State of Florida

Public Service Commission

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

DATE: January 31, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Baxter, Colson)
Office of the General Counsel (Jaeger)

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

AGENDA: 02/12/08 – Regular Agenda – Motion to Dismiss Prior to Hearing – Participation is at Discretion of the Commission

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\070231.RCM.DOC

Case Background

Rule 25-6.078, Florida Administrative Code (F.A.C.), defines investor-owned electric utilities' (IOUs) responsibilities for filing updated underground residential distribution (URD) tariffs and requires IOUs to file updated URD charges for Commission approval at least every three years, or sooner if a utility's underground cost differential for the standard low-density subdivision varies from the last approved charge by 10 percent or more. The rule requires IOUs to file on or before October 15 of each year a schedule showing the increase or decrease in the differential for the standard low-density subdivision. Further, if there is a greater than 10 percent differential, this rule requires the utility to file a written policy and supporting data and analyses

as prescribed in subsections (1), (4), and (5) of this rule[1] on or before April 1 of the following year.

On October 13, 2006, Florida Power & Light Company (FPL) notified the Commission, pursuant to Rule 25-6.078, F.A.C., that its underground cost differential for the standard low-density subdivision varied from the last approved differential by 31.01 percent.[2] FPL's current URD charges were approved in 2005.[3]

To comply with the 10 percent filing requirement of Rule 25-6.078, F.A.C., FPL filed its petition for approval of 2007 revisions to FPL's URD, and although not required by Rule 25-6.078, F.A.C., FPL also requested revisions to its underground commercial/industrial distribution (UCDs) tariffs and their associated charges on April 4, 2007. The Commission suspended the tariffs by Order No. PSC-07-0484-PCO-EI, issued June 8, 2007.

The URD charges represent the additional costs FPL, an IOU, incurs to provide underground distribution service instead of overhead service, and are calculated as differentials between the cost of underground and overhead service. Costs for underground service have historically been higher than for standard overhead construction. The URD differential is paid by the applicant as a contribution-in-aid-of-construction (CIAC). The URD tariffs provide standard charges for certain types of underground service, and apply to new residential developments such as subdivisions and townhouses.

FPL developed its URD charges based on the platted design model of the following three standard Commission-approved residential subdivisions: (1) a 210-lot low-density subdivision with a density of one or more, but less than six dwelling units per acre; (2) a 176-lot high-density subdivision with a density of six or more dwelling units per acre; and (3) a high-density subdivision where service is provided using grouped meter pedestals. Examples of the grouped meter pedestals subdivision include mobile home and R.V. parks. Up through the filings in April 2007, all four major investor-owned electric utilities used the same three standardized platted designed subdivision to develop their URD charges, as required by old Rule 25-6.078(2), F.A.C. (See Attachment A) FPL's current costs for the URD differential per lot by type of subdivisions are: $444.01 for the 210-lot low-density subdivision; $236.29 for the 176-lot high-density subdivision; and $41.31 for the high-density subdivision where service is provided using grouped meter pedestals. The type and cost of materials used in building the standardized subdivisions are based on the square footage of the homes connected, the wire size used in the

[1] Prior to amendment of this rule on February 1, 2007, the paragraphs were numbered (1), (3), and (4). Paragraph (2) was added effective February 1, 2007, to state: "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." Because of an amendment to the proposed rule, a Commission notice indicated the rule would become effective on February 5, 2007, but the rule was actually approved and became effective as of February 1, 2007. So, in some instances the parties reference the effective date as February 5, 2007.

[2] Staff notes that Rule 25-6.078, F.A.C., was recently amended by the Commission as part of its rulemaking proceedings to require electric utilities to strengthen Florida's electrical infrastructure. The amended rule became effective on February 1, 2007. However, because FPL initiated this matter by its notification to the Commission on October 13, 2006, the Commission determined in the Tariff Order that the prior rule governed in this instance. A copy of the applicable version of the rule is attached to this recommendation as Attachment A.

[3] See Order No. PSC-05-0952-TRF-EI, issued October 6, 2005, in Docket No. 050226-EI, In re: Petition for approval of 2005 revisions to residential and commercial distribution tariff by Florida Power & Light Company.

overhead and underground feeders, the size and number of transformers used, the number of homes connected to each transformer serving the subdivision, and the total power usage of all homes in the subdivision.

