

Marguerite McLean

080244-EI
070231-EI
080522-EI

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Wednesday, August 19, 2009 12:28 PM
To: Scott Simpson; John T. Butler; Ken Rubin; Ken Hoffman; R. Wade Litchfield; Brian Armstrong; Erik Sayler; Filings@psc.state.fl.us; Ralph Jaeger; Schef Wright
Subject: Electronic Filing - Dockets 080244-EI; 070231-EI; and080522-EI
Attachments: PB.NOF.Resolution.8-19-09.pdf

a. Person responsible for this electronic filing:

Robert Scheffel Wright
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, FL 32301
(850) 222-7206
swright@yvlaw.net

b. 080244-EI

In Re: Petition for Approval of Underground Conversion Tariff Revisions by Florida Power & Light Company.

070231-EI

In Re: Petition for approval of 2007 revisions to underground residential and commercial distribution tariff, by Florida Power & Light Company

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. Document being filed on behalf of the Town of Palm Beach.

d. There are a total of 10 pages.

e. The document attached for electronic filing is The Town of Palm Beach's Notice of Filing Resolution Approving Settlement Agreement and Contingent Withdrawal of Protests and Complaint.

(see attached file: PB.NOF.Resolution.8-19-09.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
Secretary to Schef Wright
Phone: 850-222-7206
FAX: 850-561-6834

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08632 AUG 19 8

FPSC-COMMISSION CLERK

8/19/2009

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Underground Conversion Tariff Revisions.) Docket No. 080244-EI
)
)

In re: Petition for approval of 2007 revisions to underground residential and commercial distribution tariff, by Florida Power & Light Company.) Docket No. 070231-EI
)
)

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: August 19, 2009
)

THE TOWN OF PALM BEACH'S NOTICE OF FILING RESOLUTION APPROVING SETTLEMENT AGREEMENT AND CONTINGENT WITHDRAWAL OF PROTESTS AND COMPLAINT

The Town of Palm Beach, Florida, hereby gives notice of filing the Town's Resolution No. 77-09, by which the Palm Beach Town Council approved the Stipulation and Settlement Agreement ("Agreement") entered into by the parties to the above-styled dockets. A copy of the certified Resolution is attached to this notice. As recited in the Agreement, the Town's approval of the Agreement is a prerequisite to the final effectiveness of the Agreement.

Pursuant to Paragraphs 3, 4, 14, and 18 of the Agreement, the Town of Palm Beach also gives notice of its contingent withdrawal of its protests in Docket No. 070231-EI and Docket No. 080244-EI, and the Town further gives notice of its contingent withdrawal of its petition and complaint in Docket No. 080522-EI. As specifically recited in the Agreement, these withdrawals are contingent on the Commission's final and effective approval of all of the Parties' actions contemplated in

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the Agreement. Accordingly, the Town's withdrawals will only be effective upon the Commission's final approval of all of the Parties' actions as provided for in the Agreement.

Respectfully submitted this 19th day of August, 2009.

A handwritten signature in black ink, reading "Robert Scheffel Wright". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Robert Scheffel Wright, Esquire
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
Telephone (850) 222-7206

Attorneys for the Town of Palm Beach, Florida

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 19th day of July 2009.

Ralph Jaeger, Esquire
Erik Sayler, Esquire
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

R. Wade Litchfield, Esquire
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408

Kenneth Hoffman, Esquire
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

Florida Power & Light Company
Ken Rubin, Esquire
John T. Butler, Esquire
700 Universe Blvd.
Juno Beach, FL 33408-0420

Brian Armstrong, Esquire
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308

Scott E. Simpson, Esquire
Korey Law Firm
Granada Oaks Professional Building
595 West Granada Blvd., Suite A
Ormond Beach, FL 32174


Attorney

RESOLUTION NO. 77-09

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, PALM BEACH COUNTY, FLORIDA, APPROVING A STIPULATION AND SETTLEMENT AGREEMENT RESOLVING PROCEEDINGS BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION RELATING TO UNDERGROUNDING UTILITY FACILITIES; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Town of Palm Beach, Florida has participated as an active member of the Municipal Underground Utilities Consortium ("MUUC") in the MUUC's efforts before the Florida Public Service Commission ("Florida PSC") to obtain favorable treatment of utility undergrounding projects; and

