Do the URD and UCD charges proposed by FPL reflect the full value of service restoration cost savings provided by underground facilities?
- ISSUE 4:** Should new developments within a municipality that are served with UG facilities and that are contiguous with areas converted from OH to UG pursuant to Rule 25-6.115 and Section 12 of FPL's Tariff, and also that are constructed by a Local Government Applicant pursuant to Section 11 of FPL's Tariff, count toward satisfying the size minimums for obtaining the maximum GAF or ASRC credits under FPL's Tariffs?
- ISSUE 5:** What is the appropriate relief for Coconut Creek, the MUUC, and other affected persons and parties in this case?

The MUUC and Coconut Creek reserve all rights to raise additional issues in accordance with the Commission's rules and any procedural order that may be issued in this case.

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

- a. FPL's URD and UCD CIAC charges do not fully comply with the requirements of Commission Rule 25-6.078, F.A.C., because the FPL's calculations misstate the value of the Net Present Value of operational costs other than Avoided Storm Restoration Costs in favor of Overhead facilities, resulting in the URD charges being too high, and therefore unfair, unjust, and unreasonable. Among other things, the MUUC and Coconut Creek believe that the FPL's asserted differences between operation and maintenance costs for UG vs. OH facilities is understated because FPL does not take account of the better O&M performance of new UG facilities as compared to the system-average cost values that FPL used in its calculations.
- b. FPL's "tiered" approach to calculating the URD charges results in substantial discrepancies between value provided from undergrounding and charges paid by projects near the breakpoints in FPL's defined subdivision size tiers. Accordingly, FPL's tariff should be changed, e.g., by incorporating a simple arithmetic formula instead of FPL's proposed discrete, hard-and-fast breakpoint structure, to provide fairer charges for projects that are near the breakpoints.
- c. The charges proposed by FPL do not reflect the full value of service restoration cost savings provided by underground facilities because they do not give full credit for weather-related restoration cost savings other than those associated with named tropical storms and hurricanes.
- d. Having larger areas served by UG facilities provides roughly equivalent value, regardless of the composition of those areas as between new, greenfield UG facilities and UG facilities that have been converted from OH facilities. Accordingly, Local Governments and other Applicants that apply for and install UG service for new developments should be allowed to count any

such new-UG-construction areas toward satisfying the size minimums under FPL's GAF tariff.²

17. Statutes and Rules That Entitle the MUUC and Coconut Creek 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, 366.05(1), 366.06(1), and 366.07, Florida Statutes, and Rules 25-6.078 and 25-22.039 and Chapter 28-106, Florida Administrative Code.

18. Statement Explaining How the Facts Alleged By the MUUC and Coconut Creek Relate to the Above-Cited Rules and Statutes. Chapter 120, Florida Statutes, provides for a point of entry into administrative proceedings for persons whose substantial interests are subject to determination by, or adversely affected by, agency action. Here, the interests of the City of Coconut Creek and the interests of all other MUUC members who have development services departments that would desire to support new UG installations in partnership with developers, and with FPL, are subject to being determined by the Commission's actions in these proceedings.

² This issue may or may not be appropriate to this docket, in that it does not relate directly to the tariff amendments approved by Order No. 08-0774-TRF-EI. Even so, the MUUC and Coconut Creek believe that this is an important issue that the Commission must resolve in order to ensure that large-scale UG projects that consist of both UG conversions and new UG construction are treated fairly and accorded the full value that such combination new-and-conversion projects provide. As with the issue relating to Applicant-constructed new UG construction mentioned in footnote 1 above, the MUUC wishes to identify this issue for the Commission and to state that it will file an appropriate petition to put this issue before the Commission for resolution along with all other outstanding issues relating to CIACs for underground electric service.

19. Additionally, the above-cited sections of Chapter 366 generally provide that the Commission must ensure that all tariffs, rates, and charges are fair, just, reasonable, and non-discriminatory. Unless the Commission ensures that the URD and UCD charges imposed by FPL are in full compliance with the Commission's rules and that they fully reflect all cost savings provided by UG facilities, those charges will be unfair, unjust, unreasonable, and unduly discriminatory.

CONCLUSION AND RELIEF REQUESTED

FPL's proposed URD and UCD CIAC charges for new underground installations do not comply with the requirements of Commission Rule 25-6.078, F.A.C., in that they do not give full credit for the operational cost savings provided by UG facilities vs. OH facilities, and also in that they do not provide full value for weather-related restoration cost savings realized by UG facilities other than those associated with named tropical storms and hurricanes.

Accordingly, the Commission should conduct a formal proceeding, including an evidentiary hearing, and to issue appropriate orders that FPL amend its tariffs to ensure that FPL's URD and UCD charges comply fully with the Commission's rules, that those charges provide credits for undergrounding that fully recognize all operational and storm restoration cost savings provided by undergrounding, and that FPL's charges and practices with regard to the subject tariffs are fair, just, reasonable, and non-discriminatory, and that

municipalities should be allowed to count new "greenfield" areas that are contiguous with areas being converted from OH to UG service toward meeting the project size minimums under FPL's GAF tariff.

WHEREFORE, the Municipal Underground Utilities Consortium and the City of Coconut Creek, Florida respectfully ask the Florida Public Service Commission to conduct a formal proceeding to investigate this matter, and to issue appropriate orders requiring FPL to amend its tariffs as requested above and granting such other relief that the Commission deems appropriate.

Respectfully submitted this 15th day of December, 2008.

S/Robert Scheffel Wright
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Attorneys for the Municipal Underground
Utilities Consortium

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic and U.S. Mail, on this 15th day of December, 2008.

Florida Power & Light Company
Mr. Wade Litchfield, Esquire
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

Florida Power & Light Company
John T. Butler, Esquire
700 Universe Blvd.
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