On October 16, 2007, the Commission issued Order No. PSC-07-0835-TRF-EI (Tariff Order), proposing to approve FPL's revisions to its URD and UCD tariffs. However, before those tariffs could become final, the Municipal Underground Utilities Consortium (MUUC), and the City of Coconut Creek, Florida (Coconut Creek or City), pursuant to Chapter 120, Florida Statutes (F.S.), and Rule 28-106.201, F.A.C., filed their Petition Protesting Order No. PSC-07-0835-TRF-EI and Request for Formal Hearing (Protest). In their Protest, MUUC and the City set forth the following five disputed issues of material fact:

1. Do FPL's URD CIAC tariffs comply 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?"

2. Do FPL's URD CIAC tariff charges reflect the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening?

3. Taking into account the avoided storm restoration cost savings and other operational cost savings provided by wide-area (e.g., subdivision or greater) UG [underground] installations, and taking into account the requirements of Commission Rule 25-6.0342, F.A.C., what should FPL's URD and UCD CIACs be?

4. Should new developments within a municipality qualify for the Governmental Adjustment Waiver credit, where the Local Government is willing to be the applicant for service in order to ensure that the wide-area benefits of undergrounding are realized, consistent with the purposes of the GAF tariff and FPL's Storm Secure Initiatives?

5. What is the appropriate relief for Coconut Creek, the MUUC, and other affected persons and parties in this case?

In response to MUUC's and the City's protest (collectively, Protestors), and in accordance with Rule 28-106.204, F.A.C., FPL filed its Motion to Dismiss Protest and Request for Formal Hearing on November 20, 2007. The Protestors filed their timely response on November 27, 2007.

This recommendation addresses FPL's Motion to Dismiss and the Protestors' response. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, F.S.

Discussion of Issues

Issue 1: Should the Commission grant FPL's Motion to Dismiss?

Staff Recommendation: No. The Commission should find that the Protestors have standing. Further, the Protestors have stated viable claims for relief in the matter of the proper calculation of the underground differential for new subdivisions pursuant to Rule 25-6.078, F.A.C. Thus, the Motion to Dismiss should be denied with respect to the Protestors' Issues 1, 2, 3, and 5. The Commission should grant FPL's petition to dismiss Issue 4 of the Protestors concerning the Governmental Adjustment Factor (GAF). FPL did not propose any changes to the application of the GAF in this docket and that matter is unrelated to the proper calculation of differentials for new construction at issue here. (Jaeger, Baxter)

Staff Analysis:

Standard of Review

A motion to dismiss raises as a question of law the sufficiency of the facts alleged in a petition to state a cause of action. See Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The standard to be applied in disposing of a motion to dismiss is whether, with all factual allegations in the petition taken as true and construed in the light most favorable to the petitioner, the petition states a cause of action upon which relief may be granted. Id. at 350. In determining the sufficiency of the petition, the Commission should confine itself to the petition and documents incorporated therein, and the grounds asserted in the motion to dismiss. Barbado v. Green and Murphy, P.A., 758 So. 2d 1173 (Fla. 4th DCA 2000), and Rule 1.130, Florida Rules of Civil Procedure.

I. FPL's Motion

FPL's Motion to Dismiss is based on two grounds. First, FPL alleges that neither the MUUC nor Coconut Creek have demonstrated that they have standing to protest the Tariff Order. Second, FPL alleges that the Protest of MUUC and Coconut City neither asserts any legal issues that would provide legitimate bases for a hearing nor does it assert viable claims for relief.

A. Standing

FPL argues that neither MUUC nor Coconut City have satisfied the requirements for standing set forth in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2nd DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Citing to Agrico, FPL states that to have standing, the petitioner must show:

> 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.[4]

[4] Agrico, 406 So. 2d at 482.

FPL asserts that MUUC has alleged three grounds for standing in this proceeding: (1) that MUUC takes electric service from FPL; (2) that it is involved in underground conversions; or (3) that it is considering and working with developers on underground utility projects. FPL states that MUUC's first claim for standing fails because the taking of electric service involves rates and not the URD tariffs. As for MUUC's second claim for standing, FPL argues that underground conversions are not covered by the URD tariff. In regards to MUUC's third claim for standing, FPL cites AmeriSteel Corp. v. Clark, 691 So. 2d 473, at 477-478 (Fla. 1977), and argues that "considering" such projects "raises, at most, the possibility of future economic harm,"[5] which is not sufficient to confer standing.

