

State of Florida



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Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: March 18, 2010
TO: Ann Cole, Commission Clerk, Office of Commission Clerk
FROM: Erik L. Sayler, Senior Attorney, Office of the General Counsel
RE: Docket No. 070231-EI – In re: Petition for approval of 2007 revisions to underground residential and commercial distribution tariff, by Florida Power & Light Company;

A handwritten signature in black ink, appearing to be "ES", written over the "RE:" line of the memorandum.

Docket No. 080244-EI – In re: Petition for approval of underground conversion tariff revisions, by Florida Power & Light Company;

Docket No. 080522-EI – 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.

Please place this memorandum and the following attachments into these docket files:
1) Florida Power & Light Company's (FPL's) responses to Staff First Set of Interrogatories (Nos. 1-10); 2) an unsigned copy of the "Stipulation and Settlement Agreement" between the parties in these dockets; and 3) email correspondence attesting that this unsigned copy is identical to the signed and executed "Stipulation and Settlement Agreement."

ELS/th
Attachment

cc: Jaeger

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

1. Please explain why the settlement allows a local government to take advantage of federal and/or state funding, while the current GAF tariff prohibits this. As part of this response, please explain what is the significance of this proposed change.
 - A. **The revised language is merely a clarification. The intent of this provision has always been to ensure that an applicant did not receive a "windfall" benefit from the GAF. This hypothetically could occur if any federal or state funding were to exceed the otherwise applicable CIAC owed (after netting out the GAF credit). To protect the general body of customers, FPL wanted to ensure the applicant doesn't end up receiving more than the cost due to FPL from the combination of these various sources. Therefore, it was not the intent of the original language to prohibit access by local governments to other funding sources but the language as previously written led to some applicant confusion. FPL believes that the requirement that local governments demonstrate that the combination of the GAF Waiver credit and any federal or state funding does not exceed the otherwise applicable CIAC is adequate to ensure that there is no "unjust enrichment" of the local governments at the expense of FPL.**

The Municipal Underground Utilities Consortium (MUUC) has advised that it considers this change significant to affected local governments because the current provision, which as written could suggest the application of an offset for federal or state funding, would impose a disincentive on local governments to obtain such funding to support undergrounding projects. This would be contrary to the best

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interests of the local communities/governments and Florida generally, because it would deprive them of federal funds that are otherwise available. Other such funding sources may include "stimulus funding" and funds that may otherwise be available in connection with road-widening or other projects that a local government may be able to coordinate with an undergrounding project. Therefore, MUUC has advised that it is important to local governments to remove this potential disincentive.

2. Please explain the basis for the 20 percent reduction (as opposed to a different percentage number) in the Direct Engineering, Supervision, and Support (DESS) costs associated with applicant performed work as shown on Tariff Sheet No. 6.300.
 - A. The 20 percent was a negotiated compromise figure between FPL and the interveners as one part of the omnibus settlement of all outstanding issues in the three "undergrounding"-related dockets (the "Settlement"). Based on the calculations for one specific job (the first phase of the Town of Jupiter Island's undergrounding project), FPL estimated the appropriate percentage reduction at 12.1%. On the other hand, based on their discovery and analyses, MUUC argued that the appropriate adjustment was in the range of 50 percent. Thus, the negotiated compromise value is well within the reasonable range of values that could be determined to be fair, just, and reasonable, and reasonably reflective of the costs incurred and saved by FPL where local government applicants perform undergrounding work.

3. The 20 percent reduction in DESS as shown on tariff sheet No. 6.300 appears to apply only to applicants who perform a conversion project under the GAF tariff. Please explain whether non-GAF conversion projects will also receive this reduced DESS costs (if the applicant performs any work).
 - A. **The 20 percent reduction applies to any applicant, whether GAF or non-GAF, who performs some of the construction work themselves. This language is not a subparagraph of the GAF Waiver.**

