

Ruth Nettles

080522

From: Rhonda Dulgar [rdulgar@yvlaw.net]
Sent: Tuesday, August 05, 2008 2:39 PM
To: John T. Butler; jrandolph@jones-foster.com; J.R. Kelly; Filings@psc.state.fl.us; Mary Anne Helton; Ralph Jaeger
Cc: Schef Wright
Subject: Electronic Filing - Undocketed
Attachments: MUUC.PetitionForRelief.8-5-08.pdf

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
swright@yvlaw.net

b. Undocketed

In Re: Petition and Complaint of the Municipal Underground Utilities Consortium for Relief from Unfair Charges and Practices of Florida Power & Light Company.

c. Document being filed on behalf of the Municipal Underground Utilities Consortium, the Town of Palm Beach, the Town of Jupiter Inlet Colony, and the City of Coconut Creek.

d. There are a total of 39 pages.

e. The document attached for electronic filing is Petition and Complaint of the Municipal Underground Utilities Consortium, the Town of Palm Beach, the Town of Jupiter Inlet Colony, and the City of Coconut Creek for Relief from Unfair Charges and Practices of Florida Power & Light Company.

(see attached file: MUUC.PetitionforRelief.8-5-08.pdf)

Thank you for your attention and assistance in this matter.

Rhonda Dulgar
Secretary to Schef Wright
Phone: 850-222-7206
FAX: 850-561-6834

DOCUMENT NUMBER-DATE

06840 AUG-5 08

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition and Complaint of the)
Municipal Underground Utilities)
Consortium for Relief from Unfair) DOCKET NO. 080522 -EI
Charges and Practices of Florida)
Power & Light Company) FILED: AUGUST 4, 2008
)

PETITION AND COMPLAINT OF THE MUNICIPAL UNDERGROUND UTILITIES
CONSORTIUM, THE TOWN OF PALM BEACH, THE TOWN OF JUPITER
INLET COLONY, AND THE CITY OF COCONUT CREEK FOR
RELIEF FROM UNFAIR CHARGES AND PRACTICES
OF FLORIDA POWER & LIGHT COMPANY

The Municipal Underground Utilities Consortium (the "MUUC"),
the Town of Palm Beach ("Palm Beach"), the City of Coconut Creek
("Coconut Creek"), and the Town of Jupiter Inlet Colony ("Jupiter
Inlet Colony"), collectively referred to herein as the
"Petitioners," pursuant to Chapter 120, Florida Statutes,¹ and Rules
25-22.036 and 28-106.201, Florida Administrative Code ("F.A.C."),
and by and through the Petitioners' undersigned counsel, hereby file
this Petition and Complaint ("Petition & Complaint"). Through their
Petition & Complaint, Petitioners request that the Commission
conduct a formal proceeding to determine the fair, just, reasonable,
and non-discriminatory terms, conditions, practices, and charges by
which FPL determines the net Contributions in Aid of Construction
("CIACs") to be paid by, or credits due to, local government
applicants who perform part or all of the construction and
installation work to convert overhead ("OH") electric distribution
facilities to underground ("UG") facilities.

¹ All citations to the Florida Statutes in this Petition & Complaint

DOCUMENT NUMBER-DATE

06840 AUG-5 8

FPSC-COMMISSION CLERK

In summary, Applicants² for such UG conversion projects have the right, pursuant to the Commission's Rules and FPL's tariffs, to perform part or all of the work themselves. The Petitioners believe that FPL is entitled to collect from such Applicants its reasonable and prudent costs actually and directly incurred as a result of an Applicant performing part or all of the work involved in the Applicant's UG conversion project, but only such actual and direct costs. In contrast, FPL asserts that, even where a Local Government Applicant performs all of the construction and installation of UG facilities, FPL incurs "direct engineering, supervision, and support" ("DESS") costs and "Corporate" overhead-type costs that total approximately 85-90 percent of the amount of such costs that FPL would incur if it were to perform all of the work itself, and accordingly attempts to impose those alleged costs on cities and towns who desire to perform the work themselves. This results in unfair, unjust, unreasonable, and unduly discriminatory charges being imposed on such cities and towns, and the Petitioners seek redress for this injustice through this Petition & Complaint.

In further support of this Petition & Complaint, the Petitioners state as follows.

are to the 2007 edition thereof.

² FPL's tariff refers both to "Applicants" and to "Local Government Applicants," such as the MUUC's members. For convenience, this Petition & Complaint uses the term "Applicants" to mean either or both Local Government Applicants and any other Applicants eligible for respective treatment under FPL's tariff.

PROCEDURAL BACKGROUND

1. 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.

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
360 South County Road
Palm Beach, Florida 33401
Telephone (561) 838-5410
Telecopier (561) 838-5411
E-Mail - Tbradford@TownofPalmBeach.com

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

Town of Palm Beach, Florida
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 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.
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
360 South County Road
Palm Beach, Florida 33401
Telephone (561) 838-5410
Telecopier (561) 838-5411
E-Mail - Tbradford@TownofPalmBeach.com

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

City of Coconut Creek
ATTN: Don Gentile, Engineering Department
4800 West Copans Road
Coconut Creek, Florida 33063
Telephone (954) 973-6756
Telecopier (954) 956-1424.

6. 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

Don Gentile, Project Manager
City of Coconut Creek Engineering Department
4800 West Copans Road
Coconut Creek, Florida 33063
Telephone (954) 973-6756
Telecopier (954) 956-1424
E-Mail - SRose@coconutcreek.net

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

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

8. 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, 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

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.

9. The agency affected by this Petition & Complaint is:

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

10. The other party whose interests will be affected by this Petition & Complaint is Florida Power & Light Company ("FPL").

