

Ruth Nettles

From: Butler, John [John.Butler@fpl.com]
Sent: Tuesday, June 09, 2009 2:48 PM
To: Filings@psc.state.fl.us
Cc: Ralph Jaeger; Erik Saylor; 'swright@yvlaw.net'; 'jlavia@yvlaw.net'; 'dtucker@ngnlaw.com'; 'barmstrong@ngnlaw.com'; 'simpson66@bellsouth.net'; 'tbradford@townofpalmbeach.com'; 'jyarbrough@southdaytona.org'
Subject: Electronic Filing: Docket Nos. 070231-EI / 080244-EI / 080522-EI - Stipulation and Settlement Agreement
Attachments: 6.9.09 Transmittal to Cole (settlement Agreement).pdf

Electronic Filing

a. Person responsible for this electronic filing:

John T. Butler, Esq.
700 Universe Boulevard
Juno Beach, FL 33408
561-304-5639
John.Butler@fpl.com

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; and

Docket No. 080244-EI: In Re: Petition for Approval of Underground Conversion tariff revisions;

Docket No. 080522-EI: In re: Petition and Complaint of the Municipal Underground Utilities Consortium for Relief from Unfair Charges and Practices of Florida Power & Light Company

c. The document is being filed by Florida Power & Light Company on behalf of the parties to the above dockets.

d. There are a total of 7 pages.

e. The document attached for electronic filing is a Stipulation and Settlement Agreement among the parties with an attached transmittal letter.

John T. Butler
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DOCUMENT NUMBER-DATE

05794 JUN-9 8

6/9/2009

FPSC-COMMISSION CLERK



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June 9, 2009

-VIA ELECTRONIC DELIVERY -

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket Nos. 070231-EI, 080244-EI and 080522-EI

Dear Ms. Cole:

I am enclosing for filing in the above dockets a Stipulation and Settlement Agreement (the "Agreement") among the parties to those dockets. The Agreement shows that it would be filed on June 4, 2009, but arranging for its execution has required additional time.

Please note that Paragraph 2 of the Agreement makes it contingent upon approval by the governing bodies of municipalities that are parties to the Agreement. I am advised by counsel for the municipal parties that they expect the Agreement to be brought to the municipalities for approval during July. Counsel for the municipal parties will advise the Commission and FPL promptly when the municipalities have decided upon approval. FPL intends to file the petition and tariff revisions contemplated by Paragraphs 5-8 of the Agreement promptly after all of the municipalities have confirmed their approval.

If there are any questions regarding this transmittal, please contact me at 561-304-5639.

Sincerely,

A handwritten signature in black ink, appearing to read 'John T. Butler', is written over a horizontal line.

John T. Butler

Enclosure

cc: Counsel for parties of record (w/enclosure)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by electronic delivery on the 9th day of June, 2009, to the following persons:

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MUUC/City of Coconut Creek
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By: 

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Underground Conversion Tariff Revisions.)	Docket No. 080244-EI
)	
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In re: Petition for approval of 2007 revisions to underground residential and commercial distribution tariff, by Florida Power & Light Company.)	Docket No. 070231-EI
)	
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In Re: Petition and Complaint of the Municipal Underground Utilities Consortium for Relief from Unfair Charges and Practices of Florida Power & Light Company)	Docket No. 080522-EI
)	Filed: June 4, 2009
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STIPULATION AND SETTLEMENT AGREEMENT

WHEREAS, Florida Power & Light Company has filed certain tariff revisions that are the subject of the above-styled Docket No. 070231-EI and Docket No. 080244-EI, which have been approved by the Florida Public Service Commission ("Commission"), subject to the protests thereof by the Municipal Underground Utilities Consortium, the Town of Palm Beach, Florida, the City of Coconut Creek, Florida, and the Town of Jupiter Inlet Colony, Florida, and the City of South Daytona, Florida, each of the foregoing individually a "Party" and collectively the "Parties," and

WHEREAS, the Municipal Underground Utilities Consortium, the Town of Palm Beach, the City of Coconut Creek, and the Town of Jupiter Inlet Colony have filed a petition and complaint with the Commission in the above-styled Docket No. 080522-EI, asserting that FPL's treatment for certain common engineering costs, in cases where a local government applicant performs part or all of underground conversion work itself, results in unfair, unjust, and unreasonable treatment of such applicants, and

WHEREAS, the Parties have conducted discovery regarding the issues in the above-styled dockets, and

WHEREAS, the Parties have engaged in good-faith negotiations toward resolving their disputes as to the issues raised in all three of the above-styled dockets,

NOW, THEREFORE, in consideration of the covenants contained herein and of the mutual benefits to be derived from the fulfillment of these covenants, the Parties hereby agree and stipulate as follows:

DOCUMENT NUMBER - DATE

05794 JUN-98

FPSC - COMMISSION CLERK

1. This Stipulation and Settlement Agreement ("Agreement") will become effective when the Commission's approval of this Agreement has become final and no longer subject to challenge or appeal under governing law. The Agreement is contingent upon the Commission's approval of the Agreement, and of the actions contemplated herein, in their entirety.

2. The Parties recognize and acknowledge that the effectiveness of this Agreement is also contingent upon the approvals of the respective governing bodies of the municipalities that are Parties to this Agreement. Upon execution of the Agreement, the staff and attorneys for the municipalities that are Parties to the Agreement will move forward as quickly as practicable to place the Agreement before the municipalities' governing bodies for their approval.

3. Upon the approval of the municipalities' governing bodies, the MUUC and the respective municipal Parties will file appropriate notices of withdrawals of their protests of the tariff provisions in PSC Docket Nos. 070231-B1 and 080244-E1, such withdrawals to be contingent upon the Commission's final approval of all of the actions contemplated herein.