WHEREAS, since 2006, the Florida PSC has conducted various docketed and undocketed proceedings regarding issues affecting the undergrounding of utility facilities, including three dockets that are currently open and active, In re: Petition for Approval of Underground Conversion Tariff Revisions, Florida PSC Docket No. 080244-EI, In Re: Petition and Complaint of the Municipal Underground Utilities Consortium for Relief from Unfair Charges and Practices of Florida Power & Light Company, Florida PSC Docket No. 080522-EI, and In re: Petition for approval of 2007 revisions to underground residential and commercial distribution tariff. by Florida Power & Light Company, Florida PSC Docket No. 070231-EI; and

WHEREAS, the Town of Palm Beach, Florida, has participated as a named party in several specific dockets before the Florida PSC, including two of the above-mentioned dockets that are presently active, Florida PSC Docket No. 080244-EI and Florida PSC Docket No. 080522-EI; and

WHEREAS, the counsel and negotiation team representing the Town of Palm Beach, Florida and the MUUC have negotiated a Stipulation and Settlement Agreement ("Settlement Agreement") between and among the MUUC, the Town, Florida Power & Light Company

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("FPL"), and the other named parties to all three of the above-styled dockets, which Settlement Agreement will, upon the completion of all actions by various parties set forth within the Settlement Agreement and upon the final approval of the Florida PSC, resolve all outstanding issues addressed in all three dockets; and

WHEREAS, the effectiveness of the Settlement Agreement is contingent upon the approval of the Town Council of the Town of Palm Beach, Florida, and also upon the approval of the governing bodies of the other municipalities who are named parties to the above-styled dockets; and

WHEREAS, the Town Council of the Town of Palm Beach, Florida has received and reviewed a copy of the Settlement Agreement; and

WHEREAS, the Town Council of the Town of Palm Beach, Florida has, upon review of the Settlement Agreement, determined that the Settlement Agreement is in the best interests of the citizens of the Town and accordingly, that the Town should approve the Settlement Agreement,

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PALM BEACH, FLORIDA, THAT:

Section 1: The forgoing recitals are hereby ratified and confirmed.

Section 2: The Town Council of the Town of Palm Beach, Florida hereby approves the Town's participation in the Settlement Agreement, a copy of which is attached hereto as Exhibit A.

Section 3: The Town Council of the Town of Palm Beach, Florida hereby authorizes its attorneys, Young van Assenderp, P.A. to file a notice of the Town's withdrawal from Florida PSC Docket No. 080244-EI and Florida PSC Docket No. 080522-EI, provided that such withdrawal shall only be effective upon the Florida PSC's approval of the Settlement Agreement.

Section 4: The Town Council of the Town of Palm Beach, Florida, authorizes its attorneys to furnish a copy of this Resolution to the Florida PSC, to FPL, and to all other parties to the above-mentioned dockets.

Section 5: This Resolution shall take effect immediately upon passage.

PASSED AND ADOPTED in a regular, adjourned session of the Town Council of the Town of Palm Beach assembled this 14th day of July 2009.



Jack McDonald, Mayor



David A. Rosow, Town Council President



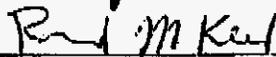


Gary Colozio, Council President Pro Tem

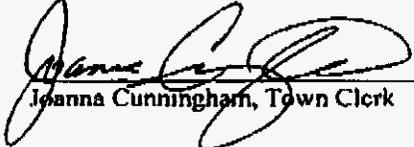


William J. Diamond, Town Council Member

ATTEST:



Richard M. Kleid, Town Council Member



Joanna Cunningham, Town Clerk



Robert N. Wildrick, Town Council Member

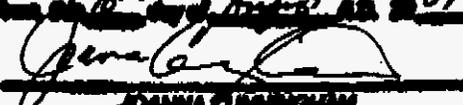
CLERK'S CERTIFICATE

STATE OF FLORIDA
COUNTY OF PALM BEACH }
TOWN OF PALM BEACH }

I, Joanna Cunningham, HEREBY CERTIFY THAT I am the duly qualified and acting Clerk of the Town of Palm Beach, Florida; that the above and foregoing is a true and correct copy of a Document the original of which is on file in the Office of the Town Clerk of the Town of Palm Beach, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Town, on this 14th day of July, A.D. 2009





JOANNA CUNNINGHAM
TOWN CLERK

EXHIBIT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Underground Conversion Tariff Revisions.)	Docket No. 080244-EI
_____)	
In re: Petition for approval of 2007 revisions to underground residential and commercial distribution tariff, by Florida Power & Light Company.)	Docket No. 070231-EI
_____)	
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

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 those covenants, the Parties hereby agree and stipulate as follows:

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EXHIBIT A

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-E1 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

EXHIBIT A

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 of 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.

EXHIBIT A

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 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-PCO-EI, 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-EI.

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.