FPL's address is as follows:

Mr. Wade Litchfield, Esquire
Vice President
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, Esquire
Senior Attorney
John_Butler@fpl.com
Florida Power & Light Co.
700 Universe Boulevard
Juno Beach, FL 33408
(561) 304-5137 (Office)
(561) 691-7305 (Telecopier)

FACTUAL BACKGROUND

11. The MUUC is a consortium of cities and towns 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.

12. Nearly all of the MUUC's members purchase retail electric service directly from FPL. Several of the MUUC's members have initiated projects to convert existing overhead ("OH") electric facilities to underground ("UG") service, and many other MUUC members are considering UG utility projects; accordingly, these cities and towns are subject to FPL's tariffs applicable to underground electric distribution facilities and service. More specifically, they are - actually in some instances and potentially in all other instances - "Applicants" within the meaning of Commission Rule 25-6.115, F.A.C., and FPL's Tariff Sheets 6.300-6.330, and "Local Government Applicants" within the meaning of FPL's Tariff Sheets 9.725-9.727.

13. The Town of Palm Beach was incorporated in 1911 and has a year-round population of approximately 9,700 and a seasonal population of 25,000 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 applicable FPL tariffs, including FPL Tariff Sheets Nos. 6.300 through 6.330, as well as

FPL's Underground Facilities Conversion Agreement (Sheets Nos. 9.700 through 9.702) and FPL's Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver (Sheets Nos. 9.725 through 9.727), the Town has been engaged in discussions and negotiations with FPL toward converting the existing overhead ("OH") electric distribution facilities in the Town to underground ("UG") 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. Palm Beach has obtained a ballpark cost estimate from FPL for its Town-wide UG conversion project. Palm Beach has participated actively in Commission proceedings relating to undergrounding since early 2006.

14. The City of Coconut Creek is a city located in Broward County, Florida. The City has a land area of approximately 12 square miles with approximately 50,000 residents and 1,400 businesses. Housing is primarily single-family homes, condominiums, and townhouses within professionally landscaped communities. Coconut Creek is widely recognized as a well-planned community with a unique environmental consciousness, including an abundance of trees, waterways, attractive landscaped roads, beautiful parks, and butterfly gardens, all reflective of the City's progressive planning approach to creating a unique life-style for its residents and businesses. Coconut Creek has plans for development and redevelopment projects within the City that will include

undergrounding of more than nine miles of existing distribution lines and the installation of new UG distribution lines in new development areas. The City is attempting to partner with developers - and with FPL - to ensure that these projects are completed as cost-effectively as possible. Among other things, the City has requested that FPL, subject to the City's commitment to be responsible for payment of applicable CIACs, include new-development areas as part of the City's contiguous areas for qualification for FPL's Governmental Adjustment Factor waiver (a 25 percent credit against otherwise applicable CIACs). Coconut Creek is also participating actively in other Commission proceedings relating to undergrounding.

15. The Town of Jupiter Inlet Colony is a small municipality with 226 homes located on the south end of Jupiter Island, at the Jupiter Inlet. Like the electrical facilities in Palm Beach, FPL's distribution facilities in Jupiter Inlet Colony are old and consist of a significant amount of rear-lot installations. Jupiter Inlet Colony has been working toward its UG conversion project for more than two years and has obtained from FPL a ballpark cost estimate for its contemplated Town-wide UG conversion project. Jupiter Inlet Colony is presently on the verge of requesting a Binding Cost Estimate from FPL for the entire UG conversion project. Based on conversations among Jupiter Inlet Colony officials and officials of Palm Beach and other municipalities, Jupiter Inlet Colony expects that it will want to pursue its rights under Rule 25-6.115, F.A.C.,

and FPL's Tariff Section No. 12.2.11 to do all of the construction and installation work for its UG conversion project through Town-hired contractors. Like Palm Beach and Coconut Creek, Jupiter Inlet Colony has participated and continues to participate actively in Commission proceedings relating to undergrounding.

16. 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 Petitioners are seeking relief via their complaint herein, 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.

Statement of Affected Interests

17. The substantial interests of the MUUC's members, properly represented by the MUUC through this Petition & Complaint, and the substantial interests of the individual Petitioners, will be affected by the Commission's decisions in this proceeding. Rule 25-6.115, F.A.C., which governs CIACs applicable to conversions of existing OH to UG distribution facilities, was amended effective at the beginning of February 2007. As relevant to this Petition & Complaint, Rule 25-6.115(11)(b), F.A.C., provides as follows:

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

* * *

(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.

18. Several sections of Chapter 366 require that FPL's rates, charges, and practices must be fair, just, reasonable, and non-discriminatory. The Petitioners believe that FPL's practices regarding the allocation, assignment, and imposition of (a) what FPL calls DESS costs, and also of (b) general corporate office overhead costs, in the computation of net CIACs for UG conversion projects, where a Local Government Applicant performs part or all of the construction and installation work itself,³ are unfair, unjust, unreasonable, and unduly discriminatory against such Applicants who desire to perform the work themselves. Accordingly, the Petitioners ask the Commission to conduct a formal proceeding to determine the fair, just, reasonable, and non-discriminatory charges and practices that FPL must follow and apply in determining and calculating the net CIACs to be paid by, or the credits due to, local governments

³ Commission Rule 25-6.115(3), F.A.C. specifically authorizes Applicants to construct and install all or part of the desired UG distribution facilities, subject to certain conditions. Section 12.2.11 of FPL's Electric Tariff similarly provides that Applicants may construct and install all or a portion of the desired UG facilities subject to certain conditions.

where those governments undertake to construct and install UG facilities either with their own labor forces or by Applicant-hired contractors. The substantial interests of the MUUC's members and the individual Petitioners are being affected by FPL's practices and charges, and their interests will be determined by the Commission's actions in this proceeding.

