

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Petition for Approval of 2007 )  
Revisions to Underground Residential )  
and Commercial Distribution Tariff, by )  
Florida Power & Light Company. )  
\_\_\_\_\_ )

DOCKET NO. 080244-EI  
FILED: December 22, 2008

**PETITION OF THE CITY OF SOUTH DAYTONA, FLORIDA  
PROTESTING ORDER NO. PSC-08-0780-TRF-EI AND  
REQUEST FOR FORMAL PROCEEDING**

The City of South Daytona (the “City”), the Municipal Underground Utilities Consortium (the “MUUC”), the Town of Palm Beach, Florida (“Palm Beach”), the City of Coconut Creek, Florida (“Coconut Creek”), and the Town of Jupiter Inlet Colony, Florida (“Jupiter Inlet Colony”), pursuant to Chapter 120, Florida Statutes, Rule 28-106.201, Florida Administrative Code (“F.A.C.”), and the Notice of Further Proceedings set forth in Commission Order No. PSC-08-0780-TRF-EI, and by and through their undersigned counsel, hereby file this Petition Protesting Order No. PSC-08-0780-TRF-EI (“Petition”) and request that the Commission conduct a formal proceeding, including an evidentiary hearing if necessary, to resolve the issues raised in this Petition. In summary, Commission Order PSC-08-0780-TRF-EI approves proposed amendments to Florida Power & Light Company’s (“FPL”) tariffs by which FPL claims to implement certain requirements of the Commission's rules that govern FPL's tariffs applicable to Contributions in Aid of Construction (“CIACs”) for conversions of existing overhead (“OH”) distribution facilities to underground (“UG”) facilities. Specifically, the amendments include an adjustment to the CIAC charges that FPL asserts reflects “the Net Present Value of operational costs including the average historical storm restoration costs

for comparable [OH vs. UG] facilities over the expected life of the facilities.” The City and the Local Governments believe that FPL's adjustment is inappropriate in that it understates the operational cost savings from UG facilities, resulting in the CIAC charges being too high. FPL's amendments also include a “tiered” structure for allocating Avoided Storm Restoration Costs (“ASRCs”), which is a defined component of the operational cost differential under the Commission's applicable rules; the City and the Local Governments believe that this “tiered” approach results in unfair, unjust, and unreasonable rates because it results in large discrepancies between value provided from undergrounding and charges paid by projects near the breakpoints in FPL's defined subdivision size tiers.

In further support of this Petition, the City states as follows.

1. The name, address, and telephone number of Petitioner, the City of South Daytona, is as follows:

City of South Daytona  
Attn: Joseph W. Yarbrough, City Manager  
City of South Daytona  
P.O. Box 214960  
South Daytona, Florida 32121  
Telephone: (386) 322-3010  
Facsimile: (386) 322-3008  
E-mail: [jyarbrough@southdaytona.org](mailto:jyarbrough@southdaytona.org)

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

Brian P. Armstrong, Esq.  
David G. Tucker, Esq.  
Nabors, Giblin & Nickerson, P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
Telephone: (850) 224-4070  
Facsimile: (850) 224-4073  
E-Mail: [dtucker@ngnlaw.com](mailto:dtucker@ngnlaw.com)

E-Mail: barmstrong@ngnlaw.com

with a courtesy copy to:

Scott E. Simpson, Esq.  
Korey, Sweet, McKinnon, Simpson and Vukelja  
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Telephone: (386) 677-3431  
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E-Mail: simpson66@bellsouth.net

3. The name, address, and telephone number of Petitioner, the Municipal Underground Utilities Consortium, are as follows:

Municipal Underground Utilities 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.

4. 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.  
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(850) 222-7206 Telephone  
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B-Mails - [swright@y-vlaw.net](mailto:swright@y-vlaw.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@TownofPalmseach.com.

5. The name, address, and telephone number of Petitioner, the Town of Palm Beach, Florida, are as follows:

Town of Palm Beach, Florida  
Attention: Thomas O. Bradford, Deputy Town Manager  
Town of Palm Beach  
360 South County Road  
Palm Beach, Florida 33401  
Telephone (561) 838-5410  
Telecopier (561) 838-5411.

