

**Ruth Nettles**

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**From:** Greene, Angela [agreene@ngn-tally.com]  
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**Subject:** Filing: Petition to Intervene of the City of South Daytona, Florida; Docket No.: 070231-EI  
**Attachments:** Petition to Intervene-FINAL.pdf

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Docket No.: 070231-EI

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

Party: City of South Daytona

No. of Pages: 9

Name of Document: Petition to Intervene of the City of South Daytona, Florida

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FPSC-COMMISSION CLERK

**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. 070231-EI  
FILED: January \_\_\_\_, 2008

**PETITION TO INTERVENE OF THE CITY OF SOUTH DAYTONA, FLORIDA**

The City of South Daytona, Florida ("City"), 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-07-0835-TRF-EI, and by and through its undersigned counsel, hereby files this Petition requesting that the Commission authorize the City's intervention in this proceeding. Commission Order PSC-07-0835-TRF-EI proposes approval of Florida Power & Light Company's ("FPL") Underground Residential Differential ("URD") Tariff and Underground Commercial/Industrial Distribution ("UCD") Tariff (collectively "FPL's Tariffs"), which Tariffs should be rejected because they do not comply with Commission Rule 25-6.078, F.A.C., which rule became effective approximately two months before FPL's petition that initiated this docket. Because any affected party was entitled to the benefit of the Commission's applicable rules upon their becoming effective, the City believes that any applications for service subject to these rules should receive that benefit - in the form of properly calculated and applied Contributions in Aid of Construction ("CIAC") - as of the rule's effective date.

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, Florida, are 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

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  
E-Mail: barmstrong@ngnlaw.com

with a courtesy copy to:

Scott E. Simpson, Esq.  
Korey, Sweet, McKinnon, Simpson and Vukelja  
Granada Oaks Professional Building  
595 West Granada Blvd., Suite A  
Ormond Beach, FL 32174-9448  
Telephone: (386) 677-3431  
Facsimile: (386) 673-0748  
E-Mail: simpson66@bellsouth.net

3. 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. 070231-EI.

Statement of Affected Interests.

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

Mr. William G. Walker, III  
Vice President  
Regulatory Affairs  
Bill\_Walker@fpl.com  
Florida Power & Light Company  
215 South Monroe Street, Suite 801  
Tallahassee, FL 32301  
(850) 521-3900 (Office)  
(850) 521-3939 (Telecopier)

Bryan S. Anderson  
Senior Attorney  
Bryan\_Anderson@fpl.com  
Florida Power & Light  
Company  
700 Universe Boulevard  
Juno Beach, FL 33408  
(561) 304-5137 (Office)  
(561) 691-7305 (Telecopier)

5. 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. The City is attempting to partner 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 certain areas where installation of UG distribution lines have been completed and is planned for qualification for FPL's Governmental Adjustment Factor waiver (a 25 percent credit against otherwise applicable CIACs). The City further requests that FPL provide the same or a similar credit that properly reflects the storm restoration cost savings, and other operational cost savings (e.g., avoided tree-trimming and pole inspection costs) that having such areas served by UG facilities will provide to FPL and its general body of customers, consistent with the Commission's rules.

6. Rule 25-6.078, F.A.C., which governs the CIACs applicable for new construction, was amended effective February 1, 2007. This rule provides in pertinent part as follows:

**25-6.078 Schedule of Charges.**

(1) Each utility shall file with the Commission a written policy that shall become a part of the utility's tariff rules and regulations on the installation of underground facilities in new subdivisions. Such policy shall be subject to review and approval of the Commission and shall include an Estimated Average Cost Differential, if any, and shall state the basis upon which the utility will provide underground service and its method for recovering the difference in cost of an underground system and an equivalent overhead system from the applicant at the time service is extended. The charges to the applicant shall not be more than the estimated difference in cost of an underground system and an equivalent overhead system.

(2) For the purpose of calculating the Estimated Average Cost Differential, cost estimates shall reflect the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening.

\* \* \*

(4) Differences in Net Present Value of operational costs, including average historical storm restoration costs over the life of the facilities, between underground and overhead systems, if any, shall be taken into consideration in determining the overall Estimated Average Cost Differential. Each utility shall establish sufficient record keeping and accounting measures to separately identify operational costs for underground and overhead facilities, including storm related costs.

7. Standing. The City's substantial interests are of sufficient immediacy to entitle the City 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, the City's substantial interests, as the party attempting to apply for new UG construction with appropriate CIACs calculated consistently with the Commission's rules, are directly and substantially affected by the Commission's decision in this case; at a minimum, allowing FPL to implement its URD CIAC

charges without complying with Commission Rule 25-6.078, F.A.C., will result in South Daytona, or developers or citizens in South Daytona, subsidizing FPL and other FPL customers by providing cost-avoidance benefits for which the Commission's rules contemplate credit being given, without receiving such credit.

8. Additionally, the City is subject to FPL's tariffs and possesses an ongoing interest in reliable electric service, in converting existing OH lines within its jurisdiction to UG service, and in ensuring that areas within the City, including new construction and re-development 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.