Standing

19. The substantial interests of the MUUC, its members, and the individual Petitioners are of sufficient immediacy to entitle the Petitioners to initiate and participate in this 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, the substantial interests of the MUUC's members and the individual Petitioners in having FPL comply with the Commission's governing statutes and rules by imposing, following, and collecting only such rates, charges, and practices as are fair, just, reasonable, and non-discriminatory are subject to determination by the Commission.

20. As summarized above, the individual Petitioners are all planning UG conversion projects and accordingly, all three municipalities are being affected by FPL's current practices and charges, and the substantial interests of all three municipalities will be determined by the Commission in the proceedings requested in this Petition & Complaint.

21. 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 vast majority of the MUUC's members are local governments in FPL's service area, and as such are "Applicants" and "Local Government Applicants" within the meaning of the Commission's rules and FPL's

tariffs applicable to UG conversion projects. 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 -- proper implementation of the Commission's rules and statutes, and proper amendment of FPL's tariffs and practices such that those tariffs, and related charges and practices, are fair, just, reasonable, and non-discriminatory -- 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.

General Process for UG Conversion Projects

22. Pursuant to the Commission's rules and FPL's tariffs, a local government interested in pursuing an underground conversion project will usually request a "ballpark cost estimate" from FPL. If the ballpark cost estimate appears feasible to the local government, it will then request a "Binding Cost Estimate" from FPL. Pursuant to applicable provisions of Section 12.2.3 of FPL's Electric Tariff, FPL collects a charge called an "engineering deposit" from the Applicant to pay for the "Binding Cost Estimate." This "engineering deposit" charge is not refundable, but if the Applicant proceeds with its UG project, the amount of the deposit is credited against the final amount due. The Petitioners do not dispute either the current level of the "engineering deposit" charge

or the practice of collecting the "engineering deposit" on a non-refundable basis.

23. If the Applicant undertakes a UG conversion project based upon the Binding Cost Estimate, the Applicant either contracts with FPL to perform the work or engages its own forces or contractors to perform part or all of the work. If the Applicant performs part or all of the work, it will execute an appropriate contract or contracts with FPL that specify the respective responsibilities of the Applicant and FPL.

24. Based on earlier discussions with FPL, the Petitioners believed that the engineering deposit was sufficient to compensate FPL for the design work necessary for a UG conversion project. At a meeting of FPL personnel and Petitioners' representatives in April of this year, however, FPL represented that its "engineering deposit" charge for the Binding Cost Estimate does not cover all of the engineering costs that FPL actually incurs in connection with a UG conversion project, regardless whether FPL performs the UG conversion work or the Local government Applicant performs the work. FPL further represented that part of its proposed charges for DESS costs cover that part of the engineering costs that are not recovered through the "engineering deposit." This may be true, and as stated above and below, the Petitioners believe that FPL is entitled to collect from Applicants the reasonable and prudent costs that FPL actually and directly incurs where an Applicant performs

part or all of the work associated with its UG conversion project. Even so, the level of such charges remains at issue.

25. Commission Rule 25-6.115(3), F.A.C., gives applicants the right to do all or part of the construction and installation work for UG conversion projects themselves. FPL's Tariff Section No. 12.2.11.d) confers the same right. Where the Local Government Applicant performs part or all of the work, the Applicant is entitled to credit from FPL for the value of the work performed (estimated as if FPL had done the work) as well as estimated savings in storm restoration costs and other costs.⁴ Once the Local Government Applicant decides which, if any, components of the work it will perform itself (i.e., through its own labor resources or by contractors approved by FPL and engaged for the purpose by the Local Government Applicant), it executes written agreements with FPL, including a Right-of-Way Agreement, and pays FPL the required CIAC,

⁴The Commission recently confirmed that, pursuant to Rule 25-6.115(11)(b), F.A.C., an Applicant can receive credit payments from FPL where the Applicant's performance of the UG construction and installation work provides greater value than the direct costs that FPL actually incurs, provided that any credit payment cannot exceed FPL's estimates of the costs it would have incurred to perform the work performed instead by the Applicant. In practical terms, this means that if an Applicant constructs and installs all of the new UG facilities, it will be entitled to a credit payment from FPL equal to the cost of the hypothetical OH facilities plus the applicable credits for avoided storm restoration costs and any other applicable credits, but the total credit payment cannot exceed FPL's estimated cost for FPL to construct and install the UG facilities itself. In Re: Petition for Declaratory Statement Concerning Rights Under Rule 25-6.115, F.A.C. by Town of Palm Beach, Town of Jupiter Island, and Town of Jupiter Inlet Colony, Order No. 08-0299-DS-EU (Fla. Pub. Serv. Comm'n, May 8, 2008).

if any, and the project proceeds. Pursuant to FPL's Tariff Section No. 12.2.11.d), the Local Government Applicant must also pay to FPL "FPL's current applicable hourly rate for engineering personnel for all time spent for (i) reviewing and inspecting the Applicant's work done, and (ii) developing any separate cost estimate(s) that are either requested by the Applicant . . . or are required by FPL to reflect both the Applicant's and FPL's portions of the work for the purpose of a GAF Waiver calculation" Based on representations by FPL personnel, the Petitioners understand that FPL's current hourly rate for engineering time is \$70 per hour, which the Petitioners also understand to include allocated overhead-type costs added onto the engineer's basic hourly salary or wage rate. Thus, the Local Government Applicant will have to pay extra for additional Binding Cost Estimates for different work-allocation scenarios,⁵ and the Local Government Applicant will also have to pay directly for FPL's actual engineering time spent reviewing and inspecting the Applicant's work. At the April meeting, FPL also represented that the costs for FPL engineers to review and inspect the Applicant's work are embedded in the DESS costs and are not charges for separately on a job-specific basis; assuming this to be true, the Petitioners would agree that the reasonable and prudent

⁵ The Petitioners believe that no additional Binding Cost Estimate would be required for the scenario in which a Local Government Applicant performs all construction and installation work on its UG project.

costs for FPL engineering personnel to review and inspect the Applicant's work are properly recoverable from the Applicant.

