

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. 080244-EI
FILED: June 5, 2008

PETITION TO INTERVENE OF THE CITY OF SOUTH DAYTONA, FLORIDA

I. Introduction

The City of South Daytona, Florida (“City”), pursuant to Chapter 120, Florida Statutes, and Rules 25-22.039, 28-106.201, and 28-106.201 Florida Administrative Code (“F.A.C.”), by and through its undersigned counsel, hereby files this Petition requesting that the Commission authorize the City’s intervention in the above styled proceeding, concerning Florida Power & Light’s (“FPL”) proposed revisions to its tariffs governing conversion of overhead distribution facilities (“OH”) to underground distribution facilities (“UG”). The City and its residents are all served by FPL. Currently, the City is engaged with FPL to try to convert existing OH distribution into UG distribution issues. The charges and credits authorized in FPL’s proposed tariff thus have a real, and indeed almost immediate, impact on the City and its residents.

II. Interested Parties

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. 080244-EI.

4. The other party whose interests will be affected by this Petition is 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)

III. Statement of Affected Interests

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. FPL's proposed tariffs set forth its own calculations of the operating cost differentials, including components based on Avoided Storm Restoration Costs and other non-storm related operating differentials.

6. 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 a party attempting to apply for conversion of OH to UG facilities 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 the proposed tariffs 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.

7. 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.

IV. Disputed Issues of Material Fact

8. The City adopts the disputed issues of material fact recited by the Municipal Underground Utilities Consortium in their "Petition to Intervene of the Municipal Underground Utilities Consortium" filed in this matter on May 28, 2008 which issues include, but will not necessarily be limited to, the following:

ISSUE 1: Is the 25% credit for Avoided Storm Restoration Costs associated with large-scale UG conversions proposed by FPL fair, just, and reasonable?

ISSUE 2: Are the smaller credits for Avoided Storm Restoration Costs associated with small-scale and medium-scale UG conversions proposed by FPL fair, just, and reasonable?

- ISSUE 3:** Will FPL's proposed ASRC credits provide appropriate incentives to municipalities to undertake OH to UG conversion projects and enhance reliability and reduce restoration costs and outages?
- ISSUE 4:** Should FPL be allowed to include the amount that it pays for new UG facilities in its plant in service accounts?
- ISSUE 5:** Are the eligibility criteria set forth in FPL's proposed tariff fair, just, reasonable, and appropriate?
- ISSUE 6:** What are the appropriate costs and benefits to be considered and reflected in the calculation of OH to UG conversion CIACs?
- ISSUE 7:** What is the appropriate level of credit or debit to be applied to reflect operational cost differentials other than Avoided Storm Restoration Costs in calculating OH to UG conversion CIACs?

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

V. Statement of Ultimate Facts Alleged, Statutes and Rules that entitle the City to relief, and Application of the cited Rules and Statutes to the ultimate facts

9. The City alleges the following ultimate facts entitling it to the relief requested herein.

- a. The City of South Daytona is a municipality validity existing under the Florida law.
- b. The residents of the City of South Daytona and the City itself are all retail customers of FPL.
- c. FPL's proposed 25% credit for large-scale UG conversions is a reasonable and appropriate value to be used to reflect average estimated Avoided Storm Restoration Costs associated with tropical storms and hurricanes in calculating CIACs for OH to UG conversions on FPL's system.
- d. FPL's proposed additional charge of \$10,400 per pole-line mile for operational costs other than ASRCs is neither fair, just, nor reasonable.
- e. Additional credits that would reduce the otherwise applicable CIACs for OH to UG conversions are fair, just, reasonable, and appropriate, and necessary to the accurate and fair implementation of the Commission's

rules. The City believes that these additional credits would reduce the otherwise applicable CIACs for UG conversions by an additional 26% of the otherwise applicable CIAC for large-scale conversions.

- f. Including such additional credits in the CIACs for UG conversions will provide additional incentives to local governments to undertake UG conversion projects.

10. 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.

11. The applicable statutes and rules that entitle the City 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, 25-6.115, and 25-22.039 and Chapter 28-106, Florida Administrative Code.

12. Rule 25-6.115(1), F.A.C., which governs the CIACs applicable for conversion of OH distribution facilities to UG and provides in pertinent part:

- a. 25-6.115(1): Each investor-owned utility shall file a tariff showing the non-refundable deposit amounts for standard applications addressing the conversion of existing overhead electric distribution facilities to underground facilities. The tariff shall include the general provisions and terms under which the public utility and applicant may enter into a contract for the purpose of converting existing overhead facilities to underground facilities. The non-refundable deposit amounts shall be

calculated in the same manner as the engineering costs for underground facilities serving each of the following scenarios: urban commercial, urban residential, rural residential, existing low-density single family home subdivision and existing high-density single family home subdivision service areas.

- b. 25-6.115(8): For the purpose of this rule, the charge for the proposed underground facilities shall include:
 - (a) The estimated cost of construction of the underground distribution facilities based on the requirements of Rule 25-6.0342, F.A.C., Electric Infrastructure Storm Hardening Standards of Construction, including the construction cost of the underground service lateral(s) to the meter(s) of the customer(s); and
 - (b) The estimated remaining net book value of the existing facilities to be removed less the estimated net salvage value of the facilities to be removed.
- c. 25-6.115(11): For purposes of computing the charges required in subsections (8) and (9):
 - (a) The utility shall include the Net Present Value of operational costs including the average historical storm restoration costs for comparable facilities over the expected life of the facilities.
 - (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.

VI. Consultation with Counsel for FPL

13. Counsel for the City has consulted counsel for FPL and is authorized to represent that FPL does not object to the City's intervention in this matter, but FPL reserves the right to contest any relief the City seeks.

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 25-115, F.A.C., in that, at a minimum, they do not take account of differences in storm restoration costs and other operational costs. 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 6 day of June, 2008.



Brian P. Armstrong
Florida Bar No. 888575
David G. Tucker
Florida Bar No. 701327
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
(850) 224-4070 Telephone
(850) 224-4073 Facsimile

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 6 day of June, 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
Telephone: (386) 677-3431
Facsimile: (386) 673-0748
E-Mail: simpson66@bellsouth.net

City of South Daytona
Attn: Joseph W. Yarbrough, City Manager
City of South Daytona
P.O. Box 214960
South Daytona, FL 32121
Telephone: (386) 322-3010
Facsimile: (386) 322-3008
E-mail: jyarbrough@southdaytona.org

Brian P. Armstrong, Esq.
David G. Tucker, Esq.
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
Telephone: (850) 224-4070
Facsimile: (850) 224-4073
E-Mail: dtucker@ngnlaw.com
E-Mail: barmstrong@ngnlaw.com



Attorney