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Sent: Thursday, September 20, 2007 4:11 PM
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Subject: Electronic Filing - Docket 070299-EI
Attachments: MUUC.PetitiontoIntervene.070299.9-20-07.doc

a. Person responsible for this electronic filing:

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b. Docket No. 070299-EI

In Re: Petition for Approval of Gulf Power Company's Storm Hardening Plan Pursuant to Rule 25-6.0342, F.A.C.

c. Document being filed on behalf of the Municipal Underground Utilities Consortium.

d. There are a total of 11 pages.

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

(see attached file: MUUC.PetitiontoIntervene.070299.9-20-07.doc)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
 Secretary to Schef Wright
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DOCUMENT NUMBER-DATE
 08629 SEP 20 6
 FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of Gulf)
Power Company's Storm Hardening Plan) DOCKET NO. 070299-EI
Pursuant to Rule 25-6.0342, F.A.C.) FILED: SEPTEMBER 20, 2007
_____)

**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. The MUUC is comprised of approximately 30 political subdivisions of the state of Florida (i.e., Florida cities and towns), including the City of Panama City Beach, Florida. Inasmuch as the City of Panama City Beach is a contributing member of the MUUC, and the City of Panama City Beach is a substantial customer of Gulf Power Company, the MUUC is entitled to intervene in this docket to support the interests of Panama City Beach. The MUUC does not intend to sponsor its own witnesses in this docket, does not intend to conduct independent examination or cross-examination of any witnesses in this docket, and intends only to support the positions taken by the City of Panama City Beach (and the Panama City Beach Community Redevelopment Agency).

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 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.

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.
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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.

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. The MUUC's members own and operate numerous municipal facilities and utility equipment. A substantial number of the MUUC's members, including Panama City Beach, are considering underground utility projects; these are in turn subject to being directly impacted by the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening.

6. Statement of Affected Interests. In this docket, the Commission will decide whether to approve Gulf's Storm Hardening

Plan. Gulf's implementation of this Plan will impact the reliability of electric service throughout Gulf's service area, including the geographic area of Panama City Beach and thus including the reliability of service to City facilities, and will also directly impact the Contributions in Aid of Construction ("CIACs") to be paid by the City and other Gulf customers in connection with their UG conversion projects. The impact on CIACs 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.

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, a substantial member of the MUUC is directly subject to Gulf's

storm hardening plan and Gulf's practices and policies. Additionally, as local governments, the MUUC's all members have ongoing interests in reliable electric service and in converting existing OH lines to UG service, the charges for which are directly impacted by the effects of Gulf's Plan. 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 act on Gulf's Plan so as to ensure electric service reliability and the proper calculation of CIACs for UG conversion projects 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. The MUUC's members are local governments, predominantly in Florida Power & Light Company's service area, and the MUUC's membership also includes the City of Panama City Beach, which is served by Gulf Power. 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. The MUUC acknowledges that only one of its members, the City of Panama City Beach, is a Gulf customer, but the MUUC believes that, as a statewide consortium representing one of the largest municipal governments in Gulf's service area, it should be entitled to intervene herein. Moreover, given the explicitly limited scope of the MUUC's participation herein, no prejudice will occur by the Commission's granting the MUUC leave to intervene to support its member's positions on the pleading record (i.e., through its prehearing and post-hearing statements) of this case.

9. Disputed Issues of Material Fact. The MUUC accepts the issues identified in the draft prehearing docket and will not raise additional issues.

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

a. The City of Panama City Beach is a member of the MUUC and a substantial retail customer of Gulf Power Company.

- b. The substantial interests of the MUUC's members in reliable electric service and in having Gulf's Storm Hardening Plan designed and structured so as to promote the public interest are subject to determination in this proceeding.
- c. The MUUC believes that certain improvements should be made in Gulf's Plan, including more thorough analysis of undergrounding as a hardening measure, especially where undergrounding opportunities may be identified in connection with road-widening, relocation, upgrade, and similar projects.
- d. The MUUC's substantial interests in reliable electric service and in having Gulf's Storm Hardening Plan designed and structured so as to promote the public interest, and to appropriately reflect the true costs and benefits relating to storm hardening as those costs will ultimately bear upon CIAC calculations pursuant to the Commission's rules, are subject to determination in this proceeding.

9. 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(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 MUUC 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 statewide consortium that includes the City of Panama City Beach, a substantial retail customer of Gulf Power, the MUUC's substantial interests in the reliability of Gulf's distribution system are sufficient to establish standing in this proceeding.

11. Limited Participation. The MUUC does not intend to sponsor its own witnesses in this docket, does not intend to conduct independent examination or cross-examination of any witnesses in this docket, and intends only to support the positions taken by its member, the City of Panama City Beach (and the Panama City Beach Community Redevelopment Agency). As noted below, no party will be asked to furnish any additional service copies of pleadings in this case as a result of the MUUC's intervention. Accordingly, no prejudice or inconvenience will be imposed on any party by the MUUC's intervention.

CONCLUSION AND RELIEF REQUESTED

The MUUC is a statewide consortium of cities and towns formed to promote reliable electric service and fair consideration of undergrounding as a technique for assuring reliable service. The City of Panama City Beach is a substantial contributing member of the MUUC and a substantial customer of Gulf Power Company. Based on its substantial interests in the reliability of Gulf's distribution system, as those interests may be affected by Gulf's Storm Hardening Plan, the MUUC is entitled to intervene in this docket.

WHEREFORE, the Municipal Underground Utilities Consortium respectfully requests the Florida Public Service Commission to enter its order GRANTING its Petition to Intervene. The MUUC's representatives indicated in paragraph 2 above are already on the service list for the consolidated storm plan dockets, and accordingly, no additional service copies are required.

Respectfully submitted this 20th day of September, 2007.

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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 on this 20th day of September, 2007, on the following:

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