

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

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DOCKET NO. 080522-EI  
FILED: August 28, 2008

**FLORIDA POWER & LIGHT COMPANY’S ANSWER  
TO 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**

Florida Power & Light Company (“FPL”) hereby answers the Petition and Complaint that was filed on August 5, 2008 by the Municipal Underground Utilities Consortium (“MUUC”), the Town of Palm Beach (“TPB”), the Town of Jupiter Inlet Colony (“TJIC”) and the City of Coconut Creek (“CCC”); collectively MUUC, TPB, TJIC and CCC will be referred to as the “Petitioners”).

**BACKGROUND**

The Petition and Complaint addresses how FPL determines the contribution-in-aid-of-construction (“CIAC”) that must be paid by a local government applicant to convert existing FPL overhead distribution facilities to underground. Specifically, FPL charges such applicants for engineering, supervision and other supervision costs associated with the conversion work, as well as applicable corporate overheads (these costs are referred to as Direct Engineering, Supervision and Support, or “DESS”). This is fully consistent with the Electric Plant Instructions of the Uniform System of Accounts (“USOA”), 18 C.F.R. Part 101, which Rule 25-6.014(1), F.A.C., obligates electric utilities such as FPL to follow.

Electric Plant Instruction 3 – Components of Construction Cost sets out the types of construction costs that are properly included in the Electric Plant accounts and

specifically enumerates the very types of costs that FPL includes in its DESS calculations for underground conversion projects. For example, for major utilities such as FPL, the Components of Construction Costs include direct and overhead costs such as *Engineering and Supervision* (including the portion of the pay and expenses of engineers, surveyors, draftsmen, inspectors, superintendents and their assistants applicable to construction work), *Rents* (including amounts paid for the use of construction quarters and office space occupied by construction forces and amounts properly includible in construction costs for such facilities jointly used), and *General Administration Capitalized* (including the portion of the pay and expenses of the general officers and administrative and general expenses applicable to construction work). Attached hereto as Exhibit 1 is the USOA's Electric Plant Instruction 3.

The Petition and Complaint disputes how FPL determines the reduction in DESS when the applicant performs some or all of the direct field work required for the conversion work. The Petitioners want the Commission to direct FPL to calculate and charge as DESS “only ... 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 [underground] conversion projects themselves.” Petition and Complaint, at p. 36.

#### **STATEMENT OF FPL'S BASIC POSITION**

The Petition and Complaint reflects a fundamental difference in approach between how the Commission's rule on CIAC for underground conversions directs FPL and other electric utilities to calculate CIAC when an applicant does some of the work, and how the Petitioners would like to see the calculation performed. Rule 25-6.115, F.A.C., provides in relevant part as follows:

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

...

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

-and-

(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.*

(Emphasis added).

It is clear from the emphasized portions of the rule that, when an applicant performs all or part of the work on an underground conversion project, the utility is to reduce the CIAC to reflect only the costs (including overhead assignments) *actually avoided* by the utility as a result, so that the general body of customers are not put in the position of subsidizing the applicant's project. It is in the direct interest of the general body of customers for the Commission to ensure that utilities collect CIAC sufficient to cover the costs that an underground conversion applicant is supposed to pay. Utilities do not record CIAC payments as revenue for the benefit of shareholders; rather, the CIAC payments are used to reduce the cost of the converted underground facilities that will go into rate base. The more that a utility collects as CIAC, the less those facilities will increase rate base and vice versa. Thus, while it is important that the CIAC calculation fairly protect the interests of applicants, it is equally important that the calculation fairly protect the interests of the general body of customers.

When an applicant wants to perform certain direct field work for an underground conversion project, FPL implements Rule 25-6.115 (3) and (11) by starting with the DESS that FPL has determined, consistent with the USOA's Electric Plant Instructions, it would need to charge the applicant if FPL were to perform all of the work itself, and then backing out the portion of the DESS that FPL determines it could avoid with the applicant instead performing the work in question. FPL refers to this as a "top down" approach.

The Petitioners object to FPL's use of the "top down" approach. They want FPL instead to disregard its calculation of the DESS charges that would apply if FPL performs the work for a conversion project and to charge an applicant only for direct costs that can be specifically attributed to the project with the applicant doing the work. FPL refers to this as a "bottom up" approach. Under the "bottom up" approach, applicants who perform the work for a project would not be charged for indirect or allocated costs associated with the project because they are not "direct" costs – even though the USOA specifically instructs utilities to include indirect and allocated costs in the cost of construction and FPL routinely charges those types of costs for projects where FPL does the work, and even though FPL needs to charge applicants those types of costs in order to make the general body of customers whole. The "bottom up" approach thus would under-recover FPL's costs associated with a project and hence would require the general body of customers to subsidize applicants who elect to perform project work themselves.

The Petitioners' proposed "bottom up" approach is inconsistent with the USOA and Rule 25-6.115. Its application would be unfair, unjust, unreasonable and unjustly discriminatory to FPL's general body of customers. For these reasons, the Commission should deny the Petition and Complaint and the relief sought therein. FPL remains ready

and willing to meet with the Petitioners and the Commission Staff to discuss other options or approaches, to the extent they ensure that the interests of both applicants and the general body of customers are properly protected under Rule 25-6.115 when applicants choose to perform some or all of the direct physical work for an underground conversion project.

