

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 22, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Office of the General Counsel (C. Keating)
Division of Economic Regulation (Breman)
Division of Regulatory Compliance & Consumer Assistance (Plescow)

RE: Docket No. 040789-EI – Complaint of Wood Partners against Florida Power & Light Company concerning contributions-in-aid-of-construction charges for underground distribution facilities.

AGENDA: 10/04/05 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\GCO\WP\2004\040789.RCM.DOC

Case Background

On September 24, 2003, Wood Partners, developers of Alta Pines Apartments (Alta Pines) in the City of Palm Beach Gardens (City), submitted a complaint (Request No. 558917E) against Florida Power & Light Company (FPL) concerning the level of contribution-in-aid-of-construction (CIAC) required by FPL to provide underground facilities to serve Alta Pines. At the request of Wood Partners, Commission staff conducted an informal conference concerning this complaint on February 25, 2004. The complaint was not resolved at or following the informal conference.

Prior to bringing this matter before the Commission, staff contacted the representative of Wood Partners who originated the complaint in an attempt to identify an agenda date at which Wood Partners would be able to participate. Staff did not receive a response from the representative, and, after subsequent attempts to contact him, learned that the representative was

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no longer employed by Wood Partners. Staff established a new contact with Wood Partners in March 2005 and verified that Wood Partners still wished to pursue its complaint. At that time, staff e-mailed the new contact in an attempt to identify an agenda date at which Wood Partners would be able to participate. Staff did not receive a response. Staff now brings its recommendation on this complaint for the Commission's consideration. Upon filing, staff mailed a copy of this recommendation to Wood Partners based on their most current contact information.

The Commission has jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including Sections 366.04, 366.05, and 366.07, Florida Statutes.

Discussion of Issues

Issue 1: Did FPL properly charge Wood Partners for underground facilities to serve Alta Pines Apartments?

Recommendation: Yes. FPL properly charged Wood Partners the incremental cost of underground facilities consistent with FPL's approved tariff and the Commission's longstanding policy that the cost causer pays the incremental cost of such facilities. (Breman, C. Keating, Plescow)

Staff Analysis: In May 2002, Wood Partners requested information from FPL concerning establishment of underground service for Alta Pines, a proposed 264-unit complex located on approximately 25 acres in the City of Palm Beach Gardens. FPL had existing distribution facilities located on Central Boulevard and Military Trail, which bounded the western and eastern sides of the proposed apartment complex. In evaluating Wood Partners' request, FPL determined that, with the addition of Alta Pines, the reliability of its distribution system in the region would require adding a feeder connectivity segment along Grandiflora Road, just south of Alta Pines. FPL finalized its underground design on August 23, 2002, based on plans provided by Wood Partners. FPL requested that Wood Partners provide a utility easement as required by Rule 25-6.076, Florida Administrative Code.

The City prohibited placement of underground distribution facilities along Grandiflora Road and along the southernmost perimeter of the apartment complex because the area is designated as a preserve. Thus, the initial underground design could not be implemented. On December 22, 2002, representatives of FPL, the City, and Wood Partners explored the extent of preserve requirements associated with Alta Pines and reached a consensus that FPL's feeder segment would be constructed underground on a utility easement to be provided across the middle of the Alta Pines site. Mr. Donaldson Hearing, a consultant for Wood Partners, memorialized these design changes in a December 23, 2002, letter to the City.

From that point, various aspects of the development project moved forward. FPL and Wood Partners exchanged information concerning the utility easement and construction design on several occasions. After receiving the utility easement from Wood Partners on June 11, 2003, and finalizing all details concerning the construction design for the underground facilities, FPL provided its final cost estimate of \$53,419.30 to Wood Partners on September 2, 2003. FPL's estimate was intended to reflect the cost differential associated with providing the required underground facilities as opposed to overhead facilities. FPL's cost estimate was comprised of the following charges:

Feeder Segment and Two Switchgear Packages	\$58,472.50
Various Credits for Trenching and Installations by Wood Partners	(14,152.20)
Two Looped Primary Lateral Risers	1,484.00
Service to a Lift Station	7,914.00

To ensure the progress of the Alta Pines project, Wood Partners paid this amount, although it did so “under protest.” On September 24, 2003, Wood Partners submitted its complaint concerning FPL’s charges. Wood Partners contends that the \$53,419.30 charge from FPL should be refunded because the feeder connectivity segment and two switch cabinets are not needed to provide adequate and reliable electric service to Alta Pines and were not requested by Wood Partners. Wood Partners asserts that FPL should be responsible for the costs of these facilities because the facilities are associated with serving other sites and regional growth matters not specific to Alta Pines.