26. The CIAC formula for government-sponsored UG conversion projects is described in the Commission's Rules and set forth in detail in FPL's tariffs. Basically, the CIAC is equal to the cost of the new UG facilities, minus the cost of equivalent OH facilities (assuming that the OH facilities would be constructed in accordance with the utility's storm hardening plan), plus the cost of removing the existing OH facilities, plus the Net Book Value of any removed facilities, minus the salvage value of removed facilities, and plus or minus the net present value of differences in operational costs, specifically including differences in storm restoration costs, as between UG and OH facilities. The estimated difference in storm restoration costs is presently reflected in FPL's GAF Waiver, which is basically a generalized, system-average credit, available to Local Government Applicants subject to certain conditions, of 25 percent of the otherwise applicable CIAC, based on FPL's estimated storm restoration cost savings to be realized on a net present value basis over the life of the UG facilities.⁶

⁶ FPL has recently proposed amendments to the relevant tariff sheets, in Docket No. 080244-EI, by which the GAF Waiver would be re-named the Avoided Storm Restoration Cost ("ASRC") credit. The MUUC has been granted intervenor status in that docket, and the Petitioners will be filing a motion to consolidate the docket initiated by this Petition & Complaint, Docket No. 080244-EI, Docket No. 070231-EI, and any other proceedings relating to FPL's practices with regard to undergrounding for procedural purposes, i.e., for processing on a common schedule with a single hearing.

27. In order to qualify for the credit provided by FPL's GAF Waiver tariff, the Local Government Applicant must request and pay for, at a minimum, the Binding Cost Estimate for the "all work performed by FPL" scenario; this is, of course, necessary to calculate the critical values needed to compute the basic CIAC (for the "all work performed by FPL" scenario) and also the GAF Waiver amount. The Applicant may request additional Binding Cost Estimates for different allocations of the work, e.g., where the Applicant would install all of the conduit and concrete facilities and FPL would do the remainder of the work. If so, the Applicant pays for such additional estimates at "FPL's current applicable rate for engineering personnel."

History of FPL's Treatment of Corporate Overheads

28. In 2004 and 2005, the Town of Palm Beach negotiated with FPL toward, designed, and obtained a contractor's bid to construct, a demonstration undergrounding project for a few blocks of Royal Poinciana Way ("RPW"), a short but major road in the Town. When it came time to finalize the RPW Project, however, FPL adjusted its cost estimates and demanded that the Town pay all of FPL's general corporate office overhead costs and DESS costs associated with the RPW Project as though FPL were doing the work, even though the Town would be doing all such work; this dramatically increased the Town's cost for the planned pilot project and in fact rendered the Town's plan to do the work itself a meaningless exercise. As a result, FPL's actions killed the RPW Project.

29. In March 2007, the Town of Jupiter Island requested and in October 2007 received two Binding Cost Estimates from FPL for the first phase ("Phase A") of its UG conversion project: one estimate was for FPL doing all work, and the other was for the Town to contract for the conduit and concrete installation work, which comprises more than half of the total cost of Phase A, with FPL doing the remainder (basically furnishing materials, pulling conductor, and making connections). When FPL furnished the requested Binding Cost Estimates in October 2007, it proposed to impose and collect from the Town, by including in the CIAC calculations, exactly the same amount of general corporate office overheads and "direct engineering, supervision, and support" costs regardless whether FPL or the Town performed the UG construction and installation work. The amount of these corporate overheads was \$740,287 in both scenarios, regardless of the fact that the Town was proposing to do more than half of the work (on a dollar-cost basis) in the Town's preferred scenario. Pursuant to subsequent discussions between the Town and FPL, FPL modified its estimates of the Phase A costs to account for (a) the fact that FPL came to believe that it would incur less costs associated with the "maintenance of traffic" ("MOT") work component of the project and (b) a slight reduction in the DESS and Corporate overhead-type costs that FPL proposed to allocate to the project and collect from Jupiter Island. However, in this revised Binding Cost Estimate, the DESS and Corporate overhead-type costs that FPL proposed to impose

on the Town (by increasing the CIAC that the Town would pay) where the Town would perform the conduit and concrete work, which accounts for more than half the total project cost, were nearly as high as (about 12 percent less than) those allocated where FPL would do all work.

30. Earlier in 2007, the Petitioners thought that the issue had been fully resolved with agreement between FPL and the MUUC that FPL would not impose corporate overheads on Applicant-performed UG work. The basis for this understanding was correspondence from FPL's attorney, who wrote the following to the Petitioners' attorney on March 7, 2007:

FPL believes that there is agreement on calculating and applying corporate overheads. But to clarify, FPL's CIAC binding estimates will include all direct FPL or FPL-contracted costs and all appropriate overheads related to those costs. The estimate will not include any allocated corporate overheads on work contracted by the Applicant.

The last sentence certainly appeared to resolve the issue with clarity, and appeared to be consistent with Rule 25-6.115(11)(b), F.A.C.

