

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of:

DOCKET NO. 130196-EI

PETITION FOR APPROVAL TO
DISCONTINUE MECHANISM FOR
GOVERNMENTAL RECOVERY OF
UNDERGROUNDING FEES, BY
FLORIDA POWER & LIGHT COMPANY.

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PROCEEDINGS: COMMISSION CONFERENCE AGENDA
ITEM NO. 4

COMMISSIONERS

PARTICIPATING: CHAIRMAN RONALD A. BRISÉ
COMMISSIONER LISA POLAK EDGAR
COMMISSIONER ART GRAHAM
COMMISSIONER EDUARDO E. BALBIS
COMMISSIONER JULIE I. BROWN

DATE: Tuesday, August 27, 2013

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
Official FPSC Reporter
(850) 413-6732

P R O C E E D I N G S

1
2 **CHAIRMAN BRISÉ:** Okay. Item Number 4.

3 **MR. ROME:** Good morning. My name is Don Rome
4 with Commission staff. This item, Number 4, is Docket
5 Number 130196. It's a petition from Florida Power and
6 Light Company to discontinue a tariff that was approved
7 in 2003 that provides an optional mechanism for local
8 governments to recover costs of undergrounding electric
9 service through fees on Florida Power and Light's
10 electric bills. The company indicates that it has
11 received few inquiries regarding the tariff over the
12 past ten years and has not executed any tariff
13 agreements with local governments.

14 Staff has reviewed the information provided
15 by the company, and staff also notes that there are no
16 other similar agreements executed by other IOUs in
17 Florida. And, therefore, staff is recommending
18 approval of the company's request to discontinue the
19 tariff and to cancel original tariff sheets 6.600,
20 6.601, and 6.602.

21 Staff is available to answer any questions
22 you may have, and it's my understanding that there also
23 is a representative from the company here this morning,
24 if you should have any questions.

25 **CHAIRMAN BRISÉ:** All right. Thank you very

1 much.

2 Commissioner Brown.

3 **COMMISSIONER BROWN:** Thank you. My question
4 is for Mr. Butler. I'm curious about this particular
5 tariff, and wondering why do you believe, in your
6 opinion, that FPL -- the munies in FPL's service
7 territory don't utilize this particular tariff since
8 2003?

9 **MR. BUTLER:** Well, I think probably the
10 biggest reason it hasn't been utilized is just that as
11 we have explained when the tariff was originally
12 approved, we are not in a position to compel people to
13 pay with the use of disconnection or the normal
14 remedies we would have if somebody doesn't pay for
15 their electric service. And so I think every
16 municipality that has looked at it, you know, even
17 seriously enough to give it a second thought has
18 concluded that they would be putting themselves --
19 setting themselves up for a complicated and awkward
20 situation in which some people do their duty and pay
21 this amount that shows up on the bill, others don't.
22 We can't do anything about it. They have, I guess,
23 possibly some lien remedies or something like that, but
24 it becomes a very difficult circumstance for them to
25 actually follow up on collection. And, of course, it

1 would become controversial and very unfair if you have
2 got some people who are paying as requested by FPL and
3 their municipality, and then others who aren't, and
4 there really isn't any direct consequence of not doing
5 so.

6 That seems to be the biggest single concern
7 about using it. You know, the administration of it
8 certainly is something that has been a concern to the
9 municipalities, although as we point out in our
10 petition, you know, we had been anticipating enough
11 interest that we could justify a fairly modest
12 administrative fee. That's clearly not going to be
13 feasible, because we have had virtually no interest.

14 If we were to continue this, it would have to
15 be with a very high administrative fee, which I think
16 would add another element of, sort of, disincentive for
17 both the municipalities and their residents. Because,
18 you know, a fee of a million or two million dollars for
19 administration on this is often in the ballpark of as
20 much as they are wanting to collect for their
21 undergrounding project. So it would really end up
22 being unfair to the municipalities and their customers,
23 in our view of it.

24 To your question, I think the main thing is
25 just the concern about the sort of vagueness on how

1 municipalities would actually go about enforcing
2 collection.

3 **COMMISSIONER BROWN:** That's helpful. I
4 appreciate the response, too. In 2003, when FPL
5 originally filed for the tariff, there was interest,
6 though, right, from the munies?

7 **MR. BUTLER:** We thought that there was going
8 to be. There had been some expression of thinking
9 that, gosh, it would be great if there were some way
10 to, you know, collect this money from our customers or
11 our residents in a way that the utility, which is
12 obviously billing them anyway, could assist with. And
13 this was the arrangement that, you know, we came up
14 with and obviously the Commission had approved at the
15 time.

