

**Dorothy Menasco**

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**From:** Rhonda Dulgar [rdulgar@yvlaw.net]  
**Sent:** Wednesday, May 28, 2008 4:45 PM  
**To:** John T. Butler; R. Wade Litchfield; Charles Beck; J.R. Kelly; Filings@psc.state.fl.us; Michael Cooke; Mary Anne Helton; Ralph Jaeger; Schef Wright  
**Subject:** Electronic Filing - Docket 080244-EI  
**Attachments:** MUUC.PetitionToIntervene.5-28-08.pdf

a. Person responsible for this electronic filing:

Robert Scheffel Wright  
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b. Docket No. 080244-EI

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

c. Document being filed on behalf of the Muncipal Underground Utilities Consortium (MUUC).

d. There are a total of 12 pages.

e. The document attached for electronic filing is Petition to Intervene of the Municipal Underground Utilities Consortium.

(see attached file: MUUC.PetitionToIntervene.5-28-08.pdf)

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*DM  
5/29/08  
R. V.N.*

DOCUMENT NUMBER-DATE

04539 MAY 28 08

FPSC-COMMISSION CLERK

5/28/2008

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of                    )  
Underground Conversion Tariff                    ) Docket No: 080244-EI  
Revisions by Florida Power & Light                )  
Company    ) Filed: May 28, 2008  
\_\_\_\_\_)

PETITION TO INTERVENE OF  
THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM

The Municipal Underground Utilities Consortium (the "MUUC"), 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 FPL's proposed revisions to its tariffs governing conversions of overhead ("OH") facilities to underground ("UG") facilities. The MUUC's membership includes more than 30 political subdivisions of the state of Florida (i.e., Florida cities and towns), the vast majority of which are retail customers of Florida Power & Light Company ("FPL") that are working on or planning UG conversion projects subject to these tariffs.

In summary, the MUUC's members have ongoing interests in converting the existing OH electric distribution lines in their jurisdictions to UG service, a transaction that is governed extensively by the tariff sheets that FPL proposes to amend in this docket; for convenience, these tariffs are referred to in this Petition as "FPL's UG Conversion Tariffs." The vast majority of the MUUC's members qualify as "Local Government Applicants" within the scope of FPL's tariffs, and thus the interests of the MUUC's members, will be directly affected by the Commission's decisions regarding the proposed tariff amendments. Accordingly,

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FPSC-COMMISSION CLERK

the MUUC is entitled to intervene in this docket to protect its members' interests.

In further support of its Petition to Intervene, the MUUC states as follows.

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

Municipal Underground Utility Consortium  
Attention: Thomas G. Bradford, Deputy Town Manager  
Town of Palm Beach  
360 South County Road  
Palm Beach, Florida 33401  
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  
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E-Mails - [swright@yvlaw.net](mailto:swright@yvlaw.net) and [jlavia@yvlaw.net](mailto:jlavia@yvlaw.net)

with a courtesy copy to

Thomas G. Bradford, Deputy Town Manager  
Town of Palm Beach  
360 South County Road  
Palm Beach, Florida 33401  
Telephone (561) 838-5410  
Telecopier (561) 838-5411  
E-Mail - [Tbradford@TownofPalmBeach.com](mailto: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 MUUC is a consortium of cities and towns that was

created by that certain "Interlocal Agreement to Promote Undergrounding of Utility Facilities and Related Implementation Activities" dated June 2006 (the "Interlocal Agreement"). In pertinent part, the Interlocal Agreement provides:

The purpose of this Agreement is to provide a means, pursuant to the provisions of Chapter 163, Florida Statutes, for the Local Governments who are Parties to this Agreement to mutually promote the installation of underground electric and other utility and utility-type facilities, in the public interest; to mutually promote the conversion of existing overhead electric and other utility and utility-type facilities to underground facilities, in the public interest; to promote and ensure, to the maximum extent feasible and practicable, that underground installations and conversions are paid for through appropriate, fair, just, equitable, and reasonable combinations of utility funding and funding by entities, such as the Local Governments, that apply for the installation and conversion of underground facilities; and to mutually participate in and support activities in furtherance of these and related efforts.

The Interlocal Agreement specifically contemplates the MUUC

[p]articipating in any relevant proceedings before any governmental agency having jurisdiction, including, without limitation, rulemaking or other proceedings before the Florida Public Service Commission, legislative activities before the Florida Legislature or before any other legislative or quasi-legislative body in Florida having relevant jurisdiction, and any other relevant proceedings and activities before any court, tribunal, agency, executive, or legislative body having jurisdiction over the subject matter of undergrounding utility and utility-type facilities in Florida.

5. Nearly all of the MUUC's members purchase retail electric service directly from FPL. A substantial number of the MUUC's members are working on or planning underground utility conversion projects, and accordingly, these members are Local Government Applicants within the scope of FPL's proposed tariffs.