9. Disputed Issues of Material Fact. The City adopts the disputed issues of material fact recited by the City of Coconut Creek, Florida and the Municipal Underground Utilities Consortium in their petition protesting Order No. PSC-07-0835-TRF-EI which issues include, but will not necessarily be limited to, the following:

**ISSUE 1:** Do FPL's URD CIAC tariffs comply with Commission Rule 25-6.078, F.A.C., which requires, among other things, that those tariffs take into account "Differences in Net Present Value of operational costs, including average historical storm restoration costs over the life of the facilities, between underground and overhead systems, if any, . . . in determining the overall Estimated Average Cost Differential?"

**ISSUE 2:** Do FPL's URD and UCD CIAC tariff charges reflect the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening?

**ISSUE 3:** Taking into account the avoided storm restoration cost savings and other operational cost savings provided by wide-area (e.g., subdivision or greater) UG installations, and taking into account the requirements of Commission Rule 25-6.0342, F.A.C., what should FPL's URD and UCD CIACs be?

**ISSUE 4:** Should new developments within a municipality qualify for the Governmental Adjustment Waiver credit, where the Local Government is willing to be the

applicant for service in order to ensure that the wide-area benefits of undergrounding are realized, consistent with the purposes of the GAF tariff and FPL's Storm Secure Initiatives?

**ISSUE 5:** What is the appropriate relief for Coconut Creek, the MUUC, and other affected persons and parties in this case?

The City reserves the right to raise additional issues in accordance with the Commission's rules and procedural orders issued in this case.

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

- a. FPL's URD and UCD CIAC charges do not comply with the specific requirements of Commission Rule 25-6.078, F.A.C., that require those charges to be computed taking into consideration "Differences in Net Present Value of operational costs, including average historical storm restoration costs over the life of the facilities, between underground and overhead systems, if any, . . . in determining the overall Estimated Average Cost Differential." Calculations in the appendices to FPL's filing for both high-density and low-density subdivisions, as well as for commercial installations, show that no such cost differences were taken into account in calculating FPL's proposed charges.
- b. FPL's URD and UCD CIAC charges may not reflect the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening. Earlier conversations with FPL personnel indicate that these impacts - of FPL's Storm Hardening Plan requirements for construction to Extreme Wind Loading criteria - are taken into account in all such calculations, but conversations with Commission Staff leave this matter unclear.
- c. FPL's URD and UCD CIAC charges must reflect the value of avoided storm restoration costs and avoided operational costs associated with UG facilities (i.e., which should exceed, for instance, the maximum of FPL cost savings identified in Docket No. 060198-EI), which are likely greater than 25 percent of the otherwise applicable CIAC charges that FPL proposes to apply pursuant to its tariffs filed in this docket. Otherwise, the cities, developers, and individual customers who pay these charges will be subsidizing FPL and its general body of customers by providing cost-savings benefits, for which Commission rules require that credit be given, without receiving such required credits. FPL's filings in this docket do not show that any such cost-savings benefits are reflected in the proposed charges, and conversations with Commission Staff indicate that they were apparently not taken into account.
- d. Municipalities, like South Daytona, that are willing to apply for UG service to ensure the realization of the benefits of wide-area undergrounding, should be allowed to do so and to count any such areas as part of qualifying UG conversion projects under FPL's GAF tariff.

11. Statutes and Rules That Entitle the City 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, 366.05(1), 366.06(1), and 366.07, Florida Statutes, and Rules 25-6.078 and 25-22.039 and Chapter 28-106, Florida Administrative Code.

12. 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, which has initiated a program to underground facilities, are subject to being determined, and the City would be affected adversely, if FPL's proposed URD and UCD tariffs remain in effect without complying with the Commission's rules. 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 URD and UCD charges imposed by FPL are in full compliance with the Commission's rules, those charges will be unfair, unjust, unreasonable, and non-discriminatory.

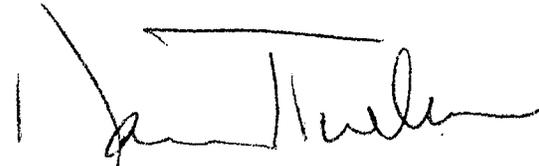
### **CONCLUSION AND RELIEF REQUESTED**

FPL'S proposed URD and UCD CIAC charges for new underground installations do not comply with the requirements of Commission Rule 25-6.078, F.A.C., in that, at a minimum, they do not take account of differences in storm restoration costs and other operational costs, as expressly required by that Rule, which has been in effect since February 1, 2007, more than two months before FPL filed the CIAC charges and tariffs that are the subject of this docket. Moreover, municipalities, like City, that wish to support UG installations within their jurisdictions should be allowed to be the applicant for such service. The Commission should

conduct a formal proceeding to ensure that the URD and UCD charges are fair, just, reasonable, and non-discriminatory and that municipalities should be able to apply for new UG service in partnership with developers.

**WHEREFORE**, the City of South Daytona, Florida respectfully asks the Florida Public Service Commission to grant the City's request to intervene in this matter, and to issue appropriate orders granting the relief requested by the City in this docket and such other relief that the Commission deems appropriate.

Respectfully submitted this 30th day of January, 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 30th day of January, 2008:

Florida Power & Light Company  
Bill Walker  
215 South Monroe Street, Suite 810  
Tallahassee, FL 32301-1859

Florida Power & Light Company  
Bryan S. Anderson  
700 Universe Blvd.  
Juno Beach, FL 33408-0420

Scott E. Simpson, Esq.  
Korey, Sweet, McKinnon, Simpson and Vukelja  
Granada Oaks Professional Building  
595 West Granada Blvd., Suite A  
Ormond Beach, FL 32174-9448  
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