16 But the big fly in the ointment is what I
17 just described. And we don't see any legitimate way
18 around that, because I don't think it would be
19 appropriate or consistent with your rules that we
20 would, you know, try to use disconnection as a hammer
21 for enforcing collection. If we can't do that, then,
22 you know, it sort of falls in the idle threat category,
23 that we just -- not much we can do about actually
24 making the collections happen.

25 **COMMISSIONER BROWN:** Thank you.

1 **MR. BUTLER:** Certainly.

2 **CHAIRMAN BRISÉ:** Commissioner Balbis.

3 **COMMISSIONER BALBIS:** Thank you, Mr.

4 Chairman. I have a few questions for Mr. Butler, as
5 well.

6 After the hurricanes of 2004 and 2005, I know
7 that there was a tremendous amount of interest in the
8 undergrounding of utilities. If we approve that this
9 tariff or this mechanism be eliminated, what other
10 mechanisms are there for customers or municipalities
11 that want to underground overhead utilities?

12 **MR. BUTLER:** Well, the main mechanism,
13 Commissioner Balbis, that was actually put into place
14 on the heels of those hurricane seasons, as you are
15 suggesting, is the governmental assistance mechanism,
16 the GAF. And pursuant to that, for qualifying areas it
17 has to be a certain size of area that is being
18 undergrounded, but there is a 25 percent reduction in
19 the amount that the municipality would otherwise pay
20 for the undergrounding. That remains available to
21 municipalities. We've had a few that have used it,
22 certainly a lot more than have used the MGRUF tariff,
23 and it's something that I think has provided a
24 significant degree of, sort of, incentive and has
25 facilitated undergrounding projects that might not

1 otherwise have happened. So that's the main mechanism
2 that is available to municipalities that would assist
3 them in getting over the hump of the extra cost of
4 undergrounding their facilities.

5 **COMMISSIONER BALBIS:** Okay. And then
6 focusing on this mechanism, have you reached out to any
7 of the municipalities, either through the Florida
8 Association of Counties or League of Cities, as to how
9 this could be modified to make it more effective or
10 gotten their opinion as to if it's okay for this to be
11 removed, maybe they're not aware of it. Have you
12 coordinated at all with those groups?

13 **MR. BUTLER:** To my knowledge, not with the
14 sort of collective groups, but we have had
15 conversations. In fact, we had quite a detailed
16 discussion over the past year or so with the Town of
17 Surfside in Dade County about their possible interest
18 in using the mechanism.

19 A lot of the problems that we're, you know,
20 recognizing exist in it, and that in our view make it
21 infeasible as a viable mechanism came out in the course
22 of those discussions. You know, the concern about the
23 large administrative fee, the concern about the
24 inability to enforce the collection and what that would
25 do to their ability to use this as a mechanism of

1 collection that bondholders could be satisfied as
2 sufficiently secure that they could really use it for
3 their financing.

4 Ultimately, we and the Town of Surfside
5 decided that it wasn't a route that made sense to them,
6 and the reasons that, you know, sort of stood as
7 obstacles that couldn't find any legitimate way over
8 them that was consistent both with Surfside's needs and
9 our desire to protect the general body of customers
10 against subsidizing Surfside is basically why we're
11 here today.

12 **COMMISSIONER BALBIS:** Okay. So that's what
13 prompted this petition? Because I'm trying to figure
14 out what prompted this, and what would be the harm in
15 just leaving this tariff available just in case there
16 is an influx of interest?

17 **MR. BUTLER:** Okay. I would say that the
18 experience and the discussions with Surfside, and there
19 have been a few other municipalities that have had just
20 surface level interest that have expressed similar
21 concerns about the mechanism. But, you know, the
22 discussions with Surfside were the most involved and
23 sort of pointed out most explicitly what the concerns
24 and the problems with the mechanism were.

25 And to your question about the problem of

1 what would be wrong with simply leaving the tariff in
2 place, clearly we can't, consistent with protecting the
3 interest of the general body of customers, leave it in
4 place with the current \$50,000 administrative fee.
5 That was based on what has turned out to be a wildly
6 optimistic assumption that there would be 20 or 25
7 municipalities who would be interested. So if you
8 collect 50,000 from each of them, you're in the
9 ballpark of what, at the time, we had estimated the,
10 you know, administrative costs for setting up the
11 collection system would be.

12 Clearly, we don't have anything near that
13 level of interest. If we got one or two, it would be
14 more that we have had in the last decade. So we would
15 need to change this administrative fee to something
16 that is high enough that, frankly, we don't think it
17 would be in the interest of the municipalities, or,
18 importantly, our customers who live in those
19 municipalities, to have them use a mechanism in which
20 there would have to be such a large administrative fee
21 collected from them, in addition to the cost of
22 undergrounding, as a basis for using the, you know, FPL
23 bill for collecting the -- you know, collecting the
24 charge.