4. Rule 25-6.078, Florida Administrative Code (F.A.C.), requires investor-owned utilities to file updated underground residential distribution (URD) charges at least every three years. Please explain whether the proposed settlement anticipates or contemplates that the overhead vs. underground operational cost differential will always have a value of \$0 for non-storm operational costs in the URD tariff (Sheet No. 6.100) and the conversion tariff (Sheet No. 6.300).
 - A. **The Settlement does not contemplate that the net present value of the non-storm operational overhead v. underground cost differential will always be zero. Going forward, this amount will be reevaluated and adjusted if necessary, subject to the limitation in Section 12 of the Settlement that FPL will not seek to revise the agreed terms of the Settlement, including but not limited to setting the non-storm operational overhead vs. underground cost differential at zero, before January 1, 2013.**

5. Rule 25-6.078(4), F.A.C., contemplates that the URD charges take into account the differences in the net present value of operational costs between overhead and underground facilities. In Docket No. 070231-EI, FPL in its petition filed April 1, 2008, included workpapers to show the calculation of non-storm operational costs (\$241 for the operational costs calculated in its April 1, 2008, petition. Please explain, describe, or discuss how the proposed settlement, which provides for \$0 non-storm operational costs, complies with Rule 25-6.078(4), F.A.C.
- A. The Settlement is a reasonable, agreed resolution of a dispute among the parties as to how the non-storm operational overhead v. underground cost differential should be determined. Using a value of zero is consistent with compromising between evidence that would have been presented at hearing showing that, by FPL's calculation, the value should be negative and, by MUUC's calculation, the value should be positive. FPL's tariff is compliant with Rule 25-6.078(4) F.A.C. ("Rule") in that the net present value operational cost differential between overhead and underground facilities is reflected in the tariff structure. The fact that the "determined" amount is \$0, as called for by the Settlement, does not violate the Rule. In fact, during Staff workshops held in 2006, there was discussion that no one could know in advance if the differential would be negative or positive, and that the value could reasonably be zero.**

6. Rule 25.6-115, F.A.C., requires that the calculation of CIAC paid by applicants for underground conversions include the net present value of operational costs. In Docket No. 080244-EI, FPL stated that the non-storm component is an additional charge of \$10,400 per pole-line mile of overhead facilities that are converted (the amount was subsequently recalculated to \$11,300). Please explain, describe, or discuss how the proposed settlement which provides for \$0 non-storm operational costs complies with Rule 25.6-115, F.A.C.
 - A. See FPL's response to Staff Interrogatory #5.

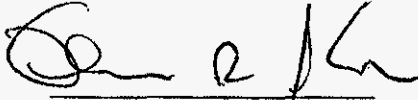
7. The following question refers to paragraph 16 of the proposed settlement. Please state how many GAF contracts have been signed since the inception of the GAF option and how many GAF projects will receive a refund if the adjustments reflected in the settlement become final. If any GAF projects will receive refunds, please state the total dollar amount to be refunded.
 - A. **FPL notes that the GAF credit was already tied back to the April 4, 2006 date by Order No. PSC-06-0339-PCO-EI. GAF applicants have contracted with FPL for 16 individual jobs. Of those, FPL currently estimates that 11 jobs would have refunds and that the total estimated refund amount would be about \$150,000. The great majority of that refund amount relates to non-storm operational cost differential charges that FPL has collected from GAF applicants. Order No. PSC-08-0780-TRF-EI provides for such charges to be collected subject to refund, and this obligation does not distinguish between GAF applicants and non-GAF applicants.**

Therefore, FPL is obligated to refund the non-storm operational cost differential charges to GAF applicants independently of the Settlement.

8. The following question refers to paragraph 16 of the proposed settlement, and the reference to Order No. PSC-06-0339-PCO-EI, in Docket No. 060150-EI. The cited Order stated as follows: “. . . in the event a tariff revision is ultimately approved for FPL in this docket [Docket No. 060150-EI], FPL shall be permitted to apply any such later-approved discount to the cost of undergrounding facilities for local governments that proceed with underground conversion projects prior to our final decision on the issue. . . .” at 3 (emphasis added). As it relates to the Order cited above, please explain, describe, or discuss why it is appropriate to apply the adjustments in the settlement back to April 4, 2006, in these dockets.
- A. **As noted in response to Interrogatory No. 5 above, the Settlement is a reasonable, agreed resolution of a dispute among the parties. This term is part of the compromise that the parties reached, and therefore its reasonableness should be assessed as a component of the overall Settlement. FPL did not propose this term, so it is not in the best position to describe the basis for the term. However, FPL agrees with MUUC that it is appropriate to apply the adjustments back to April 4, 2006 because they represent fair and reasonable estimates of cost savings that GAF underground conversion projects will provide to FPL and its customers. As such, there is no reason to distinguish between projects based on whether the GAF contracts were signed before or after April 4, 2006.**