6. All pleadings, orders and correspondence should be directed to the Town of Palm Beach's representatives as follows:

Robert Scheffel Wright, Attorney at Law  
John T. Lavia, III, Attorney at Law  
Young van Assenderp, P.A.  
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with a courtesy copy to

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E-Mail - [Tbradford@TownofPalmPeach.com](mailto:Tbradford@TownofPalmPeach.com)

7. The name, address, and telephone number of Petitioner, the City of Coconut Creek, Florida, are as follows:

City of Coconut Creek  
Attention: Don Gentile, Engineering Department  
4800 West Copans Road  
Coconut Creek, Florida 33063

Telephone (954) 973-6756  
Telecopier (954) 956-1424.

8. 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](mailto:swright@yvlaw.net) and [jlavia@yvlaw.net](mailto:jlavia@yvlaw.net)

with a courtesy copy to

Don Gentile, Project Manager  
City of Coconut Creek Engineering Department  
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Coconut Creek, Florida 33063  
Telephone (954) 973-6756  
Telecopier (954) 956-1424  
E-Mail — [DGentile@coconutcreek.net](mailto:DGentile@coconutcreek.net)

9. The name, address, and telephone number of Petitioner, the Town of Jupiter Inlet Colony, are as follows:

Town of Jupiter Inlet Colony  
Attention: Joann Manganiello, Town Administrator  
Administration Building  
1 Colony Road  
Jupiter Inlet Colony, Florida 33469

10. All pleadings, orders and correspondence should be directed to the Town of Jupiter Inlet Colony's representatives as follows:

Robert Scheffel Wright, Attorney at Law  
John T. Lavia, III, Attorney at Law  
Young van Assenderp, EtA.  
225 South Adams Street, Suite 200

Tallahassee, Florida 32301  
(850) 222-7206 Telephone  
(850) 561-6834 Facsimile  
E-Mails — [swright@yvlaw.net](mailto:swright@yvlaw.net) and [jlavia@yvlaw.net](mailto:jlavia@yvlaw.net)

with a courtesy copy to

Joann Manganiello, Town Administrator  
Town of Jupiter Inlet Colony  
Administration Building  
1 Colony Road  
Jupiter Inlet Colony, Florida 33469  
Telephone (561) 746-3787  
Telecopier (561) 746-1068  
E-Mail — [jicolony@bellsouth.net](mailto:jicolony@bellsouth.net).

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

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

The Commission's docket number for this matter is No. 080244-EI.

12. The City received notice of this matter when they received a copy of Commission Order No. PSC-08-0780-TRF-EI on or about November 26, 2008.

Statement of Affected Interests

13. The other party whose interests will be affected by this Petition is Florida Power & Light Company ("FPL"). FPL's address is as follows:

Mr. Wade Litchfield, Esquire  
Vice President  
Regulatory Affairs  
[Wade\\_Litchfield@fpl.com](mailto:Wade_Litchfield@fpl.com)  
Florida Power & Light Company  
215 South Monroe Street, Suite 801  
Tallahassee, FL 32301  
(850) 521- 3900 (Office)  
(850) 521-3939 (Telecopier)

John T. Butler  
Senior Attorney  
[John\\_Butler@fpl.com](mailto:John_Butler@fpl.com)  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408  
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(561) 691-7305 (Telecopier)

14. Petitioner, the City of South Daytona, is a city located in Volusia County, Florida. The City has a land area of approximately four square miles with approximately 13,000 residents and varied businesses. Housing is primarily single-family homes, condominiums, and townhouses. South Daytona has recently completed a first phase of undergrounding and has plans for development and redevelopment projects within the City that will include undergrounding of many miles of existing distribution lines and possibly the installation of new UG distribution lines.

15. FPL is a public utility subject to the Commission's full regulatory jurisdiction pursuant to Chapter 366, Florida Statutes, and also subject to Commission Rule 25-6.115, F.A.C. Within the scope of Commission Rule 25-22.036, F.A.C., FPL is the party against whom the Petitioner seeks relief via this complaint, in the form of requiring FPL to amend, modify, and adjust its tariffs, charges, and practices applicable to UG conversion projects such that FPL's charges and practices comply fully with the statutory requirements that such charges and practices must be fair, just, reasonable, and not unjustly discriminatory.