25 I guess it's one of those things. I don't

1 know any better way to put it than it seemed like a
2 nice idea at the time. You know, it was something
3 that, had we gotten the interest from a substantial
4 number of municipalities, could have been viable. But
5 without it, and we have no reason to think that we're
6 going to get interest from a substantial number of
7 municipalities, it doesn't -- you know, it doesn't look
8 viable to us. And we don't think it's a good idea to
9 leave it out there as something that is apparently
10 available, but would have such a burdensome charge
11 associated with it.

12 **COMMISSIONER BALBIS:** Well, how many
13 municipalities indicated a surface level interest, and
14 which ones?

15 **MR. BUTLER:** I don't know off the top of my
16 head which ones. My understanding is that there were,
17 over the last decade, you know, less than a half dozen
18 who have ever even, you know, contacted us to say what
19 is this about. And as I say, Surfside is by far the
20 one that took it the furthest in terms of actually
21 meeting with us, you know, discussing some of the
22 provisions, what they would have needed to see changed
23 in order to have it work for them.

24 And one of the big things they were concerned
25 about was the enforceability of the collection

1 mechanism. And then, from our perspective, recognizing
2 that, you know, this assumption that had been built
3 into the original request of the fairly substantial
4 level of participation just could not possibly be
5 justified, and we would need to drastically increase
6 what the administrative charge would be.

7 **COMMISSIONER BALBIS:** Okay. And, Mr.
8 Chairman, one further question for staff.

9 **CHAIRMAN BRISÉ:** Sure.

10 **COMMISSIONER BALBIS:** If the Commission were
11 to approve staff's recommendation and eliminate this
12 mechanism, what would the harm, if any, to the
13 ratepayers be? I mean, what's the downside to this, I
14 guess, is the question.

15 **MR. ROME:** We don't see a downside.

16 **COMMISSIONER BALBIS:** Okay.

17 **CHAIRMAN BRISÉ:** Commissioner Graham.

18 **COMMISSIONER GRAHAM:** Mr. Butler, how are you
19 today?

20 **MR. BUTLER:** I am well. And, you?

21 **COMMISSIONER GRAHAM:** Not bad.

22 Commissioner Balbis already asked some of the
23 questions I was going to ask. I guess I just need to
24 back up. Ten years ago you guys came before us with
25 this idea of this tariff, correct?

1 **MR. BUTLER:** That's right.

2 **COMMISSIONER GRAHAM:** This wasn't something
3 that someone from the PSC thought was a good idea and
4 went to you and said let's implement this?

5 **MR. BUTLER:** It wasn't. I believe that there
6 was another utility, it may have been Duke, then
7 Progress, that had one of these that had been, you
8 know, petitioned and adopted. And we ended up looking
9 at it and saying I guess we could do something similar,
10 and we brought it to you. But, yes, it was a utility
11 idea; it wasn't a Commission idea.

12 **COMMISSIONER GRAHAM:** Now, when this thing
13 first kicked off ten years ago -- and this is where I
14 was going to get into the League of Cities/Association
15 of Counties -- did somebody go out like Pied Piper and
16 spread the seed and show everybody that this is the
17 mechanism that we have out there, is this something you
18 guys are interested in, or was it just we passed a
19 tariff and everybody just stayed quiet?

20 **MR. BUTLER:** Well, you're asking a question
21 about something before my involvement with this. But
22 my understanding is that this has been made known to
23 the municipalities, the League of Cities, other sources
24 through the years that it has been available, and it
25 hasn't been something that there has been a lot of

1 interest for.

2 I can't say, based on the early lack of
3 interest, that it's something that has been pushed very
4 hard in the last few years. But, you know, I think
5 it's fair to say that it's a mechanism that the
6 municipalities are aware exists. And if it met needs
7 they felt they could serve with it, that they know they
8 could have contacted us to, you know, pursue it.

9 **COMMISSIONER GRAHAM:** Well, I thought it was
10 a clever mechanism. And we hear -- I know I have heard
11 for years people talking about always wanting to put
12 all the utility underground because esthetically it
13 looks better, and during hurricanes you have less
14 chance of the pole blowing over and damages that way.

15 What I didn't know, and I'm glad you said it
16 off of Commissioner Brown's question, was not having
17 any leverage to collect that. I know there are several
18 things that go onto the power bill, you know, franchise
19 fees and other fees along those lines. Do you also not
20 have the leverage to collect those fees? You know, can
21 someone just come through and say I'm going to pay the
22 power portion of my bill and nothing else?