FPL also argues that MUUC has not met the standards set forth in Florida Home Builders Association v. Dept. of Labor and Unemployment Security, 412 So. 2d 351, 353-354 (Fla. 1982), for associational standing. FPL contends that MUUC only states that "a substantial majority of the MUUC's members . . . receive retail electric service from FPL," which addresses rates but not the URD tariffs.

Like MUUC, FPL also asserts that Coconut Creek has failed to demonstrate standing. FPL states that the only basis Coconut Creek provides to demonstrate standing is that the City is "attempting to partner with developers" on the undergrounding of new distribution lines. Again citing AmeriSteel, FPL asserts that Coconut Creek's claim of future economic harm is not an injury in fact of sufficient immediacy to entitle the City to a hearing.

Based on the above, FPL argues that both MUUC and Coconut City have failed both prongs of the test for standing set forth in Agrico.

B. Failure to State Viable Claims for Relief

FPL also alleges that MUUC and Coconut City have failed to state viable claims for relief. FPL notes that pursuant to Rule 25-6.078, F.A.C., it initiated this proceeding on October 13, 2006, by filing its notification to the Commission that the cost differential varied from the last approved URD differential by 31.01 percent. Based on this differential, FPL was required by that same rule to file an updated URD tariff by April 1, 2007. However, before FPL could file this updated tariff, FPL states that Rule 25-6.078, F.A.C., was amended effective February 1, 2007, to insert a new section (2) and a new section (4).[6] New Section (2) states: "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." FPL argues that the Commission was correct when it stated in the Tariff Order that these new changes should not apply to the current tariff filing. FPL notes that it is given almost six months to develop the detailed data and analyses that support the estimated average cost differential calculation, and that if the amendment was retroactively applied in this proceeding, its time would be limited to

[5] In AmeriSteel, two electric companies entered into an agreement that reaffirmed their service customer boundaries, and AmeriSteel, a customer of FPL, attempted to intervene saying that this agreement would prevent it from seeking service from the Jacksonville Electric Authority (JEA) and cause it to pay the higher rates of FPL. The court upheld the Commission's decision that the entity did not have standing to protest the order because the customer's claim of future economic harm was not an injury in fact of sufficient immediacy to entitle the customer to a hearing.

[6] Staff notes that new Section (4) actually significantly modified old Section (3), which had to be renumbered as (4) because of the insertion of the new Section (2).

less than three months. FPL argues that such an abbreviated timeframe would be overly burdensome and contrary to the process contemplated by the rule.

FPL notes that the Protestors argue that Amended Rule 25-6.078(2), F.A.C., requires the utility to take into account the added cost of building the hypothetical overhead system to hardening standards approved pursuant to Rule 25-6.0342, F.A.C. FPL states that pursuant to Rule 25-6.0342, F.A.C., it did not even file its Electric Infrastructure Storm Hardening Plan (Plan) for Commission approval until May 7, 2007, and then has gone through a series of workshops and a hearing through the summer and early fall. Until the Commission approved the Plan,[7] FPL argues that it could not know what hardening activities would appropriately be reflected in the calculation of a hypothetical overhead system as contemplated by the current Rule 25-6.078(2), F.A.C. FPL further argues that Rule 25-6.078, F.A.C., has no applicability to UCD tariffs.

Finally, FPL notes that the Protest argues in Issue 4 that the Governmental Adjustment Factor (GAF) waiver should apply to underground facilities at new developments, and not just conversions, as it now does. FPL argues that to consider this issue is totally inappropriate in this filing for URD or UCD tariffs, which have nothing whatsoever to do with the GAF waiver. FPL argues that the GAF Tariff, including the GAF waiver, was approved by the Commission in Order No. PSC-07-0442-TRF-EI, issued May 22, 2007,[8] and that "MUUC was a party in that docket and had ample opportunity to raise issues related to the eligibility criteria."

II. MUUC and City's Response

In their Response, the Protestors argue that both Coconut City and MUUC have standing and have stated viable claims for relief in their petition for hearing. Their response is discussed below.