31. In April 2008, FPL acknowledged that, following the above-referenced revisions in Fall 2007, it does not include 100 percent of true "general corporate office overhead" costs in its CIAC calculations where Applicants perform the work. In a one-page example⁷ provided to MUUC representatives by FPL, however, FPL indicates that it would still charge against the Applicant's account approximately 35 percent of what it identified as "Corporate" overhead-type costs, mostly allocated on the basis of materials costs. FPL also continues to maintain that, even where an Applicant does the UG work, FPL incurs DESS costs that are nearly as great as where FPL does the work. The Petitioners believe that this is not the case, that FPL's overall DESS costs are unreasonably high in any event, that FPL's proposed allocation methodology significantly overstates the costs that FPL actually incurs where a Local Government Applicant does the UG work, and that FPL's CIAC calculations and charges demanded from Applicants who perform part or all of the construction and installation work on UG conversion projects are therefore unfair, unjust, unreasonable, and unduly discriminatory against such Local Government Applicants. Based on estimates extrapolated from ballpark cost estimates, binding cost estimates, and the DESS Worksheet furnished by FPL, the Petitioners

⁷This example was a one-page spreadsheet titled "Direct Engineering, Supervision & Support - Adjustment for Assumed Customer-Performed Work," abbreviated as the "DESS Worksheet," which was based on FPL's cost estimates for the first phase of Jupiter Island's UG conversion project. A copy of the DESS Worksheet is attached as Exhibit A to this Petition & Complaint.

believe that the amounts in dispute are very great: for Jupiter Island, even if the Town were to perform all work itself, FPL would propose to impose charges for "direct engineering, supervision, and support costs" and corporate overhead costs on the order of \$1.6 million to \$1.7 million where FPL's total estimated cost of the UG construction and installation would be about \$9-10 million. For Palm Beach, the corresponding figure would be approximately \$7.5 million to \$8 million, based on an estimated UG conversion cost of approximately \$40 million. The Petitioners believe that these charges are excessive, unfair, unjust, and unreasonable.

DISCUSSION OF THE PETITIONERS' REQUESTED RELIEF

32. The Petitioners are fundamentally committed to fairness. Here, fairness requires that FPL be allowed to collect from Applicants only the reasonable and prudent costs that FPL actually and directly incurs as a result of a UG conversion project being performed by an Applicant (whether a Local Government Applicant or a non-governmental Applicant). The Petitioners respectfully ask the Commission to conduct a formal proceeding, including a full evidentiary hearing, on the issues raised herein, and at the conclusion of that hearing, to require FPL to modify and adjust its tariffs, charges, and practices such that its charges and practices with regard to UG conversion projects result in Local Government Applicants only paying FPL for the reasonable and prudent costs that FPL actually and directly incurs where Local Government Applicants perform part or all of the work associated with their UG conversion

projects themselves. Subject to the Commission's decision on this Petition & Complaint, many of the MUUC's member cities and towns plan to perform all construction and installation of the UG facilities that will serve their citizens, as is their right specifically guaranteed by Commission Rule 25-6.115, F.A.C., and by FPL Tariff Section No. 12.2.11.

33. In summary, FPL will be paid for designing and engineering the projects through the Local Government Applicants' "engineering deposit" payments for Binding Cost Estimates, and through any supplemental charges that the Commission determines to be fair, just, and reasonable pursuant to the formal proceedings to be conducted pursuant to the Petitioners' requests herein, and FPL will be paid for its engineers' time inspecting and reviewing the Applicant's work. In these particular circumstances, the Petitioners believe that FPL does not incur any general corporate office overhead costs in connection with the construction and installation work performed by the Local Government Applicant's own labor resources or the Applicant's contractors, and accordingly, FPL cannot fairly or reasonably propose to collect any such general corporate office overhead charges from the Local Government Applicant. It is FPL's burden to identify any direct costs that FPL actually incurs as part of an Applicant-performed UG conversion project and to include them as direct costs in its estimates. Allowing FPL to collect any more than such actual costs incurred directly because of a Local Government Applicant-performed UG

conversion project would be unfair, unjust, unreasonable, and unjustly discriminatory, and such collection by FPL would result in the Local Government Applicant subsidizing FPL's other customers.

General Corporate Office Overhead Costs

34. FPL should not be permitted to apply corporate overhead costs on work that it does not perform. As proposed by the Petitioners in this Petition & Complaint, the Local Government Applicants would perform much or all work associated with their UG conversion projects, other than (a) some of the initial engineering design work that FPL would normally perform (and be at least partially paid for) in the course of preparing Binding Cost Estimates, (b) an FPL engineer's time to review and inspect the Applicant's work as it progresses (for which FPL will also be paid directly pursuant to its tariff), (c) the removal work in most instances, and possibly (d) supplemental charges for any additional, actual, direct FPL effort required where the Local Government Applicant performs the work. In the simplest terms, FPL's Corporate overhead costs are costs that are not incurred as a result of the Applicant's choosing to undertake the underground conversion, but are inherent in FPL's regular business operation. The Local Government Applicant should only be required to pay FPL for recovery of any additional direct costs actually incurred by FPL as a result of the Applicant's conversion project.

35. The Petitioners also challenge FPL's anticipated argument that Rule 25-6.115(3)(c), F.A.C., should be interpreted such that

corporate-type overheads may be charged in the case where the Local Government Applicant does the work because, FPL may assert, FPL's overhead costs or charges would not decrease as a result of "their agreement" to let the Applicant do the UG conversion work. Of course, FPL's general corporate office overhead costs neither increase nor decrease as a result of the project, no matter who does the work, and in fact, no matter whether the particular project is done at all. The burden should be on FPL to identify the specific direct costs that it incurs as a result of the Local Government Applicant's conversion project, and the Applicant can legitimately be required to pay only those direct costs. This will assure that the Applicant pays only the costs that its project causes, and that the general body of ratepayers will not incur additional costs, thus satisfying Rule 25-6.115(3)(c), F.A.C.