16. Rule 25-6.115, F.A.C., which governs the CIACs applicable for conversions of existing OH facilities to UG facilities, provides in pertinent part as follows:

**25-6.115 Conversion of Existing Overhead Investor-owned Distribution Facilities.**

(1) Each investor-owned utility shall file a tariff showing the non-refundable deposit amounts for standard applications addressing the conversion of existing overhead electric distribution facilities to underground facilities. The tariff shall include the general provisions and terms under which the public utility and applicant may enter into a contract for the purpose of converting existing overhead facilities to underground facilities. The non-refundable deposit amounts shall be calculated in the same manner as the engineering costs for underground

facilities serving each of the following scenarios: urban commercial, urban residential, rural residential, existing low-density single family home subdivision and existing high-density single family home subdivision service areas.

\* \* \*

(3) Nothing in the tariff shall prevent the applicant from constructing and installing all or a portion of the underground distribution facilities provided:

(a) Such work meets the investor-owned utility's construction standards;

(b) The investor-owned utility will own and maintain the completed distribution facilities; and

(c) Such agreement is not expected to cause the general body of ratepayers to incur additional costs.

\* \* \*

(11) For purposes of computing the charges required in subsections (8) and (9):

(a) The utility shall include the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the facilities.

(b) If the applicant chooses to construct or install all or a part of the requested facilities, all utility costs, including overhead assignments, avoided by the utility due to the applicant assuming responsibility for construction shall be excluded from the costs charged to the customer, or if the full cost has already been paid, credited to the customer. At no time will the costs to the customer be less than zero.

17. Standing. The City'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, a petitioner must demonstrate that its substantial interests will be affected by the proceeding. Specifically, a petitioner 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, for UG



conversion projects appropriate CIACs calculated consistently with the Commission's rules, are directly and substantially affected by the Commission's decision in this case.

18. Additionally, the City is directly subject to FPL's Tariffs. Moreover, the City has an ongoing interest in reliable electric service, in converting existing OH lines in its jurisdiction to UG service, and in ensuring that new construction within its jurisdiction is served by UG electric facilities, consistent with the express policies and goals announced by FPL in its Storm Secure Initiatives in January 2006. The charges for both new UG service and for UG conversions are, of course, directly impacted by FPL's tariffs.

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

- ISSUE 1:** Do FPL's tariffs comply fully with Commission Rule 25-6.115, F.A.C., which requires, among other things, that those tariffs include "the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the facilities?"
- ISSUE 2:** Are FPL's tariff charges, credits, and provisions fair, just and reasonable?
- ISSUE 3:** Do the charges and credits proposed by FPL reflect the full value of service restoration cost savings provided by underground facilities?
- ISSUE 4:** Should new developments within a municipality that are served with UG facilities and that are contiguous with areas converted from OH to UG pursuant to Rule 25-6.115 and Section 12 of FPL's Tariff, and also that are constructed by a Local Government Applicant pursuant to Section 11 of FPL's Tariff, count toward satisfying the size minimums for obtaining the maximum GAF or ASRC credits under FPL's Tariffs?
- ISSUE 5:** What is the appropriate relief for the City, and other affected persons and parties in this case?

The City reserves all rights to raise additional issues in accordance with the Commission's rules and any procedural order that may be issued in this case.

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

- a. FPL's tariffs do not fully comply with the requirements of Commission Rule 25-6.115, F.A.C., because FPL's calculations misstate the value of the Net Present Value of operational costs other than Avoided Storm Restoration Costs in favor of Overhead facilities, resulting in the CIAC charges for UG facilities being too high, and therefore unfair, unjust, and unreasonable. Among other things, the City believes that the FPL's asserted differences between operation and maintenance costs for UG vs. OH facilities is misstated because FPL does not take account of the better O&M performance of new UG facilities as compared to the system-average cost values that FPL used in its calculations.
- b. The ASRCs proposed by FPL do not reflect the full value of service restoration cost savings provided by underground facilities because they do not give full credit for weather-related restoration cost savings other than those associated with named tropical storms and hurricanes.
- c. FPL's "tiered" approach to calculating the ASRC credits and CIACs results in large discrepancies between value provided from undergrounding and charges paid by projects near the breakpoints in FPL's defined size tiers. Accordingly, this approach should be changed, e.g., by a simple arithmetic formula, to provide fairer charges for projects that are near the breakpoints.
- d. Having larger areas served by UG facilities provides roughly equivalent value, regardless of the composition of those areas as between new, greenfield UG facilities and UG facilities that have been converted from OH facilities. Accordingly, local governments, including the City, and other Applicants that apply for and install UG service for new developments should be allowed to count any such new-UG-construction areas toward satisfying the size minimums under FPL's GAF tariff<sup>1</sup>.