4. The MUUC, Palm Beach, Coconut Creek, and Jupiter Inlet Colony will withdraw their complaint filed in PSC Docket No. 080522-E1, such withdrawal to be contingent upon the Commission's final approval of all of the actions contemplated herein.

5. FPL will file a petition seeking the Commission's approval of its Governmental Adjustment Factor tariff provisions as permanent tariffs of FPL, i.e., not subject to any further mandatory Commission review but remaining subject to the Commission's continuing authority to conduct informal investigations and proceedings on those tariffs on its own motion.

6. FPL will file proposed tariff provisions with the Commission setting the estimated overhead vs. underground operational cost differential on FPL's Tariff Sheet No. 6.300 to zero, replacing the value of -\$11,300 per pole line mile presently in that tariff, and FPL will also file proposed revisions to FPL's Tariff Sheet No. 6.100 that will make the corresponding adjustments for the overhead vs. underground operational cost differential to be reflected in FPL's URD tariffs.

7. FPL will file proposed tariff provisions with the Commission replacing existing Section 1.e. on its Tariff Sheet No. 9.725, UNDERGROUND FACILITIES CONVERSION AGREEMENT - GOVERNMENTAL ADJUSTMENT FACTOR WAIVER, with the following:

- e. The Local Government Applicant must demonstrate to the reasonable satisfaction of FPL that the sum of the GAF Waiver credit plus any federal or state funds that the Local Government Applicant is able to use to support the Conversion does not exceed

the otherwise applicable CIAC as calculated before application of the GAF Waiver.

8. FPL will file proposed tariffs with the Commission that will set FPL's charge for Direct Engineering, Supervision, and Support costs applicable to any Applicant-performed work at 80% of the value that would have applied if FPL performed this work.

9. The MUUC and the municipalities that are Parties to this Agreement agree that they will not, before January 1, 2013, directly or indirectly raise claims relative to the "operational cost differential" between overhead and underground facilities.

10. The MUUC and the municipalities that are Parties to this Agreement agree that they will not, before January 1, 2013, directly or indirectly seek an increase in the Governmental Adjustment Factor waiver or credit, also known as the Avoided Storm Restoration Cost credit, for underground conversion projects.

11. The MUUC and the municipalities that are Parties to this Agreement agree that they will not, before January 1, 2013, directly or indirectly raise any claims relative to the "contiguous underground facilities" or relative to FPL's proposed "tiered" GAF/ASRC credits for underground installations.

12. FPL agrees that it will not, before January 1, 2013, directly or indirectly seek to change any of the provisions agreed to in this Stipulation and Settlement Agreement, including specifically, not to seek to reduce the GAF or ASRC waiver or credit, nor to increase the "operational cost differential" applicable in calculating CIACs for underground conversion projects, nor to increase the amount that FPL collects as Direct Engineering, Supervision, and Support costs for Applicant-performed work on underground conversion projects.

13. All Parties to this Agreement acknowledge that nothing herein may be construed to prevent the Commission from conducting any proceedings that the Commission may initiate with regard to any of the tariff provisions and other matters that are the subject of this Agreement. The Parties agree and acknowledge that, in the event that the Commission or any other person initiates any proceedings relative to the matters that are the subject to this Agreement, including any matters with respect to which any Party or Parties have agreed not to initiate proceedings, then all Parties are free to participate in such Commission proceedings to protect their interests as they deem appropriate, and the Parties will not be bound by or subject to the positions stated in this Agreement.

14. The Parties will jointly move the Commission to schedule all of the petitions and withdrawals described herein for consideration at a single agenda conference, such that the Commission's action will be effective as to all of the Parties' actions contemplated above at the same time.

15. Nothing herein shall operate as a bar to any Party seeking the Commission's action to enforce any provision of this Agreement or of FPL's tariffs as they may be approved pursuant to this Agreement.

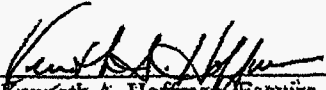
16. For the avoidance of doubt, the Parties agree that the adjustments reflected in this Agreement will be applicable to all Applicants who applied for underground conversions under FPL's GAF tariff after April 4, 2006, as provided for in Commission Order No. PSC-06-0339-PCQ-EL, issued on April 24, 2006.

17. The Parties further agree that the adjustments to FPL's URD tariffs reflected in this Agreement will be applicable to all underground service installations under those tariffs for which applications were made on or after October 9, 2007, which was the effective date of the initial URD tariffs pursuant to Commission Order No. PSC-07-0835-TRF-EL.

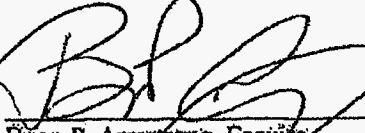
18. The Parties have agreed to the positions stated in this Stipulation and Settlement Agreement solely for the purpose of settlement, and accordingly, the Parties are not bound by or subject to the positions stated herein in the event that the Agreement is not approved in its entirety by the Commission.

This Stipulation and Settlement Agreement is executed by the Parties through the signatures of their authorized representatives below, and this Agreement is respectfully filed with the Commission on this 4th day of June, 2009.


FLORIDA POWER & LIGHT COMPANY


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THE CITY OF SOUTH DAYTONA, FLORIDA


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THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM,
THE TOWN OF PALM BEACH, FLORIDA,
THE CITY OF COCONUT CREEK, FLORIDA, AND
THE TOWN OF JUPITER INLET COLONY, FLORIDA


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