

ORIGINAL

Matilda Sanders

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Tuesday, May 29, 2007 9:39 AM
To: Bill Walker; John Butler; Adam Teitzman; Filings@psc.state.fl.us; H. Mann; Keino Young; Lorena Holley; Schef Wright
Subject: Electronic Filing- Docket 07030- EI
Attachments: Palm Beach Petition to Intervene.doc

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
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b. Docket No. 070301-EI

In Re: Approval of Florida Power & Light Company's Storm Hardening Plan Pursuant to Rule 25-6.0342, F.A.C.

c. Document being filed on behalf of the Town of Palm Beach, Florida.

d. There are a total of 8 pages.

e. The document attached for electronic filing is Petition to Intervene of the Town of Palm Beach, Florida.

(see attached file: PalmBeachPetitiontoIntervene.doc)

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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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

5/29/2007

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Approval of Florida Power)
& Light Company's Storm Hardening) DOCKET NO. 070301-EI
Plan Pursuant to Rule 25-6.0342, F.A.C.) FILED: MAY 29, 2007
_____)

PETITION TO INTERVENE OF THE TOWN OF PALM BEACH, FLORIDA

The Town of Palm Beach, Florida ("Palm Beach" or "Town"), pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039, 28-106.205, and 28-106.201, Florida Administrative Code ("F.A.C."), and by and through its undersigned counsel, hereby petitions the Commission for leave to intervene in the above-styled docket relating to Florida Power & Light Company's ("FPL") "Electric Infrastructure Storm Hardening Plan" (the "Plan") dated and filed in this docket on May 7, 2007. In summary, the Town of Palm Beach is a substantial customer of FPL, and the Town has ongoing interests in converting the existing overhead ("OH") electric distribution lines in Palm Beach to underground ("UG") service. Accordingly, the Town's substantial interests in reliable electric service and in the implications of FPL's Plan for the Town's desired UG conversion projects will be determined by these proceedings and the Town is entitled to intervene.

In further support of its Petition to Intervene, the Town of Palm Beach states as follows.

DOCUMENT NUMBER-DATE
04364 MAY 29 5
FPSC-COMMISSION CLERK

1. The name, address, and telephone number of the Petitioner are as follows:

Town of Palm Beach
ATTN: Thomas G. Bradford, Deputy Town Manager
360 South County Road
Palm Beach, Florida 33480
Telephone (561) 838-5410
Telecopier (561) 838-5411.

2. All pleadings, orders and correspondence should be directed to Petitioner's representatives as follows:

Robert Scheffel Wright, Attorney at Law
John T. LaVia, III, Attorney at Law
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
(850) 222-7206 Telephone
(850) 561-6834 Facsimile
E-Mails - swright@yvlaw.net and jlavia@yvlaw.net

with a courtesy copy to

Thomas G. Bradford, Deputy Town Manager
Town of Palm Beach, Florida
360 South County Road
Palm Beach, Florida 33480
Telephone (561) 838-5410
Telecopier (561) 838-5411
E-Mail - TBradford@townofpalmbeach.com.

3. The agency affected by this Petition to Intervene is:

Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850.

4. The Town of Palm Beach was incorporated in 1911 and has a year-round population of approximately 10,000 and a seasonal population of 30,000 persons. The Town employs approximately 400 people. The Town of Palm Beach owns and operates numerous municipal facilities and lighting equipment,

for all of which the Town purchases electric service from FPL. For the past several years, as a potential applicant within the meaning of FPL's tariffs applicable to UG conversion projects, the Town has been engaged in discussions and negotiations with FPL toward converting the existing overhead electric distribution facilities in the Town to underground facilities. As a long-established community, much of FPL's distribution system in Palm Beach consists of older, overhead facilities, and the Town is actively working toward the conversion of all OH facilities in the Town to UG facilities. The Town is planning to solicit its citizens' interest in proceeding with the contemplated underground conversion project in a referendum election to be held in early 2008.

5. Statement of Affected Interests. In this docket, the Commission will decide whether to approve FPL's Storm Hardening Plan. FPL's implementation of this Plan will impact the reliability of electric service throughout FPL's service area, including Palm Beach, and will also directly impact the Contributions in Aid of Construction ("CIACs") to be paid by the Town in connection with its UG conversion project. This impact naturally flows from Commission Rule 25-6.115(9), F.A.C., which requires that estimated OH construction costs used in calculating CIACs shall be based on the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening.

6. Standing to Intervene. The Town of Palm Beach's substantial interests are of sufficient immediacy to entitle it to participate in the proceeding and are the type of interests that the proceeding is designed to protect. To participate as a party in this proceeding, an intervenor must demonstrate that its substantial interests will be affected by the proceeding. Specifically, the intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect. Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997); Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982). Here, the Town is a substantial customer of FPL with obvious substantial interests in the reliability of FPL's distribution system and also an applicant for UG conversion projects whose substantial interests in having any CIACs calculated in compliance with the Commission's rules will also be determined in this proceeding.

