

ORIGINAL

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**From:** Rhonda Dulgar [rdulgar@yvlaw.net]  
**Sent:** Tuesday, February 27, 2007 3:57 PM  
**To:** John T. Butler; Natalie Smith; Patrick Bryan; R. Wade Litchfield; Charles Beck; Patricia A. Christensen; Joseph A. McGlothlin; Harold Mclean; Filings@psc.state.fl.us; Rosanne Gervasi; Schef Wright  
**Subject:** Electronic Filing - Docket No. 060150-EI  
**Attachments:** MUUC.Response to FPL.2-27-07.doc

a. Person responsible for this electronic filing:

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b. Docket No. 060150-EI

In Re: Petition for approval of revisions to contributions-in-aid-of-construction definition in Section 12.1 of First Revised Tariff Sheet No. 6.300, by Florida Power & Light Company.

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

d. There are a total of 9 pages.

e. The document attached for electronic filing is The Municipal Underground Utilities Consortium's Response to FPL's Request that the Commission "Reject MUUC's Issues 5 to 8" and Otherwise Limit the MUUC's Ability to Raise Issues.

(see attached file: MUUC.Response to FPL.2-27-07.doc)

Thank you for your attention and assistance in this matter.

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DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of )  
Revisions to Contribution-in-Aid-of ) Docket No: 060150-EI  
Construction Definition in Section )  
12.1 of First Revised Tariff Sheet ) Filed: February 27, 2007  
No. 6.300, by Florida Power & Light )  
Company )  
\_\_\_\_\_ )

THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM'S RESPONSE TO FPL'S  
REQUEST THAT THE COMMISSION "REJECT MUUC'S ISSUES 5 TO 8" AND  
OTHERWISE LIMIT THE MUUC'S ABILITY TO RAISE ISSUES

The Municipal Underground Utilities Consortium ("MUUC"), by and through its undersigned counsel and pursuant to Rule 28-106.204(1), Florida Administrative Code ("F.A.C."), hereby files its response in opposition to FPL's request that the Commission prohibit or limit the MUUC's ability to raise issues in this proceeding. In summary, FPL did not and apparently does not object to the MUUC's pending Petition to Intervene in this proceeding, but in its response to the MUUC's petition, FPL asked the Commission to "reject" certain issues raised by the MUUC. Because this requested relief is, inherently, a motion as contemplated by Rule 28-106.204(1), F.A.C., which states that "[a]ll requests for relief shall be by motion", the MUUC is entitled to reply.

For the reasons explained below, FPL's requested relief should be denied, at a minimum with respect to the MUUC's proposed Issues 5, 6, and 7. While the MUUC agrees that FPL's proposed City/County Right-of-Way Agreement for Underground Conversions

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(the "ROW Agreement") is not, technically, a part of FPL's petition, the MUUC believes that consideration of its proposed Issue 8 is appropriate in this docket because of the commonality of subject matter and because the subject ROW Agreement is necessary for any "Applicant" under FPL's proposed tariffs to have underground electric facilities located in rights-of-way.<sup>1</sup>

#### BACKGROUND

FPL initially filed its petition for approval of its "Governmental Adjustment Factor" tariff in February 2006. FPL subsequently amended that initial petition by filing its Amended Petition for approval of certain original and revised tariff sheets on September 21, 2006. In its Amended Petition, FPL significantly expanded the scope of its requested tariff amendments by asking the Commission to approve the formula for calculating UG CIACs that the Commission was then considering as part of contemplated amendments to Rule 25-6.115, F.A.C. Among other things, FPL's Amended Petition, which is the request that is currently pending in this docket, asks the Commission to approve a formula for calculating UG CIACs, and this formula includes the net present values of operational costs for UG and OH facilities.

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<sup>1</sup> The following abbreviations are used herein. "UG" means underground. "OH" means overhead. "CIACs" means contributions in aid of construction. "UG CIACs" means contributions in aid of construction to be charged by FPL for the conversion of overhead electric distribution facilities to underground facilities. "GAF Tariff" refers to FPL's proposed tariff that would give a credit for defined OH-to-UG conversions undertaken by local government "Applicants," as defined in FPL's tariffs.

The Town of Palm Beach and the Town of Jupiter Island, two of the MUUC's members, have previously petitioned for and been granted intervention in this docket. The MUUC filed its petition to intervene on February 15, 2007, and FPL filed its response to the MUUC's petition on February 20, 2007. As required by Rule 28-106.201, F.A.C., the MUUC identified known issues of material fact in its petition, including two issues with respect to which the MUUC believes that the MUUC and FPL are in substantial agreement.

On February 20, FPL filed its response to the MUUC's Petition to Intervene, stating that it does not object to the MUUC being granted intervenor status in this docket, but specifically asking the Commission for the following relief:

FPL respectfully requests that the Commission, if it grants MUUC's Petition to Intervene, strictly limit MUUC's intervention to issues directly relevant to review and approval of the GAF Tariff and, consistent therewith, reject MUUC's Issues 5 to 8 as unnecessary and inappropriate to this proceeding.

#### DISCUSSION

First, as a threshold matter, the MUUC is entitled to respond to FPL's Response because, while the subject pleading is not styled as a motion, it is substantively a request for relief - asking the Commission to reject certain of the MUUC's proposed issues - and therefore substantively and effectively a motion as contemplated by Rule 28-106.204(1), F.A.C. The plain language of FPL's prayer for relief bears out the point that this is

substantively a motion: "FPL respectfully requests that the Commission . . . reject MUUC's Issues 5 to 8." As noted above, pursuant to Rule 28-106.204(1), F.A.C., "[a]ll requests for relief shall be by motion."