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<sup>1</sup> This issue may or may not be appropriate to this docket, in that it does not relate directly to the tariff amendments approved by Order No. 08-0780-TRF-EI. Even so, the CITY believes that this is an important issue that the Commission must resolve in order to ensure that large-scale UG projects that consist of both UG conversions and new UG construction are treated fairly and accorded the full value that such combination new-and-conversion projects provide. At this juncture, the CITY wishes to identify this issue for the Commission and to state that it will file an appropriate petition to put this issue before the Commission for resolution along with all other outstanding issues relating to CIACs for underground electric service.

21. Statutes and Rules That Entitle the City to the Relief Requested. The applicable statutes and rules that entitle the City and the Local Governments to relief include, but are not limited to, Sections 120.569, 120.57(1), 366.03, 366.05(1), 366.06(1), and 366.07, Florida Statutes, and Rules 25-6.115 and 25-22.039 and Chapter 28-106, Florida Administrative Code.

22. Statement Explaining How the Facts Alleged By the City Relate to the Above-Cited Rules and Statutes. Chapter 120, Florida Statutes, provides for a point of entry into administrative proceedings for persons whose substantial interests are subject to determination by, or adversely affected by, agency action. Here, the interests of the City, are subject to being determined, and to being affected adversely, by allowing FPL's tariffs to remain in effect without complying with the Commission's rules.

23. Additionally, the above-cited sections of Chapter 366 generally provide that the Commission must ensure that all tariffs, rates, and charges are fair, just, reasonable, and non-discriminatory. Unless the Commission ensures that the tariff charges and credits imposed by FPL are in full compliance with the Commission's rules, those charges will be unfair, unjust, unreasonable, and unduly discriminatory.

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

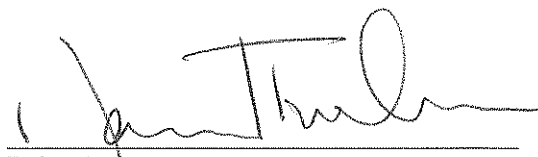
FPL's proposed CIAC charges for underground conversions do not comply with the requirements of Commission Rule 25-6.115, F.A.C., in that they do not give full credit for the operational cost savings provided by UG facilities vs. OH facilities, and also in that they do not provide full value for weather-related restoration cost savings realized by UG facilities other than those associated with named tropical storms and hurricanes. Moreover, FPL's "tiered" approach to calculating the ASRC credits and resulting CIACs results in large discrepancies between the value provided by undergrounding and the CIAC charges paid by projects near the breakpoints in FPL's

defined size tiers. Accordingly, FPL's CIAC charges should be modified to reflect the full value of cost savings provided by undergrounding, and FPL's tariffs should be modified to treat UG projects of different sizes fairly and commensurately with the value that they provide.

The Commission should conduct a formal proceeding, including a hearing, to ensure that FPL's charges and tariff provisions are fair, just, reasonable, and non-discriminatory. Additionally, municipalities should be allowed to count new "greenfield" UG areas that are contiguous with areas being converted from OH to UG service toward meeting the project size minimums under FPL's GAF tariff.

**WHEREFORE**, the City of South Daytona, respectfully asks the Florida Public Service Commission to conduct a formal proceeding to investigate this matter, and to issue appropriate orders granting the relief requested in this Petition and such other relief that the Commission deems appropriate.

Respectfully submitted this 22nd day of December, 2008.



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Attorneys for the City of South Daytona

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic and U.S. Mail, on this 22nd day of December, 2008:

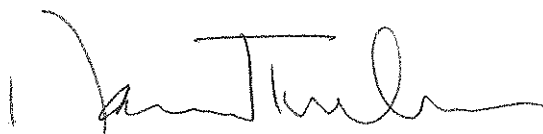
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