6. Statement of Affected Interests. In this docket, the Commission will decide whether to approve FPL's requested revisions to its UG Conversion Tariffs. In so doing, the Commission will also determine certain values that will be used in calculating the Contributions in Aid of Construction ("CIACs") to be paid by Local Government Applicants and other applicants pursuant to FPL's UG Conversion Tariffs and pursuant to Commission Rule 25-6.115. F.A.C. The subject tariffs set forth the formula by which contributions in aid of construction ("CIACs") for conversion of OH to UG facilities are calculated. FPL's proposed tariff revisions will, if approved, provide for certain credits, ranging from five percent (5%) to twenty-five percent (25%) of the otherwise applicable CIAC, that would reduce the CIAC to reflect estimated savings in avoided storm restoration costs ("ASRCs") that FPL expects to realize by undergrounding its distribution facilities. FPL's proposed revisions would also implement an additional charge - an increase to the CIAC for UG conversions - equal to \$10,400 per pole-line mile of distribution facilities converted. According to FPL, this charge is intended to recover additional operating, maintenance, and repair costs that FPL claims it would incur from installing UG facilities instead of OH facilities; the MUUC and its members disagree with this proposed charge and believe that undergrounding electric distribution facilities will, in fact, produce substantial reductions in FPL's costs, above and beyond the storm restoration costs mentioned above, and that these projected cost savings should translate into reductions in FPL's CIACs for UG conversions. FPL's UG Conversion

Tariffs also include eligibility criteria for projects that qualify for the ASRC credits mentioned above. Since the substantial majority of the MUUC's members are local governments who are considering UG conversion projects, their substantial interests will be directly affected by the Commission's actions in this docket.

7. Standing to Intervene. The MUUC'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 vast majority of the MUUC's members are directly subject to FPL's UG Conversion Tariffs. Moreover, the MUUC's members have ongoing interests in converting the existing OH lines in their respective jurisdictions to UG service, a transaction that is governed in part by the subject tariff. Thus, the interests that the MUUC seeks to protect are of sufficient immediacy to warrant intervention, and the MUUC's interests in having the Commission determine the fair, reasonable, equitable, and appropriate UG CIACs are clearly within the scope of interests that this proceeding is designed to protect.

8. Associational Standing. Under Florida law, to establish standing as an association representing its members' substantial interests, an association such as the MUUC must demonstrate three things:

- a. that a substantial number of its members, although not necessarily a majority, are substantially affected by the agency's decisions;
- b. that the intervention by the association is within the association's general scope of interest and activity; and
- c. that the relief requested is of a type appropriate for an association to obtain on behalf of its members.

Florida Home Builders Ass'n v. Dep't of Labor and Employment Security, 412 So. 2d 351, 353-54 (Fla. 1982). The MUUC satisfies all of these "associational standing" requirements. A substantial majority of the MUUC's members are local governments in FPL's service area and receive retail electric service from FPL. The MUUC exists to represent its members' interests in a number of venues, including the Florida Public Service Commission: indeed, the Interlocal Agreement creating the MUUC specifically contemplates the MUUC's participation in a proceeding such as this. Finally, the relief requested--intervention and lower UG CIACs than proposed by FPL--is across-the-board relief that will apply to all of the MUUC's members in the same way; therefore, the requested relief is of the type that is appropriate for an association to obtain on behalf of its members.

9. Disputed Issues of Material Fact. The MUUC has funded a study of the cost-effectiveness of OH-to-UG conversions, Cost-Effectiveness of Undergrounding Electric Distribution Facilities in Florida, issued in November 2006 and prepared for the MUUC by PowerServices, Inc., an engineering consulting firm whose principals have extensive experience with underground conversion projects. As might be expected with complicated and interrelated tariff provisions that address numerous costs and benefits associated with undergrounding, the MUUC and FPL are not in complete agreement on all of FPL's proposed tariff provisions. The MUUC does support the proposed 25% credit value for the estimated ASRC component of FPL's CIAC calculation for large-scale UG conversions, and the MUUC has consistently supported (subject to normal prudence criteria) FPL's request that the Commission recognize the additional investment that would be made by FPL in UG facilities as new plant in service. However, as relates to the calculation of the total CIAC for UG conversion projects, the MUUC believes that FPL's proposed additional charge of \$10,400 per pole-line mile is neither fair, just, nor reasonable, and that additional credits that would reduce FPL's CIACs for UG conversions are justified. Implementing such additional credits will render FPL's UG Conversion Tariffs fair, just, and reasonable. Additionally, the MUUC has concerns with several tariff implementation issues, including the MUUC's position that new "greenfield" UG facilities that are contiguous to UG conversions should count toward satisfying the size eligibility criteria for the ASRC credits. The MUUC and FPL are continuing to



negotiate in good faith toward resolution of these and other issues<sup>1</sup> in efforts (a) to resolve as many issues as possible as early as possible, and (b) to clearly define any remaining areas of disagreement. Pending the outcome of these negotiations, the MUUC identifies the following as potential issues of material fact that will be decided in this proceeding. The MUUC believes that those items marked with an asterisk (\*) are not in dispute.