9. The following question refers to paragraph 17 of the proposed settlement. Are there any residential underground installations that will receive a refund if the adjustments reflected in the settlement become final? If yes, please state how many, and the total dollar amount to be refunded.
- A. **Yes. FPL's preliminary estimate is that this would affect about 140 residential underground jobs and the total refund amount would be about \$500,000.**
10. Please explain, describe, or discuss the impact on the general body of ratepayers, if any, if the proposed settlement is approved.
- A. **There can be no definitive, quantitative answer to this question without making an assumption about the outcome of the dispute in Docket Nos. 070231-EI, 080244-EI and 080522-EI in the absence of the Settlement. If one assumed that instead of the Settlement, MUUC would have prevailed on all its positions under a litigated outcome in those dockets, then the general body of customers would be responsible for significantly more costs than under the Settlement. If FPL would have prevailed on all its positions rather than settling, then the general body of customers would be responsible for less cost than they would have under the Settlement. As discussed above, FPL believes that the Settlement is a reasonable compromise of the parties' dispute and reflects fair and reasonable estimates of the cost savings that underground projects will provide to FPL's general body of customers. Accordingly, the impact of the Settlement is fair to those customers.**

AFFIDAVIT



Thomas R. Koch

State of Florida)


County of Miami-Dade)

I hereby certify that on this 3rd day of March, 2010, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared Thomas R. Koch, who is personally known to me, and he acknowledged before me that he sponsored the answers to Interrogatory Nos.1 thru 10 from Staff's 1st Set of Interrogatories to Florida Power & Light Company in Consolidated Docket No. 080244-EI, and that the responses are true and correct based on his personal knowledge.

In Witness Whereof, I have hereunto set my hand and seal in the State and County aforesaid as of this 3rd day of March, 2010.


Notary Public, State of Florida

Notary Stamp:

NOTARY PUBLIC-STATE OF FLORIDA
 Carolyn J. Smith
Commission # DD593720
Expires: SEP 11, 2010
BONDED THRU ATLANTIC BONDING CO., INC.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Underground Conversion Tariff Revisions.) Docket No. 080244-EI
)
)

In re: Petition for approval of 2007 revisions to underground residential and commercial distribution tariff, by Florida Power & Light Company.) Docket No. 070231-EI
)
)

In Re: Petition and Complaint of the Municipal Underground Utilities Consortium for Relief from Unfair Charges and Practices of Florida Power & Light Company) Docket No. 080522-EI
)
) Filed: June 4, 2009
)

STIPULATION AND SETTLEMENT AGREEMENT

WHEREAS, Florida Power & Light Company has filed certain tariff revisions that are the subject of the above-styled Docket No. 070231-EI and Docket No. 080244-EI, which have been approved by the Florida Public Service Commission ("Commission") subject to the protests thereof by the Municipal Underground Utilities Consortium, the Town of Palm Beach, Florida, the City of Coconut Creek, Florida, and the Town of Jupiter Inlet Colony, Florida, and the City of South Daytona, Florida, each of the foregoing individually a "Party" and collectively the "Parties," and

WHEREAS, the Municipal Underground Utilities Consortium, the Town of Palm Beach, the City of Coconut Creek, and the Town of Jupiter Inlet Colony have filed a petition and complaint with the Commission in the above-styled Docket No. 080522-EI, asserting that FPL's treatment for certain common engineering costs, in cases where a local government applicant performs part or all of underground conversion work itself, results in unfair, unjust, and unreasonable treatment of such applicants, and

WHEREAS, the Parties have conducted discovery regarding the issues in the above-styled dockets, and

WHEREAS, the Parties have engaged in good-faith negotiations toward resolving their disputes as to the issues raised in all three of the above-styled dockets,

NOW, THEREFORE, in consideration of the covenants contained herein and of the mutual benefits to be derived from the fulfillment of those covenants, the Parties hereby agree and stipulate as follows:

1. This Stipulation and Settlement Agreement ("Agreement") will become effective when the Commission's approval of this Agreement has become final and no longer subject to challenge or appeal under governing law. The Agreement is contingent upon the Commission's approval of the Agreement, and of the actions contemplated herein, in their entirety.