### **FPL'S RESPONSES TO SPECIFIC ALLEGATIONS**

1. FPL does not dispute the allegations contained in Paragraphs 1-17 of the Complaint.

2. FPL does not dispute the allegations in Paragraph 18 concerning the requirements of Chapter 366 but denies that FPL's calculation of CIAC for underground conversion projects in any way violates or is inconsistent with those requirements. FPL's current methodology for determining CIAC is fair, just, reasonable and non-discriminatory.

3. FPL does not dispute the standing allegations of Paragraphs 19-21.

4. FPL does not dispute the general description of the CIAC process contained in Paragraphs 22-23.

5. With respect to Paragraph 24, FPL has no knowledge as to the Petitioners' beliefs regarding the role of the engineering deposit and accordingly denies same. FPL denies that engineering deposits are (or are intended to be) sufficient to cover all engineering costs incurred in connection with underground conversion projects.

6. FPL generally does not dispute the allegations of Paragraph 25 but denies that applicants are responsible only for the "actual engineering time spent reviewing and inspecting the Applicant's work." An applicant's responsibility for FPL's costs

associated with an underground conversion project is specified in Rule 25-6.115 (3) and (11), which require the “top down” approach to calculating those costs discussed above.

7. FPL does not dispute the allegations in Paragraphs 26-27 concerning the general procedure for calculating CIAC applicable to a governmental applicant.

8. FPL admits that it had meetings with TPB in 2004-5 concerning a conversion project for Royal Poinciana Way but denies the remaining allegations of Paragraph 28.

9. FPL generally does not dispute the factual allegations of Paragraph 29, but denies the Petitioners’ characterizations that the reductions in its re-calculation of DESS for the Town of Jupiter Island Phase A conversion project were “slight” or that the resulting DESS was “nearly as high” as the re-calculation. In any event, FPL’s calculation of DESS for the Phase A project is consistent with Rule 25-6.115 and is fair, just, reasonable and non-discriminatory to both the applicant and FPL’s general body of customers.

10. FPL has no knowledge of and accordingly denies the factual allegations and statements of Petitioners’ beliefs in Paragraph 30.

11. FPL generally does not dispute the factual allegations of Paragraph 31, but denies that FPL’s calculation of DESS costs results in those costs being unreasonably high or in any manner unfair, unjust, unreasonable or unduly discriminatory. FPL’s approach for calculating DESS is consistent with Rule 25-6.115 and is fair, just, reasonable and non-discriminatory to both applicants and FPL’s general body of customers.

12. Paragraph 32 generally describes the relief Petitioners seek. FPL denies that Petitioners are entitled to such relief.

13. FPL denies the allegations of Paragraph 33, to the extent that they advocate a methodology for determining CIAC that is inconsistent with the requirements of Rule 25-6.115 (3) and (11) and/or the “top down” approach that implements those requirements.

14. FPL denies the allegations of Paragraphs 34-35. If FPL were not permitted to charge applicants for overhead costs associated with their underground conversion projects whenever the applicants chose to perform some or all of the direct physical work for the projects themselves, FPL’s general body of customers would be required to subsidize those applicants in violation of Rule 25-6.115.

15. FPL denies the allegations of Paragraphs 36-39, to the extent that they advocate a methodology for determining CIAC that is inconsistent with the requirements of Rule 25-6.115 (3) and (11) and/or the “top down” approach that implements those requirements.

16. Paragraph 40 sets forth issues of material fact that the Petitioners consider to be in dispute. FPL does not deny that the Petitioners consider those issues to be in dispute, but any dispute over those issues should be resolved by finding that FPL’s calculation of CIAC complies fully with Rule 25-6.115 and is fair, just, reasonable and non-discriminatory to both applicants and FPL’s general body of customers.

17. FPL does not dispute the ultimate facts alleged in Paragraph 41 (a) and (b) but denies all of the remaining ultimate facts alleged in Paragraph 41.

18. With respect to Paragraph 42, FPL denies that there are any ultimate facts which would justify or compel the Commission to revise FPL’s approach to calculating CIAC.

19. FPL denies that the Petitioners are entitled to the relief they seek, under the statutes and rules cited in paragraph 43 or otherwise.

20. FPL generally does not dispute the Petitioners' characterizations of the statutes and rules to which Paragraphs 44-45 refer, but denies that the Petitioners are entitled to the relief they seek, under the statutes and rules cited therein or otherwise.

21. FPL denies that the Petitioners are entitled to the relief sought in the section of the Petition and Complaint entitled "Conclusion and Relief Requested."

WHEREFORE, FPL respectfully requests that the Commission deny the Petition and Complaint in its entirety.

Respectfully submitted,

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By: /s/ John T. Butler  
John T. Butler  
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**CERTIFICATE OF SERVICE**  
**Docket No. 080522-EI**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic delivery on this 28<sup>th</sup> day of August, 2008, to the following:

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By:     /s/ John T. Butler      
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