"Direct Engineering, Supervision, and Support" Costs

36. As noted above, FPL also attempts to charge, or to debit against the credits that would otherwise be due to the Applicant, what FPL calls DESS costs. Per the above-referenced FPL DESS Worksheet, it appears that the amount of such engineering, supervision, and support costs that FPL claims it incurs even where a Local Government Applicant performs all of the construction and installation work itself is approximately 90-95 percent of the amount that it claims it incurs where FPL itself does all of the work. (On the DESS Worksheet, FPL's Corporate overhead-type costs are included within the DESS costs.) The Petitioners believe that

this is unrealistic, unreasonable, and unsupportable. Additionally, based on preliminary review and other experience, the Petitioners believe that FPL's overall "engineering and overhead" costs are probably excessive. At a minimum, where the Local Government Applicant engages contractors to perform all of the work, FPL will not provide any supervision of the Applicant's contractors, and FPL will not provide any support for the Applicant's work or the work of the Applicant's contractors. Moreover, it has been the early experience of some Local Government Applicants, and it is the expectation of others, that they will employ their own engineers who will perform substantial amounts of the detailed design engineering and project coordination for those governments' UG conversion projects.⁸ In such cases, the Petitioners believe that the Local Government Applicant's engineers will likely perform significant amounts of work that would otherwise be performed by FPL engineers; the work of the Applicant's engineers would, the Petitioners believe, be reviewed by FPL engineers for conformance and compliance with applicable FPL standards and codes, but there should be a net reduction in FPL's actual and direct costs. (Consistent with the Petitioners' commitment to fair charges, the Petitioners would

⁸One common scenario in which this is expected to occur is where the Local Government Applicant is also converting the telecommunications and cable television facilities in its jurisdiction to UG facilities. In that case, an engineer will have to design the entire project, including the facilities of all 3 utilities. FPL personnel have indicated that they are not willing to perform that work, leading local governments to hire their own engineers for the purpose.

expect an Applicant to pay FPL for its engineers' time spent reviewing the work of the Applicant's engineers.) Accordingly, it would be inappropriate, unfair, unjust, and unreasonable for FPL to impose on the Applicant any more than the specific, actual "direct engineering, supervision, and support" costs that FPL actually and directly incurs to engineer or otherwise support the Applicant's UG conversion project.

37. The individual Petitioners and the MUUC and its member cities and towns are fundamentally committed to fairness. Accordingly, Local Government Applicants expect to pay FPL for the Binding Cost Estimates for their UG conversion projects in accordance with FPL's Tariff Section No. 12.2.3 plus any specific, actual "direct engineering, supervision, and support" costs that FPL actually and directly incurs to engineer or otherwise support the Applicant's UG conversion project. In practical terms, the Petitioners expect that they will incur additional engineering design costs in connection with their UG projects, and that they will work with FPL engineers, for whose time they will pay "FPL's current applicable hourly rate for engineering personnel" in accordance with FPL Tariff Section No. 12.2.11.d), to ensure that any revised design and engineering is fully consistent with FPL's design standards and specifications, all applicable codes, and all other requirements. The Towns will also pay "FPL's current applicable hourly rate for engineering personnel" for time spent

reviewing and inspecting the Applicant's work, also as provided by FPL Tariff Section No. 12.2.11.d).

38. Moreover, in addition to being unfair by forcing Local Government Applicants to pay for costs that their projects do not cause FPL to incur, allowing FPL to collect such general corporate office overhead costs and engineering supervision and support costs from Local Government Applicants, where such costs exceed the reasonable and prudent costs actually and directly incurred by FPL in connection with the Applicant-performed UG project, would vitiate the Applicants' rights that the Commission's Rules and FPL's tariffs are supposed to guarantee them. Significantly, such treatment would also be a substantial disincentive to undergrounding, contrary to the Commission's policies and FPL's avowed support for undergrounding in its Storm Secure Plan.

39. Conceptually, the relief sought by Petitioners could take the form of a revised uniform percentage to be applied to UG CIAC calculations where the Applicant performs part or all of the work, or it could take the form of each Applicant paying FPL for its actual and direct costs associated with the UG project on a "time and materials" basis. While FPL may assert that this would be cumbersome, the Petitioners believe that the amounts involved more than justify FPL keeping track of specific costs. For example, Palm Beach's UG project alone could have costs greater than \$1 million - indeed, FPL's examples and known past practices indicate that FPL would attempt to collect about \$8 million from Palm Beach.

Petitioners believe that it would obviously be fair and reasonable to require FPL to account specifically for costs of this magnitude to be imposed on a single customer.

DISPUTED ISSUES OF MATERIAL FACT

40. Disputed issues of material fact in this proceeding may include, but will not necessarily be limited to, the following.

ISSUE 1: Whether the rates demanded, charged, or collected by FPL for UG conversion projects, where a Local Government Applicant performs all or part of the UG conversion work itself are fair, just, reasonable, and not unjustly discriminatory against such Local Government Applicants.

ISSUE 2: Whether FPL's tariff rules, regulations, and practices applicable to UG conversion projects in instances where a Local Government Applicant performs all or part of the UG conversion work itself are fair, just, reasonable, and not unjustly discriminatory against such Local Government Applicants.

ISSUE 3: Whether FPL's "direct engineering, supervision, and support" costs are excessive.

ISSUE 4: Whether FPL's allocation of and proposed charges for DESS costs applied to UG conversion projects in instances where an Applicant performs all or part of the UG conversion work itself are fair, just, reasonable, and not unjustly discriminatory against such Applicant.

ISSUE 5: Whether FPL's allocation of "Corporate" overhead-type costs to UG conversion projects in instances where a Local Government Applicant performs all or part of the UG conversion work itself are fair, just, reasonable, and not unjustly discriminatory against such Local Government Applicants.