2. The Parties recognize and acknowledge that the effectiveness of this Agreement is also contingent upon the approvals of the respective governing bodies of the municipalities that are Parties to this Agreement. Upon execution of the Agreement, the staff and attorneys for the municipalities that are Parties to the Agreement will move forward as quickly as practicable to place the Agreement before the municipalities' governing bodies for their approval.

3. Upon the approval of the municipalities' governing bodies, the MUUC and the respective municipal Parties will file appropriate notices of withdrawals of their protests of the tariff provisions in PSC Docket Nos. 070231-EI and 080244-EI, such withdrawals to be contingent upon the Commission's final approval of all of the actions contemplated herein.

4. The MUUC, Palm Beach, Coconut Creek, and Jupiter Inlet Colony will withdraw their complaint filed in PSC Docket No. 080522-EI, such withdrawal to be contingent upon the Commission's final approval of all of the actions contemplated herein.

5. FPL will file a petition seeking the Commission's approval of its Governmental Adjustment Factor tariff provisions as permanent tariffs of FPL, i.e., not subject to any further mandatory Commission review but remaining subject to the Commission's continuing authority to conduct informal investigations and proceedings on those tariffs on its own motion.

6. FPL will file proposed tariff provisions with the Commission setting the estimated overhead vs. underground operational cost differential on FPL's Tariff Sheet No. 6.300 to zero, replacing the value of -\$11,300 per pole line mile presently in that tariff, and FPL will also file proposed revisions to FPL's Tariff Sheet No. 6.100 that will make the corresponding adjustments for the overhead vs. underground operational cost differential to be reflected in FPL's URD tariffs.

7. FPL will file proposed tariff provisions with the Commission replacing existing Section 1.e on its Tariff Sheet No. 9.725, UNDERGROUND FACILITIES CONVERSION AGREEMENT – GOVERNMENTAL ADJUSTMENT FACTOR WAIVER, with the following:

- e. The Local Government Applicant must demonstrate to the reasonable satisfaction of FPL that the sum of the GAF Waiver credit plus any federal or state funds that the Local Government Applicant is able to use to support the Conversion does not exceed

the otherwise applicable CIAC as calculated before application of the GAF Waiver.

8. FPL will file proposed tariffs with the Commission that will set FPL's charge for Direct Engineering, Supervision, and Support costs applicable to any Applicant-performed work at 80% of the value that would have applied if FPL performed this work.

9. The MUUC and the municipalities that are Parties to this Agreement agree that they will not, before January 1, 2013, directly or indirectly raise claims relative to the "operational cost differential" between overhead and underground facilities.

10. The MUUC and the municipalities that are Parties to this Agreement agree that they will not, before January 1, 2013, directly or indirectly seek an increase in the Governmental Adjustment Factor waiver or credit, also known as the Avoided Storm Restoration Cost credit, for underground conversion projects.

11. The MUUC and the municipalities that are Parties to this Agreement agree that they will not, before January 1, 2013, directly or indirectly raise any claims relative to the "contiguous underground facilities" or relative to FPL's proposed "tiered" GAF/ASRC credits for underground installations.

12. FPL agrees that it will not, before January 1, 2013, directly or indirectly seek to change any of the provisions agreed to in this Stipulation and Settlement Agreement, including specifically, not to seek to reduce the GAF or ASRC waiver or credit, nor to increase the "operational cost differential" applicable in calculating CIACs for underground conversion projects, nor to increase the amount that FPL collects as Direct Engineering, Supervision, and Support costs for Applicant-performed work on underground conversion projects.