A. Standing

In regards to Coconut City, the Protestors state that the City has standing because their Protest specifically states that projects within the City would include the installation of new underground distribution lines in new development areas. Further, the Protestors state that the City has requested FPL, subject to the City's commitment to be responsible for payment of applicable CIACs, to include the new-development areas as part of the City's contiguous areas for qualification for the GAF waiver "and also that FPL provide the same or a similar credit for new construction that properly reflects the storm restoration cost savings . . . (e.g., avoided tree-trimming and pole inspection costs) that having such areas served by UG [underground] facilities will provide to FPL . . . ." The Protestors further argue that FPL is fully aware that the City is planning three specifically identified "greenfield" segments which would be covered by FPL's URD and UCL tariffs.

[7] Commission approved the Plan December 4, 2007.
[8] Docket No. 060150-EI, In re: Petition for approval of revisions to contribution-in-aid-of-construction definition in Section12.1 of First Revised Tariff Sheet No. 6.300, by Florida Power & Light Company.

In regards to MUUC, the Protestors state that MUUC specifically asserted in its petition three grounds demonstrating standing: (1) that the vast majority of its members are directly subject to FPL's tariff; (2) that its members have ongoing interests in ensuring that new construction be served by underground facilities; and (3) that the charges for new underground service are directly impacted by FPL's tariffs. The Protestors further argue that FPL knows that many of MUUC's members are not built out and will be subject to the URD tariffs. The Protestors further assert that MUUC was specifically formed for the purpose of promoting underground facilities, and ensuring that such installations were "paid for through appropriate, fair, equitable, and reasonable combinations of utility funding and funding by entities such as the MUUC's members."

B. The MUUC and Coconut Creek Have Stated Viable Claims for Relief

1. Initiation of the Proceeding

The Protestors disagree with FPL's claim that this proceeding was initiated when FPL notified the Commission on October 13, 2006, that its cost differential varied from the last approved URD Tariff charge by 10 percent or more. The Protestors argue that there was no proceeding before April 2, 2007, when FPL filed its petition that initiated this docket. Because the amendment to Rule 25-6.078, F.A.C., became effective some two months prior to FPL filing its petition, the Protestors, citing Sexton Cove Estates v. Pollution Control Board, 325 So. 2d 468, 470 (Fla. 1st DCA 1976), argue that FPL was bound by the rule as amended. Further, citing In Turro v. Dep't of Health and Rehabilitative Services, 458 So. 2d 345, 346 (Fla. 1st DCA 1984; and Grove Isle, Ltd. v. Bayshore Homeowners' Ass'n, 418 So. 2d 1046, 1049 (Fla. 1st DCA 1982), the Protestors assert that even where a rule has been modified after a petition was filed, but where the petitioner was aware of the impending amendment, the courts sometimes allow the agency to apply the new rule.

Citing "Access to Florida Administrative Proceedings" by Pat Dore, the Protestors argue that "affected persons and entities are to be afforded appropriate points of entry into agency proceedings" before an agency determines the substantial interests of a party and that this right was intended to be broadly available. In the case at hand, the Protestors argue that any action prior to April 2, 2007, was a "free-form" proceeding, and that "there was no 'recognizable event' providing a clear point of entry at least until the Commission opened Docket No. 070231-EI on April 2, 2007."

2. Entitlement to the Benefits and Protections of Effective Rule

Under this section, the Protestors argue that they are entitled to the protections afforded by the Commission's rules as of the date they are effective, or at least within a reasonable time after they become effective. The Protestors further argue that by the time of the issuance of the Order approving the tariffs, some eight months after the rule became effective, that this should be considered a reasonable time. Also, the Protestors again argue that the filing was approximately two months after the effective date of the rule.

3. Contradicts FPL's Purported Support of Undergrounding

Although FPL has voiced support of undergrounding, the Protestors argue that FPL is trying to escape the rule's requirements which would give appropriate credit for benefits provided by undergrounding. The Protestors argue that "FPL had already done the calculations and analysis to support applying appropriate storm restoration cost savings credits in URD CIACs in September 2006, even before FPL claims to have initiated this proceeding." The Protestors argue that this analysis was done in the GAF tariff petition for conversions and would apply equally to new construction.

4. Benefits of Storm Hardening Should be Incorporated Into FPL's URD Charges Through Action in This Docket

The Protestors argue that FPL has known since January 2006 when it published its Storm Secure Plan (Plan) what its proposed hardening standards were. Moreover, the Protestors note that, by the time the issues in this proceeding are decided, FPL's Plan will be fully effective.