ISSUE 6: Whether FPL's "general corporate office overhead costs" vary depending on whether FPL performs the work associated with a UG conversion project or on whether a Local Government Applicant performs all or part of the UG conversion work itself.

ISSUE 7: What relief should the Commission grant in this case?

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

STATEMENT OF ULTIMATE FACTS ALLEGED

41. The Petitioners allege the following ultimate facts that entitle it to the relief requested herein.

- a. FPL is subject to Chapter 366, Florida Statutes, and to Commission Rule 25-6.115, F.A.C., and FPL's charges and practices relating to UG conversion projects where Local Government Applicants perform part or all of the UG conversion work themselves are fully subject to the Commission's jurisdiction under those statutes and the Commission's Rules.
- b. The vast majority of the MUUC's member cities and towns are subject to FPL's tariffs relating to UG conversion projects.
- c. The rates demanded, charged, or collected by FPL for UG conversion projects, where a Local Government Applicant performs all or part of the UG conversion work itself are unfair, unjust, unreasonable, and unjustly discriminatory against such Local Government Applicants.
- d. FPL's tariff rules, regulations, and practices applicable to UG conversion projects where a Local Government Applicant performs all or part of the UG conversion work itself are unfair, unjust, unreasonable, and unjustly discriminatory against such Local Government Applicants.
- e. FPL's "direct engineering, supervision, and support" costs are excessive.
- f. FPL's allocation of "direct engineering, supervision, and support costs" to UG conversion projects in instances where a Local Government Applicant performs all or part of the UG conversion work itself results in charges that are unfair, unjust, unreasonable, and unjustly discriminatory against such Local Government Applicants.

- g. FPL's allocation of "general corporate office overhead costs" to UG conversion projects in instances where a Local Government Applicant performs all or part of the UG conversion work itself results in charges that are unfair, unjust, unreasonable, and unjustly discriminatory against such Local Government Applicants.
- h. FPL's "general corporate office overhead costs" do not vary depending on whether FPL performs the work associated with a UG conversion project or on whether a Local Government Applicant performs all or part of the UG conversion work itself.
- i. Where Local Government Applicants perform part or all of the work associated with their UG conversion projects, FPL is entitled to collect from Applicants, or to deduct from credits to be paid to such Applicants, only the actual, direct, reasonable, and prudent costs that it incurs in connection with those UG conversion projects.
- j. Where Local Government Applicants perform part or all of the work associated with their UG conversion projects themselves, FPL's current practices and charges result in those Local Government Applicants paying more than FPL's reasonable and prudent costs that FPL actually and directly incurs as a result of such UG conversion projects, with the result that those Local Government Applicants will subsidize FPL and its other customers.

42. The foregoing facts provide the factual and legal basis for the Commission to hold the hearing requested by the Petitioners in this Petition & Complaint and, upon the conclusion of that hearing, to order FPL to revise its tariffs, including its tariff rules and regulations and any related contract forms, in order to ensure that FPL only charges and collects the reasonable and prudent costs that FPL actually and directly incurs as the result of an Applicant-performed UG conversion project, and that FPL's tariff provisions and practices relating to UG conversion projects where Local Government Applicants perform part or all of the work

themselves are fair, just, reasonable, and not unjustly discriminatory against such Local Government Applicants.

**STATUTES AND RULES THAT ENTITLE THE PETITIONERS
TO THE RELIEF REQUESTED**

43. The applicable statutes and rules that entitle the Petitioners to the relief requested in this Petition & Complaint include, but are not limited to, Sections 120.569, 120.57(1), 366.03, 366.05(1), 366.06(1)&(2), and 366.07, Florida Statutes, and Rules 25-6.115 and 25-22.036 and Chapter 28-106, Florida Administrative Code.

44. Statement Explaining How the Facts Alleged By the Petitioners 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 agency action. Here, the interests of the MUUC and its members who are planning UG conversion projects are directly, materially, and substantially affected by FPL's charges, practices, and tariff provisions, and those interests are therefore subject to being determined by the Commission's decisions regarding those charges, practices, and tariffs. Rule 25-22.036(2), F.A.C., provides that a complaint is the appropriate means of initiating formal proceedings where the petitioner or complainant "complains of an act or omission by a person subject to Commission jurisdiction which affects the complainant's substantial interests and which is in violation of a statute enforced by the Commission."

Here, the Petitioners are asking the Commission to conduct a hearing and to require FPL to modify and adjust its tariffs, charges, and practices such that its charges and practices with regard to UG conversion projects result in Local Government Applicants only paying FPL for the reasonable and prudent costs that FPL actually and directly incurs where Local Government Applicants perform part or all of the UG conversion work themselves. 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 FPL's charges, tariffs, tariff rules, practices, and UG conversion contracts are in full compliance with those statutes, FPL's tariffs, charges, and practices will be unfair, unjust, unreasonable, and unduly discriminatory.

45. The Petitioners, and all Local Government Applicants subject to FPL's UG tariffs, are entitled by several provisions of Florida Statutes to CIACs that are fair, just, reasonable, not unjustly discriminatory, and not unjustly preferential. These sections include Sections 366.03, 366.05(1), 366.06(1)&(2), and 366.07(1), Florida Statutes. Together with the Rules, these sections of the Florida Statutes entitle the Petitioners to the formal evidentiary proceeding and hearing requested in this Petition & Complaint, and to the substantive relief requested herein.

