

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition and complaint by Municipal Underground Utilities Consortium, Town of Palm Beach, Town of Jupiter Inlet Colony, and City of Coconut Creek for relief from unfair charges and practices of Florida Power & Light Company.

DOCKET NO. 080522-EI  
ORDER NO. PSC-08-0750-PCO-EI  
ISSUED: November 13, 2008

ORDER GRANTING THE PETITION TO INTERVENE BY THE CITY OF SOUTH DAYTONA, FLORIDA

On August 5, 2008, the Municipal Underground Utilities Consortium (MUUC) filed a petition and complaint against Florida Power & Light Company (FPL). MUUC requested 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 (CIAC) 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.

Petition for Intervention

By petition, dated October 14, 2008, the City of South Daytona, Florida, (City) has requested permission to intervene in this docket relating to MUUC's petition and complaint. The City is located in Volusia County, covers approximately four square miles, and has approximately 13,000 residents. The City and its residents are served by FPL and subject to its tariffs. The City is an "applicant" within the meaning of FPL's tariffs and the Commission's rules relating to CIAC for UG conversion projects.

The City asserts it has recently completed the first phase of converting OH electric distribution facilities into UG. The City has plans for development and redevelopment projects within the City which will include the conversion of more miles of existing OH facilities and possibly the installation of new UG facilities. The City is attempting to partner with FPL to ensure that these projects are completed as cost-effectively as possible.

The City argues that the allocation of Direct Engineering, Supervision, and Support (DESS) costs and general corporate overhead costs when computing the net CIAC for conversion of OH to UG conversion projects are unfair, unjust, unreasonable, and unduly discriminatory against applicants who desire to perform the UG conversion work themselves, and such allocations by FPL are not specified in the applicable FPL tariff. As a result, the City asserts that FPL's practices related to determining and calculating the net CIAC affect the substantial interests of the City and its residents.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

The City adopts and restates the list of disputed issues of material fact raised in MUUC's August 5, 2008, petition and complaint. The City reserves all rights to raise additional issues in accordance with the Commission's rules and any procedural orders that may be issued in this case. The City asserts that MUUC does not object to City's petition to intervene.

### FPL's Response

In its October 31, 2008, response, FPL states that it does not object to the City's intervention in this docket. However, FPL asserts that, by asking the Commission to require FPL to amend its tariffs, the City has raised an issue which MUUC did not raise. FPL asserts that, pursuant to Rule 25-22.039, Florida Administrative Code (F.A.C.), the City must take this proceeding as it finds it. Accordingly, if the City is allowed to intervene, FPL asserts that the City should not be permitted to pursue that issue here.

### Standard for Intervention

Pursuant to Rule 25-22.039, F.A.C., persons other than the original parties to a pending proceeding, who have a substantial interest in the proceeding, and who desire to become parties, may petition for leave to intervene. Petitions for leave to intervene must be filed at least five days before the evidentiary hearing, must conform with Rule 28-106.201(2), F.A.C., and must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to Commission rule, or that the substantial interests of the intervenor are subject to determination or will be affected by the proceeding. Intervenors take the case as they find it.

In order to establish standing, the intervenor must satisfy the two-prong standing test in AgriCo Chem. Co. v. Dep't of Env'tl. Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981). The intervenor must show: (1) he or she will suffer injury in fact which is of sufficient immediacy to entitle him to a Section 120.57, Florida Statutes, hearing; and (2) his or her substantial injury is of a type or nature which the proceeding is designed to protect. See id. The first aspect of the test deals with the degree of injury; the second deals with the nature of the injury. See id. The intervenor's "injury in fact" must be both real and immediate, not speculative, conjectural, or hypothetical. See Int'l Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990); Village Park Mobile Home Ass'n, Inc. v. State Dep't of Bus. Regulation, 506 So. 2d 426, 433-34 (Fla. 1st DCA 1987), rev. den., 513 So. 2d 1063 (Fla. 1987).

### Analysis & Ruling

Having reviewed this petition, it appears that the City has established standing to intervene because its interests may be substantially affected by this proceeding. MUUC and FPL concede that City may intervene; therefore, this petition shall be granted. Also, FPL asserts that the City should not raise its additional issue at this time. It is therefore noted that the City's intervention shall be limited to issues that are the subject of this docket and, if necessary, a decision on the City's additional issue will be made at a later date. Pursuant to Rule 25-22.039, F.A.C., the City takes the case as it finds it.

Therefore, it is

ORDERED that the Petition to Intervene filed by the City of South Daytona, Florida, is hereby granted with the limitation discussed above. It is further

ORDERED that all parties to this proceeding shall furnish copies of all testimony, exhibits, pleadings and other documents which may hereinafter be filed in this proceeding, to:

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By ORDER of the Florida Public Service Commission this 13th day of November, 2008.



ANN COLE  
Commission Clerk

( S E A L )

ELS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Office of Commission Clerk, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.