23 **MR. BUTLER:** Those portions are considered
24 part of the power -- you know, the power bill as I
25 understand it. When the tariff, this tariff was

1 originally proposed, it was, you know, made explicit as
2 it should be that this is not, you know, part of
3 regular electric service. And as such, it is not
4 something that is, you know, subject to the -- subject
5 to our ability to disconnect for nonpayment.

6 The various taxes and franchise fees that we
7 are obligated to collect, you know, we treat those as
8 being part of the cost for electric service that's
9 provided, so obviously people aren't free to pay only
10 for a portion of the electric service that they
11 receive.

12 **COMMISSIONER GRAHAM:** Are there other things
13 in the bill that are, such as like that? You don't
14 have to --

15 **MR. BUTLER:** There are a small number of
16 things -- if you mean like this, like the MGRUF
17 tariff --

18 **COMMISSIONER GRAHAM:** Yeah.

19 **MR. BUTLER:** -- where it's, sort of, payment
20 is optional. There are arrangements where, for
21 example, you know, energy savings measures or, you
22 know, matters that are services that customers might
23 elect to buy for power conditioning or something like
24 that, those fall into the same category.

25 You know, if somebody were to take some sort

1 of surge protection, for example, they may end up
2 getting billed through the utility bill. But if they
3 don't pay for it, you know, that's not something that
4 we would be disconnecting for, because it's not part of
5 the basic electric service and the charges that are
6 sort of unavoidable in association with providing the
7 basic electric service.

8 So there aren't a lot of examples, but, you
9 know, it's not the only thing that has ever appeared on
10 a utility bill that would not be subject to the
11 leverage of disconnection.

12 **CHAIRMAN BRISÉ:** And how are those things
13 tracked, or is there, like, a -- is the late fee
14 associated with that, you know, just like the late fee
15 that's associated with not paying your bill? You know,
16 if somebody decides they're not going to pay that, but
17 they are just going to pay the power bill and the
18 associated taxes that go along with that, and yet this
19 other item sits over there and it just accumulates over
20 time. I mean, is there any collection that goes in
21 with that? Does that, after awhile, get forgiven?
22 Surely there's something that has happened before.

23 **MR. BUTLER:** I think the simple answer for
24 most of those is that, you know, just to use the
25 example of a service that somebody elects to purchase

1 separately from the utility service, they are basically
2 paying in advance, and if they don't pay they stop
3 getting the service.

4 **COMMISSIONER GRAHAM:** So in this case you'll
5 go through and you pull the power line out of the
6 ground?

7 **MR. BUTLER:** Well, it's not a pulling the
8 power, but if it's some sort of surge protection or if
9 it's, you know, an insurance product, for example, that
10 would protect appliances, they just lose the coverage
11 on it. And, yes, we would, in the event of physical
12 equipment, I guess, go and remove the physical
13 equipment. But they are paying in advance for those
14 services, and if they pay they continue to get it. If
15 they don't, it's discontinued.

16 Here the difference being that this is
17 something where it's supposed to be a long-term
18 commitment to pay for this undergrounding over, many
19 times, quite a few years. And so it really wouldn't be
20 in the same situation where somebody could simply stop
21 paying and stop getting the benefit of the
22 undergrounding.

23 **COMMISSIONER GRAHAM:** Well, I wasn't here ten
24 years ago when all this came through, just like
25 yourself, and it seemed like it was a good idea, and

1 it's a shame that this is a mechanism that, you know,
2 more municipalities haven't taken advantage of. But
3 that being said, I don't feel like it's my job to force
4 you guys to keep it in your books if it's not working,
5 and clearly ten years is plenty of time to allow for it
6 to work. And if it's not working, I guess there is no
7 reason to hold on to it.

8 **MR. BUTLER:** That is certainly our view.
9 Thank you.

10 **MR. BAEZ:** Commissioners, I was just going to
11 add a little bit of background to how these mechanisms
12 came up. And we talk on levels of municipalities, but
13 the fact is that this particular tariff was created as
14 a compromise. Because what you were really dealing
15 with were island communities within municipalities, or
16 certain neighborhoods. And it became, probably, an
17 unworkable solution in the end. But to try to address
18 how do you isolate the customers, in particular, that
19 are picking up the tab for this against an entire
20 municipality.

21 So you don't have -- the tariff doesn't seem
22 to function on a municipality level as a whole, as a
23 unit, but rather how do you rope in the particular
24 neighborhoods that were asking for the undergrounding
25 service. And so price -- I think Mr. Butler has made

1 the clear point that you're just priced out of the
2 market, if you are having to pick up the \$2 million to
3 set up the billing systems and then also pay for the
4 work.