7. Disputed Issues of Material Fact. The Town of Palm Beach believes that the disputed issues of material fact in this proceeding will include, but will not necessarily be limited to, the following.

ISSUE 1: Is FPL's proposed Storm Hardening Plan reasonable?

ISSUE 2: Does FPL's Plan comply with all requirements of Rule 25-6.0342, F.A.C.?

ISSUE 3: Should the Commission require any modifications to FPL's Plan in the public interest?

ISSUE 4: Should FPL's Storm Hardening Plan be approved, approved with modifications, or rejected?

The Town reserves all rights to raise additional issues in accordance with the Commission's rules and the Order Establishing Procedure (when issued) in this case.

8. Statement of Ultimate Facts Alleged. The Town of Palm Beach alleges the following ultimate facts entitling it to the relief requested herein.

- a. The Town of Palm Beach is a substantial retail customer of FPL.
- b. The Town of Palm Beach is an "Applicant" within the meaning of FPL's UG CIAC tariffs.
- c. The Town of Palm Beach's substantial interests in reliable electric service and in having FPL's Storm Hardening Plan designed and structured so as to promote the public interest are subject to determination in this proceeding.
- d. As reflected in its preliminary comments filed in this docket jointly with the Town of Jupiter Island and the Municipal Underground Utilities Consortium, the Town of Palm Beach believes that certain improvements should be made in FPL's Plan, including more active pursuit of undergrounding as a hardening measure, especially where undergrounding opportunities may be identified in connection with road-widening, relocation, upgrade, and similar projects; encouragement of and commitment to using rights-of-way to the maximum extent feasible for the placement of UG facilities as a storm hardening measure; and support of submersible underground equipment.

9. Statutes and Rules That Entitle the Town of Palm Beach to the Relief Requested. The applicable statutes and rules that entitle the Town of Palm Beach to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.03, 366.04(5), and 366.05(1), Florida Statutes, and Rules 25-6.0342 and 25-22.039 and Chapter 28-106, Florida Administrative Code.

10. Statement Explaining How the Facts Alleged By the Town of Palm Beach Relate to the Above-Cited Rules and Statutes.

Rules 25-22.039 and 28-106.205, F.A.C., provide that persons whose substantial interests are subject to determination in, or may be affected through, an agency proceeding are entitled to intervene in such proceeding. Section 366.03, Florida Statutes, requires each public utility to furnish sufficient, adequate, and efficient service; Section 366.04(5), Florida Statutes, gives the Commission jurisdiction over the planning, development, and maintenance of the grid to assure adequate and reliable service; and Section 366.05(1), Florida Statutes, gives the Commission jurisdiction to require improvements and additions to utility facilities to promote the convenience and welfare of the public. As a substantial retail customer of FPL, the Town's substantial interests in the reliability of FPL's distribution system (and transmission system) are sufficient to establish standing in this proceeding. Moreover, as a municipal government directly subject to FPL's CIAC tariffs relating to OH-to-UG conversions, and thus also subject to the impacts that the approval of FPL's Storm Hardening Plan will have on such CIACs, the Town's substantial interests are further subject to determination in this proceeding, and the Town is entitled to intervene herein.

CONCLUSION AND RELIEF REQUESTED

The Town of Palm Beach is a substantial customer of FPL and an "Applicant" and a local government subject to FPL's existing and proposed UG CIAC tariffs. Based on its substantial interests in the reliability of FPL's distribution system (and transmission system), as those interests may be affected by

FPL's Storm Hardening Plan, and further based on the Town's substantial interests in the impacts that FPL's Plan will have on CIACs to be paid by the Town for UG conversion projects, the Town is entitled to intervene in this docket.

WHEREFORE, the Town of Palm Beach, Florida respectfully requests the Florida Public Service Commission to enter its order GRANTING its Petition to Intervene and requiring that all parties to this proceeding serve copies of all pleadings, notices, and other documents on the Town's representatives indicated in paragraph 2 above.

Respectfully submitted this 29th day of May, 2007.

Robert Scheffel Wright
Florida Bar No. 966721
John T. LaVia, III
Florida Bar No. 853666
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(850) 222-7206 Telephone
(850) 561-6834 Facsimile

Attorneys for the Town of Palm Beach,
Florida

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic Mail and U.S. Mail this 29th day of May, 2007, to the following:

Adam Teitzman
H. Mann
Keino Young
Lorena Holley
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Bill Walker
Florida Power & Light Company
215 South Monroe Street,
Suite 810
Tallahassee, Florida 32301-1850

John T. Butler
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420

s/ Robert Scheffel Wright
Attorney