**ISSUE 1:** Is the 25% credit for Avoided Storm Restoration Costs associated with large-scale UG conversions proposed by FPL fair, just, and reasonable?\*

**ISSUE 2:** Are the smaller credits for Avoided Storm Restoration Costs associated with small-scale and medium-scale UG conversions proposed by FPL fair, just, and reasonable?

**ISSUE 3:** Will FPL's proposed ASRC credits provide appropriate incentives to municipalities to undertake OH-to-UG conversion projects?

**ISSUE 4:** Should FPL be allowed to include the amount that it pays for new UG facilities in its plant in service accounts?\*

**ISSUE 5:** Are the eligibility criteria set forth in FPL's proposed tariff fair, just, reasonable, and appropriate?

**ISSUE 6:** What are the appropriate costs and benefits to be considered and reflected in the calculation of OH-to-UG conversion CIACs?

**ISSUE 7:** What is the appropriate level of credit or debit to be applied to reflect operational cost differentials other than Avoided Storm Restoration Costs in calculating OH-to-UG conversion CIACs?

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<sup>1</sup> The other principal issue on which the MUUC and FPL have not been able to agree relates to FPL's proposed charges for "engineering and overhead" costs where Local Government Applicants perform part or all of the UG conversion work themselves, as permitted by FPL's UG Conversion Tariffs and by the Commission's rules. Because that issue is not squarely posed by FPL's petition in this docket, the MUUC will file a petition asking the Commission to resolve this issue in the near future.

Since, as noted above, the MUUC and FPL are continuing to discuss and negotiate with respect to remaining issues, the MUUC is unable to state at this time what all potential disputed issues of material fact may be. Accordingly, the MUUC reserves all rights to raise additional issues in accordance with the Commission's rules and any Order Establishing Procedure issued in this case.

10. Statement of Ultimate Facts Alleged. The MUUC alleges the following ultimate facts entitling it to the relief requested herein.

- a. The vast majority of the MUUC's members are retail customers of FPL.
- b. The vast majority of the MUUC's members are actual or potential "Local Government Applicants" within the meaning of FPL's UG Conversion Tariffs.
- c. FPL's proposed 25% credit for large-scale UG conversions is a reasonable and appropriate value to be used to reflect average estimated Avoided Storm Restoration Costs associated with tropical storms and hurricanes in calculating CIACs for OH-to-UG conversions on FPL's system.
- d. FPL's proposed additional charge of \$10,400 per pole-line mile for operational costs other than ASRCs is neither fair, just, nor reasonable.
- e. Additional credits that would reduce the otherwise applicable CIACs for OH-to-UG conversions are fair, just, reasonable, and appropriate, and necessary to the accurate and fair implementation of the Commission's rules. The MUUC believes that these additional credits would reduce the otherwise applicable CIACs for UG conversions by an additional 26 percent of the otherwise applicable CIAC for large-scale conversions.
- f. Including such additional credits in the CIACs for UG conversions will provide additional incentives to local governments to undertake UG conversion projects.

11. Statutes and Rules That Entitle the MUUC to the Relief

Requested. The applicable statutes and rules that entitle the MUUC to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.03, 366.04(1), 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes, and Rules 25-6.115 and 25-22.039, Florida Administrative Code, and Chapter 28-106, F.A.C. 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. Since a substantial number of the MUUC's members are municipal governments that are retail customers of FPL and actual or potential Local Government Applicants subject to FPL's tariffs relating to OH-to-UG conversions, the MUUC is entitled to intervene herein. The above-cited sections of Chapter 366, Florida Statutes, relate to the Commission's jurisdiction over FPL's rates and service, and the Commission's statutory mandate to ensure that FPL's rates - here, FPL's UG Conversion Tariffs - are fair, just, and reasonable. The facts alleged here by the MUUC demonstrate (a) that the Commission's decisions herein will have a significant impact on the implementation of FPL's OH-to-UG CIACs and thus on the MUUC's members, (b) that a substantial number of the MUUC's members are or will be affected by the Commission's determinations in this docket, and (c) accordingly, that these statutes provide the basis for the relief requested by the MUUC herein.

#### **CONCLUSION AND RELIEF REQUESTED**

The vast majority of the Municipal Underground Utilities Consortium's members are customers of FPL and local governments

subject to FPL's existing and proposed UG Conversion Tariffs. The MUUC is entitled to intervene in this docket, and to seek relief in the form of CIACs that fully reflect the benefits provided by OH-to-UG conversions and that are fully compliant with the Commission's rules and statutes.

**WHEREFORE**, the Municipal Underground Utilities Consortium 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 MUUC's representatives indicated in paragraph 2 above.

Respectfully submitted this 28th day of May, 2008.



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Attorneys for the Municipal Underground  
Utilities Consortium


**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing MUUC's Petition to Intervene has been furnished by electronic Mail and U.S. Mail this 28th day of May, 2008, to the following:

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Mary Anne Helton  
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