In response, FPL asserts that its charges to Wood Partners were consistent with its Commission-approved tariff and Commission rules. FPL states that in determining what work was required and in determining appropriate charges, it reviewed the reliability needs for both the development (Alta Pines) and the region, as it would do in similar cases. FPL concluded that construction of the feeder segment and two switch cabinets were necessary to maintain normal reliability of that part of its system serving the area that includes Alta Pines. FPL notes that it would not have assessed charges if it was able to install overhead facilities. However, because the City’s development order to Wood Partners required all utilities associated with the Alta Pines project to be placed underground, FPL states that it charged Wood Partners the cost differential between underground and overhead facilities, pursuant to Commission rules.

Analysis

Because Wood Partners was required by the City of Palm Beach Gardens to place all utilities associated with the Alta Pines project underground, Wood Partners applied to FPL for construction of an underground distribution system for Alta Pines. Such applications are governed by Part V of Chapter 25-6, Florida Administrative Code, entitled “Rules for Residential Electric Underground Service.” Among those rules, Rule 25-6.078 requires each utility to file a written policy, subject to the Commission’s review and approval, that states 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. FPL’s policy with respect to multiple-occupancy residential buildings, like those involved in the Alta Pines project, is reflected in Section 10.6 of its Commission-approved tariff. Of particular relevance is Section 10.6.2 of the tariff:

Contribution by Applicant – When feeder mains on tracts of land upon which multiple-occupancy buildings will be constructed are deemed necessary by the Company to provide and/or maintain adequate service, [and] an underground installation is requested by the Applicant, or required by a governmental agency having the authority to do so, the Applicant shall contribute the differential costs provided in Section 10.3.2.b) and 10.3.3.c). There will be no contribution from the Applicant with respect to construction of underground distribution facilities other than feeder mains so long as the Company is free to construct such extensions in the most economical manner, and reasonably full use is made of the tract of land upon which the multiple-occupancy residential buildings will be constructed. Other conditions will require special arrangements.

Sections 10.3.2.b) and 10.3.3.c) of FPL's tariff specify how differential costs shall be calculated. The rule and tariff provisions discussed above reflect the Commission's long-standing policy that, where practical, persons who "cause" costs to be incurred should bear the burden of those costs.

Wood Partners does not dispute FPL's calculation of the cost differential between construction of an underground versus overhead system. Rather, Wood Partners contends that it should be responsible only for the cost differential associated with providing underground electric service directly to Alta Pines but should not be responsible for the cost differential associated with facilities used to serve regional system reliability needs, i.e., the feeder connectivity segment and two switch cabinets. However, pursuant to its tariff, FPL concluded that these facilities were necessary not just to serve Alta Pines, but to maintain normal reliability for that part of its system serving the area that includes Alta Pines - a conclusion that Wood Partners does not appear to dispute and that staff sees no basis to dispute. Based on FPL's review, the level of service reliability to Alta Pines customers as well as adjacent customers would be inadequate under FPL's system standards if these facilities were not installed. Thus, it appears that charging Wood Partners for the cost differential associated with these facilities is consistent with Section 10.6.2 of FPL's tariff.

In conclusion, staff recommends that the Commission find that FPL acted in compliance with its approved tariff when it charged Wood Partners \$53,419.30 as the cost differential associated with construction of underground electric facilities at Alta Pines and, accordingly, that no refund is due to Wood Partners.

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Issue 2: Should this docket be closed?

Recommendation: If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

Staff Analysis: At the conclusion of the protest period, if no protest is filed this docket should be closed upon the issuance of a consummating order.