13. All Parties to this Agreement acknowledge that nothing herein may be construed to prevent the Commission from conducting any proceedings that the Commission may initiate with regard to any of the tariff provisions and other matters that are the subject of this Agreement. The Parties agree and acknowledge that, in the event that the Commission or any other person initiates any proceedings relative to the matters that are the subject to this Agreement, including any matters with respect to which any Party or Parties have agreed not to initiate proceedings, then all Parties are free to participate in such Commission proceedings to protect their interests as they deem appropriate, and the Parties will not be bound by or subject to the positions stated in this Agreement.

14. The Parties will jointly move the Commission to schedule all of the petitions and withdrawals described herein for consideration at a single agenda conference, such that the Commission's action will be effective as to all of the Parties' actions contemplated above at the same time.

15. Nothing herein shall operate as a bar to any Party seeking the Commission's action to enforce any provision of this Agreement or of FPL's tariffs as they may be approved pursuant this Agreement.

16. For the avoidance of doubt, the Parties agree that the adjustments reflected in this Agreement will be applicable to all Applicants who applied for underground conversions under FPL's GAF tariff after April 4, 2006, as provided for in Commission Order No. PSC-06-0339-PCO-EI, issued on April 24, 2006.

17. The Parties further agree that the adjustments to FPL's URD tariffs reflected in this Agreement will be applicable to all underground service installations under those tariffs for which applications were made on or after October 9, 2007, which was the effective date of the initial URD tariffs pursuant to Commission Order No. PSC-07-0835-TRF-EI.

18. The Parties have agreed to the positions stated in this Stipulation and Settlement Agreement solely for the purpose of settlement, and accordingly, the Parties are not bound by or subject to the positions stated herein in the event that the Agreement is not approved in its entirety by the Commission.

This Stipulation and Settlement Agreement is executed by the Parties through the signatures of their authorized representatives below, and this Agreement is respectfully filed with the Commission on this 4th day of June, 2009.

FLORIDA POWER & LIGHT COMPANY

Kenneth A. Hoffman, Esquire
Vice President, Regulatory Relations
Florida Power & Light Company
215 South Monroe Street
Tallahassee, Florida 32301
Telephone (850) 521-3919

THE CITY OF SOUTH DAYTONA, FLORIDA

Brian P. Armstrong, Esquire
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
Telephone: (850) 224-4070

THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM,
THE TOWN OF PALM BEACH, FLORIDA,
THE CITY OF COCONUT CREEK, FLORIDA, AND
THE TOWN OF JUPITER INLET COLONY, FLORIDA

Robert Scheffel Wright, Esquire
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
Telephone (850) 222-7206

Erik Sayler

From: Schef Wright [swright@yvlaw.net]
Sent: Monday, March 08, 2010 12:44 PM
To: John Butler; Erik Sayler
Subject: RE: 080244 Settlement

Thanks, John! Erik, looks like you're good to go. Let us know if you need anything more. All the best, Schef

>>> "Butler, John" <John.Butler@fpl.com> 03/08/10 12:36 PM >>>

Schef, you have the right document -- my assistant has confirmed that the text matches the signed settlement. Thanks!
John

-----Original Message-----

From: Schef Wright [mailto:swright@yvlaw.net]
Sent: Monday, March 08, 2010 11:52 AM
To: Butler, John; Erik Sayler
Subject: RE: 080244 Settlement

Hey Erik & John -

I have an unsigned copy of what I believe is the version that we executed - all the page breaks appear to line up. I'm attaching it to this e-mail, but Erik, you should wait for John to confirm that it is in fact the document before passing it on to Staff.

All the best, Schef

>>> "Erik Sayler" <esayler@PSC.STATE.FL.US> 03/08/10 11:32 AM >>>

By way of reference, we have the signed copy, but it was transmitted and retransmitted a number of times, making it hard to read. If you could coordinate on providing a copy of the settlement, either unsigned or one signature that is more legible, that would be very helpful.

Thanks

Erik Sayler
850-413-6084

From: Erik Sayler
Sent: Monday, March 08, 2010 11:30 AM
To: John T. Butler ; 'Schef Wright'
Subject: 080244 Settlement

Do you have a clean unsigned copy of it? Thanks

Erik L. Sayler
Senior Attorney
Office of the General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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