5 These smaller communities, or these smaller
6 neighborhoods within the communities, the price is a
7 little bit too steep. I think it's natural that you
8 haven't seen the kind of adoption that you would have
9 hoped.

10 **CHAIRMAN BRISÉ:** Commissioner Balbis.

11 **COMMISSIONER BALBIS:** Thank you, Mr.
12 Chairman.

13 I have a question for staff. In 2003, when
14 this tariff and mechanism was developed, what level of
15 effort was required to do so? Was it a workshop; was
16 it eight months of work; was it a very simple process?

17 **MR. ROME:** Well, I can't speak to that
18 directly. That was before my time, as well. I would
19 guess, based on a review of the historical record, I
20 don't think that there was the equivalent of, say, rule
21 development workshops or anything at that time. It was
22 a request by the utility at the time for what appeared
23 to be a viable program. But as the last ten years have
24 shown, it just hasn't gelled.

25 **MS. DRAPER:** Commissioner, Elizabeth Draper

1 with staff. If I may answer his question, because I
2 believe I worked on this docket.

3 The utility simply filed a petition. Staff
4 did its analysis and filed a recommendation to approve
5 the tariff. There were no workshops or any parties
6 participating, if I recall.

7 **COMMISSIONER BALBIS:** Okay. So it was a
8 relatively quick process, then?

9 **MS. DRAPER:** Yes.

10 **COMMISSIONER BALBIS:** Okay. Because my fear
11 is that there was an extensive process done to develop
12 this tariff, and time has passed, and we are going to
13 eliminate this mechanism very quickly, and perhaps it's
14 just something that needs to be tweaked. So I'm
15 comforted about the fact that it seems like a quick
16 process.

17 I still would like to hear from either the
18 Florida Association of Counties or League of Cities on
19 this. And perhaps not this particular docket, but any
20 other proposed mechanisms. Because I know that when I
21 was in local government there was a tremendous amount
22 of interest in undergrounding utilities, and perhaps
23 they need to be made aware of the mechanisms that
24 exist. And if this one -- there is a likelihood of
25 subsidization from customers that don't participate.

1 That concerns me, but I would like to see Florida Power
2 and Light to continue to coordinate with local
3 governments as to different mechanisms that are in
4 place, or that perhaps can come to us to have this, if
5 people want it.

6 **CHAIRMAN BRISÉ:** Thank you.

7 My take on this item is that I think it's
8 cost inhibitive, and I say that from a perspective of
9 an experience in a different setting.

10 Years ago -- and when I say years ago, maybe
11 five or six years ago -- the City of North Miami was
12 going through the process of seeking to have lines
13 undergrounded. And the reality was that it was too
14 expensive for them to participate and take advantage of
15 this. And it was the municipality as a whole, it
16 wasn't a neighborhood.

17 And so part of the challenge here is for many
18 smaller municipalities, they just can't afford to go
19 through this. And I think for this program to be
20 viable, it would require a legislative change in that
21 it would allow for multiple municipalities to, sort of,
22 be able to come up together as a -- I don't know if
23 they want to hold the -- be the controlling entity over
24 the lines and take the responsibility as a set of
25 municipalities, and that's part of the challenge that

1 exists here.

2 We attempted to address that at the
3 legislature. But getting all of those municipalities
4 together to sort of agree on what the terms would be
5 became a bigger challenge. So I think everybody
6 decided that we would leave that as is. And if
7 municipalities wanted to move forward, they would do it
8 from their pocketbooks. So that's my perspective on
9 this item.

10 And looking at it, I think that it is cost
11 inhibitive, and it doesn't make sense to keep something
12 that is just not viable, a tariff that is just not
13 viable around. But I think having a program that would
14 make sense is something that needs to be looked at and
15 worked on.

16 Commissioner Graham.

17 **COMMISSIONER GRAHAM:** I'll move staff
18 recommendation on Item Number 4.

19 **COMMISSIONER BROWN:** Second.

20 **CHAIRMAN BRISÉ:** Okay. It has been moved and
21 seconded.

22 Any further comments or questions?

23 All right. Seeing none, all in favor say
24 aye.

25 (Vote taken.)

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CHAIRMAN BRISÉ: All right. Thank you very
much.
MR. BUTLER: Thank you.

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STATE OF FLORIDA)

COUNTY OF LEON)

: CERTIFICATE OF REPORTER

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 11th day of September, 2013.



JANE FAUROT, RPR
Official FPSC Hearings Reporter
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