5. Application of the GAF Waiver to New Underground Facilities

The Protestors admit that FPL's GAF Waiver Tariff, on its face, applies only to underground conversion projects. However, they believe that FPL's objection to it being raised in this docket would: (1) contradict the purpose of the GAF Waiver Tariff; (2) contradict FPL's avowed support for undergrounding; and (3) elevate form over substance. If it is found that it is improper to consider the applicability of the GAF Waiver Tariff in this docket, the Protestors note that this would apply to only their Issue 4 listed in their Protest, and that the first three issues would still be applicable.

The Protestors argue that they both have standing and have stated viable claims for relief. Therefore, the Protestors argue that FPL's Motion to Dismiss should be denied.

III. Staff Analysis

At the outset, staff acknowledges that dismissal is a drastic remedy, and one that should be granted only when the appropriate legal standard has been clearly met. See Carr v. Dean Steel Buildings, Inc., 619 So. 2d 392 (Fla. 1st DCA 1993). Also, as stated in Varnes, 624 So. 2d at 350, the standard to be applied in disposing of a motion to dismiss is whether, with all factual allegations in the petition taken as true and construed in the light most favorable to the petitioner, the petition states a cause of action upon which relief may be granted. FPL has based its Motion to Dismiss on: (a) lack of standing; and (b) a failure to state viable claims for relief. Staff will address each of these assertions below.

A. Standing

In order to establish standing, a petitioner must show: (1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, F.S., hearing; and (2) that his substantial injury is of a type or nature which the proceeding is designed to protect. Agrico, 406 So. 2d at 482. Staff believes that both the City and MUUC have met both prongs of the standing

test set forth in Agrico. Taking all the allegations in the Petition to be true, staff believes that the Protestors have demonstrated an injury in fact, because the Protestors would be required to pay a higher URD tariff charge based on the Commission's action in the protested order -- Order No. PSC-07-0835-TRF-EI. Nothing in the tariff or rules prohibits a city from being the applicant of record for new underground construction, in which case the cities would be directly subject to the CIAC. Also, staff believes that the Protestors have demonstrated that the injury in fact is of sufficient immediacy because the City and MUUC's members are current customers of FPL subject to the URD charge. See AmeriSteel, 691 So. 2d at 477-478. Any customer who might reasonably be subject to a charge at some point should be able to challenge that charge at the time of its adoption. Forcing a customer to challenge a tariff after it has been approved shifts the burden to demonstrate the appropriateness of the tariff from the utility to the customer. Therefore, staff believes that the Protestors will suffer a substantial injury which this proceeding and Rule 25-6.078, F.A.C., are designed to protect.

In regards to associational standing, the Protestors state in their Protest that they meet the standard for associational standing set forth in Florida Home Builders, 412 So. 2d at 353-354, in that a substantial number of its members are substantially affected by the Commission's decision, that intervention is within the association's general scope of interest, and the relief requested is of a type appropriate for an association to obtain on behalf of its members. Staff agrees. Therefore, staff believes that FPL's Motion to Dismiss for lack of standing should be denied.

B. Whether Protest States Viable Claims for Relief

The primary basis of FPL's allegations that the City and MUUC failed to state a viable claim for relief is the utility's assertion that the Commission was correct to use the prior version of Rule 25-6.078, F.A.C. While the Protestors quote, and seem to rely on, the new rules which became effective February 1, 2007, the main point of their petition appears to be that FPL has not properly calculated the true cost differential. The old rule requires as follows: "Detailed supporting data and analyses used to determine the Estimated Average Cost Differential for underground and overhead distribution systems shall be concurrently filed by the utility with the Commission and shall be updated using cost data developed from the most recent 12-month period." In their Protest, the Protestors specifically state that FPL's URD and UCD tariffs do not reflect the value of avoided storm restoration costs and avoided operational costs associated with underground facilities, which are likely greater than 25 percent of the applicable CIAC charges. FPL's argument that the protest of the UCD is inappropriate because FPL is not require to file a UCD under Rule 25-6.078 is misplaced. Although FPL is not required to file a commercial underground differential, it chose to do so, placing this tariff subject to normal tariff review. The Commission may consider any relevant standard or requirement in deciding the appropriateness of a proposed rate or tariff, whether or not required by a rule. Taking the Protestors' Petition in its most favorable light, staff believes that this is a viable claim for relief when viewed in the light of the standard for a motion to dismiss. See Varnes, 624 So. 2d at 350.