CONCLUSION AND RELIEF REQUESTED

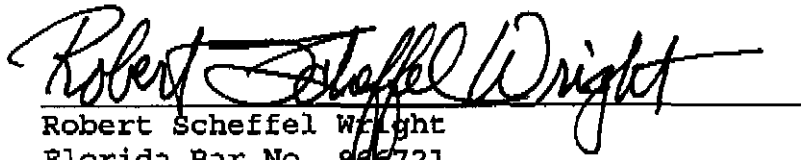
The individual Petitioners, the MUUC, and its member cities and towns are fundamentally committed to fairness. Accordingly, the Petitioners believe that it is appropriate to pay FPL the actual, direct, reasonable, and prudent costs that FPL incurs - but only the reasonable and prudent costs that FPL actually and directly incurs - in connection with UG conversion projects.

Petitioners believe that FPL's tariffs applicable to UG conversion projects where part or all of the UG conversion work is performed by an Applicant are not in compliance with applicable provisions of statutes and Commission Rule 25-6.115, F.A.C., in that they result in unfair, unjust, unreasonable, and unjustly discriminatory charges being imposed on the MUUC's members (and other Applicants) that wish to perform part or all of the UG construction and installation in connection with their UG conversion projects. Specifically, the Petitioners believe that FPL's charges and practices result in FPL collecting from Applicants, including Local Government Applicants, or charging against the credits that would otherwise be due to such Applicants, amounts greater than the actual costs, including both DESS costs and general Corporate costs, that FPL actually and directly incurs where Applicants perform part or all of the UG conversion work themselves. Based on review of various cost estimates and other information furnished by FPL, the Petitioners also believe that FPL's overall engineering and support

costs may be excessive. Accordingly, the Commission should conduct a formal proceeding and hearing to take evidence on these matters and require FPL to amend its tariffs to ensure that Local Government Applicants only pay FPL for the reasonable and prudent costs that FPL actually and directly incurs where Local Government Applicants perform part or all of the work associated with their UG conversion projects themselves. This relief will further the Commission's policy supporting undergrounding and also support FPL's own avowed policy supporting undergrounding as set forth in FPL's Storm Secure Plan. Within the scope of Rule 25-2.036, F.A.C., the Petitioners are not asking the Commission to impose any penalty on FPL; rather, the Petitioners are asking the Commission only to ensure that FPL's charges and practices relating to UG conversion projects performed by Local Government Applicants are fair, just, reasonable, and not unjustly discriminatory against such Local Government Applicants, including the individual Petitioners and the MUUC's member cities and towns.

WHEREFORE, the Municipal Underground Utilities Consortium, the Town of Palm Beach, the City of Coconut Creek, and the Town of Jupiter Inlet Colony respectfully request the Florida Public Service Commission to conduct a formal proceeding to investigate these matters, to issue appropriate orders requiring FPL to amend its tariffs as prayed herein, and to grant such other relief as the Commission deems appropriate.

Respectfully submitted this 5th day of August, 2008.

A handwritten signature in black ink that reads "Robert Scheffel Wright". The signature is written in a cursive style and is positioned above a horizontal line.

Robert Scheffel Wright
Florida Bar No. 966721
John T. LaVia, III
Florida Bar No. 853666
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
(850) 222-7206 Telephone
(850) 561-6834 Facsimile

Attorneys for the Petitioners

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 5th day of August, 2008.

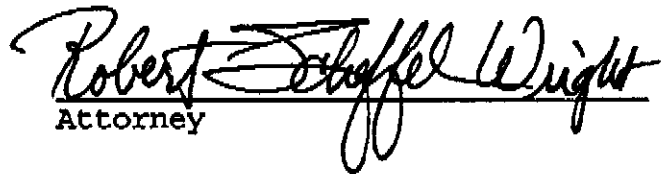
Florida Power & Light Company
Mr. Wade Litchfield, Esquire
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

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

Mary Anne Helton, Esquire
Ralph Jaeger, Esquire
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

J.R. Kelly, Esquire, Public Counsel
Office of the Public Counsel
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400

John C. Randolph, Esquire
Jones, Foster, Johnston & Stubbs, P.A.
Flagler Center Tower, Suite 1100
505 South Flagler Drive
West Palm Beach, FL 33401


Attorney

**Direct Engineering, Supervision & Support
Adjustment for Assumed Customer-Performed Work**

	% Breakdown	Adjustment (Customer- Performed Work)	Adjustment %
Operations Centers	70%		-0.7%
Engineering	26%	0.0%	0.0%
CCRs (Contract Crew Oversight)	5%	0.0%	0.0%
Service Center Support	19%	-1.9%	-0.4% (1)
Operations Supervisors	12%	-1.9%	-0.2%
Restoration Coverage	5%	-1.9%	-0.1%
Other Service Center	4%	-1.9%	-0.1%
Operations Support	19%		-4.2%
Drafting	3%	0.0%	0.0%
CCR Support	2%	0.0%	0.0%
Engineering Staff	8%	0.0%	0.0%
Distribution Business Services	1%	-65.5%	-0.6% (2)
Technology Support	0%	-65.5%	-0.3%
Other Support	3%	-65.5%	-1.9%
Survey	1%	-100.0%	-1.4% (3)
Complete	1%	-65.5%	-7.2%
TOTAL			-12.1%

(1):

CMH - Customer-performed work	(2,740)
CMH - Total	<u>144,000</u>
% of Total CMH	-1.9%

(2):

	<u>Labor/Vehicle</u>	<u>Material</u>	<u>Total</u>
Total underground work	2,118,308	684,789	2,803,097
Customer-performed work	<u>(1,836,802)</u>	-	<u>(1,836,802)</u>
Remaining FPL portion of work	<u>281,506</u>	<u>684,789</u>	<u>966,295</u>
% Customer-performed work			-65.5%

TJI Total underground direct engineering, supervision & support	638,018
Adjustment Amount	<u>(76,562)</u>
Adjusted TJI direct engineering, supervision & support	<u>561,456</u>

(3): Assumes customer performs own survey work