As to the substance of FPL's requested relief, the MUUC believes that, at least as regards its proposed Issues 5, 6, and 7, FPL's arguments are misplaced. When it filed its initial petition for approval of its GAF Tariff in February 2006, FPL did not propose any amendments to the formula to be applied in calculating UG CIACs. When it filed its Amended Petition in September 2006, however, FPL significantly and substantially changed the scope of this docket: the docket is no longer just about FPL's GAF Tariff (the credit for government-sponsored OH-to-UG conversion projects); it now encompasses the UG CIAC formula itself, and accordingly, all issues relating to that formula and to the implementation of the tariff are appropriate to this docket.

If FPL's Amended Petition were simply a petition for approval of an optional tariff rider, e.g., a petition only for approval of the 25% GAF Waiver credit for estimated avoided storm restoration costs, as an option available to defined "Applicants," then FPL's analysis would be appropriate. However, this is not the case. When it amended its petition and proposed to amend numerous provisions of its UG CIAC tariffs, including the CIAC formula itself, FPL put the full panoply of issues into play in this

docket. Accordingly, FPL's suggested analysis of what issues are and are not appropriate for this docket is based on the erroneous premise that the only issue is the GAF Waiver credit, and that analysis is therefore inapplicable.

Issues 5 and 6 go directly to such issues: the appropriate costs and benefits to be reflected in the formula and the appropriate level of credit to be applied in calculating UG CIACs.

Issue 7 addresses a specific implementation issue as to how the UG CIACs should be calculated when an Applicant under the relevant FPL tariffs (including Sheets Nos. 6.300-6.330 and 9.725-9.727) elects to do part or all of the work itself, pursuant to Rule 25-6.115(3), F.A.C. As a necessary implementation issue, this issue is appropriate for resolution by the Commission in this docket.

Regarding Issue 8, the MUUC agrees that, technically, this issue is not directly raised by FPL's Amended Petition and that it is at least susceptible to resolution through other proceedings. However, this issue arises as an implementation issue of concern to members of the MUUC that will have to be addressed when, as contemplated by FPL's Storm Secure Plan and by new Commission Rule 25-6.0341, F.A.C. (providing that distribution facilities shall be located in rights-of-way and easements), any MUUC member seeks to have an underground conversion project done with the new UG facilities located in its rights-of-way.

At the bottom line, the MUUC and FPL are in agreement that it

is appropriate for UG facilities to be located in rights-of-way. FPL has proposed a form of agreement (not unlike its Underground Facilities Conversion Agreement filed in this docket and not unlike other form agreements in FPL's tariffs) that would govern the location of new UG facilities in a municipal government Applicant's rights-of-way, but at least some members of the MUUC take issue with certain of FPL's proposed provisions, believing that these certain provisions, which will dictate the terms and conditions under which FPL will provide the requested UG service and facilities, are not fair, just and reasonable as required by Chapter 366, Florida Statutes. Accordingly, while the MUUC or any of its individual members could file a complaint or petition seeking to have the Commission resolve these issues, the MUUC believes that, because its proposed ROW Agreement purports to govern the terms and conditions of FPL's facilities and service, FPL should file the ROW Agreement for approval as part of its tariffs, and regardless of who initiates such action, the ROW Agreement is so integrally intertwined with the implementation of FPL's UG CIAC tariffs that it is at least appropriate - and certainly efficient and timely - to address the ROW Agreement in this docket.

Finally, FPL's argument that the MUUC is or should somehow be limited in its ability to raise issues because, as an intervenor, the MUUC "takes the case as it finds it," is specious and meritless in this context. While the general legal proposition

offered by FPL is both fair-sounding and true, the procedural posture of this docket is such that it is entirely appropriate for the MUUC, or any other substantially affected party, to raise any issues that are relevant to the Commission's consideration of FPL's Amended Petition and the several tariff sheets that FPL has asked the Commission to approve pursuant to that Amended Petition. This docket is still at a preliminary stage: the Commission has taken no action on FPL's petition other than to suspend the initial proposed tariffs in April 2006, no procedural order has been issued, and no proposed order on FPL's tariff, which would trigger a point of entry,<sup>2</sup> has been issued. Accordingly, the MUUC cheerfully takes the case as it finds it: pending initial action by the Commission and awaiting its point of entry to raise issues. In short, the MUUC appropriately followed the rules for petitions to intervene set forth in Chapter 28 of the Florida Administrative Code and the MUUC is fully entitled to raise any issues relating to the subject tariffs and their implementation now.

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<sup>2</sup> The Staff's recommendation in this docket stated the following: "[I]f a protest is filed by a person whose interests are substantially affected within 21 days of the issuance date of the Order, the docket should remain open pending resolution of the protest. If the Commission approves the alternate staff recommendation on Issue 1, this docket should remain open in order to proceed directly to hearing." Obviously, this docket remains at the preliminary action stage where any substantially affected person or party can request a hearing on the issues raised. As noted in the MUUC's Petition to Intervene, the MUUC is endeavoring to work with FPL to resolve as many issues as possible.



WHEREFORE, the MUUC respectfully requests that FPL's request to reject Issues 5 through 8 in the MUUC's Petition to Intervene in this docket be denied.

Respectfully submitted this 27th day of February, 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 this 27th day of February, 2007, to the following:

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