C. Summary

Based on the above, staff believes that FPL has failed to demonstrate that a motion to dismiss is proper for the disputed issues 1, 2, 3, and 5 raised by the Protestors, relating to the proper calculation of both the residential and commercial underground differential costs proposed in this docket. Staff believes that there is a question of the proper calculation of both the URD and UCD tariffs, and that this docket is the most appropriate forum in which to address the concerns of the Protestors. Thus, staff recommends that FPL's Motion to Dismiss be denied in regard to Protestors' Issues 1, 2, 3, and 5.

However, staff agrees with FPL that this docket is not an appropriate forum to consider whether the underground facilities at new developments should qualify for the GAF Waiver. The GAF Waiver applies only to underground conversion projects and no changes to the GAF tariff were proposed in this docket. Nothing prevents the Protestors from pursuing the GAF issue in a separate proceeding. Therefore, staff recommends that FPL's motion to dismiss the Protestors' Issue 4 be granted, and that Issue 4 be removed from further consideration in this docket.

Issue 2: Should this docket be closed?

Recommendation: If the Commission approves staff's recommendation, the docket should remain open for the processing of the Protest. (Jaeger)

Staff Analysis: If the Commission approves staff's recommendation, the docket should remain open for the processing of the Protest.

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. 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) On or before October 15th of each year each utility shall file with the Commission's Division of Economic Regulation Form PSC/ECR 13-E, Schedule 1, using current material and labor costs. If the cost differential as calculated in Schedule 1 varies from the Commission-approved differential by plus or minus 10 percent or more, the utility shall file a written policy and supporting data and analyses as prescribed in subsections (1), (3) and (4) of this rule on or before April 1 of the following year; however, each utility shall file a written policy and supporting data and analyses at least once every three years.

(3) Differences in operating and maintenance costs between underground and overhead systems, if any, may be taken into consideration in determining the overall Estimated Average Cost Differential.

(4) Detailed supporting data and analyses used to determine the Estimated Average Cost Differential for underground and overhead distribution systems shall be concurrently filed by the utility with the Commission and shall be updated using cost data developed from the most recent 12-month period. The utility shall record these data and analyses on Form PSC/ECR 13-E (10/97). Form PSC/ECR 13-E, entitled "Overhead/Underground Residential Differential Cost Data" is incorporated by reference into this rule and may be obtained from the Division of Economic Regulation, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, (850) 413-6900.

(5) Service for a new multiple-occupancy building shall be constructed underground within the property to be served to the point of delivery at or near the building by the utility at no charge to the applicant, provided the utility is free to construct its service extension or extensions in the most economical manner.

(6) The recovery of the cost differential as filed by the utility and approved by the Commission may not be waived or refunded unless it is mutually agreed by the applicant and the utility that the applicant will perform certain work as defined in the utility's tariff, in which case the applicant shall receive a credit. Provision for the credit shall be set forth in the utility's tariff rules and regulations, and shall be no more in amount than the total charges applicable.

(7) The difference in cost as determined by the utility in accordance with its tariff shall be based on full use of the subdivision for building lots or multiple-occupancy buildings. If any given subdivision is designed to include large open areas, the utility or the applicant may refer the matter to the Commission for a special ruling as provided under Rule 25-6.083, F.A.C.

(8) The utility shall not be obligated to install any facilities within a subdivision until satisfactory arrangements for the construction of facilities and payment of applicable charges, if any, have been completed between the applicant and the utility by written agreement. A standard agreement form shall be filed with the company's tariff.

(9) Nothing herein contained shall be construed to prevent any utility from assuming all cost differential of providing underground distribution systems, provided, however, that such assumed cost differential shall not be chargeable to the general body of rate payers, and any such policy adopted by a utility shall have uniform application throughout its service area.

Specific Authority 366.04(2)(f), 366.05(1) FS. Law Implemented 366.03, 366.04(1), (4), 366.04(2)(f), 366.06(1) FS. History–New 4-10-71, Amended 4-13-80, 2-12-84, Formerly 25-6.78, Amended 10-29-97.