

Matilda Sanders

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**Sent:** Friday, March 24, 2006 2:35 PM  
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**Subject:** Electronic Filing for Docket No. 060150-EI - FPL's Response to the Town of Palm Beach's Petition to Intervene

**Attachments:** FPL's Response to the Town of Palm Beach's Petition to Intervene.doc

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SEC   1    
OTH \_\_\_\_\_



FPL's  
Response to the Town

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 060150-EI Petition for approval of revisions to contribution-in-aid-of-construction definition in Section 12.1 of First Revised Tariff Sheet No. 6.300, by Florida Power & Light Company.

c. Document being filed on behalf of Florida Power & Light Company.

d. There are a total of 5 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response to the Town of Palm Beach's Petition to Intervene and Petition for Tariff Amendment.

(See attached file: FPL's Response to the Town of Palm Beach's Petition to Intervene.doc)

Thank you for your attention and cooperation to this request.

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DOCUMENT NUMBER-DATE

02690 MAR 24 08

FPSC-COMMISSION CLERK

**ORIGINAL**

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for approval of revisions to	)	
contribution-in-aid-of-construction	)	Docket No. 060150-EI
definition in Section 12.1 of First Revised	)	
Tariff Sheet No. 6.300, by	)	
Florida Power & Light Company	)	Filed: March 24, 2006
_____	)	

**FLORIDA POWER & LIGHT COMPANY'S  
RESPONSE TO THE TOWN OF PALM BEACH'S PETITION TO  
INTERVENE AND PETITION FOR TARIFF AMENDMENT**

**NOW, BEFORE THIS COMMISSION**, through undersigned counsel, comes Florida Power & Light Company ("FPL" or the "Company"), and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response to the Petition to Intervene and Petition for Tariff Amendment filed March 17, 2006, on behalf of the Town of Palm Beach, Florida ("Palm Beach" or "Town"), and in support states:

1. On February 20, 2006, FPL filed a petition asking that this Commission approve limited revisions to the General Rules and Regulations for Electric Service in the Company's Tariff ("Petition for Tariff Amendment"). Specifically, the Company proposed to revise the definition of Contribution-In-Aid of Construction ("CIAC") to include a government adjustment factor of 25% where the applicant is a local government. This revision would permit the Company to invest 25% of the CIAC for local government sponsored conversion projects, with the Commission recognizing such investment as new plant in service. FPL believes that the proposed tariff revisions should be approved in order to promote local government-sponsored underground conversion projects.

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2. On March 17, 2006, the Town of Palm Beach (“Palm Beach”) filed a Petition to Intervene and Petition for Tariff Amendment in the above-referenced docket. Palm Beach requests that the Commission conduct proceedings within this docket to determine the proper, fair, just and reasonable CIAC for underground conversions pursuant to the Company’s tariffs. (Petition, p. 1). In particular, Palm Beach asks the Commission to conduct appropriate proceedings to consider whether additional credits for local government underground conversions, beyond the 25% proposed by FPL, are warranted. Id.

3. FPL does not object to Palm Beach’s participation as a party in Docket No. 060150-EI. FPL notes, however, that parties are entitled to a hearing under sections 120.569 and 120.57 only if an agency’s proposed action will result in injury-in-fact to that party and if the injury is of a type that the statute authorizing the agency action is designed to prevent. See, e.g., Fairbanks, Inc. v. State, Dep’t of Transp., 635 So. 2d 58, 59 (Fla. 1st DCA 1994), review denied, 639 So. 2d 977 (Fla. 1994) (“To establish entitlement to a section 120.57 formal hearing, one must show that its ‘substantial interests will be affected by proposed agency action.’”); Univ. of S. Fla. College of Nursing v. State Dep’t of Health, 812 So. 2d 572, 574 (Fla. 2d DCA 2002) (“Section 120.57(1), a provision of Florida’s Administrative Procedure Act, provides that a party whose ‘substantial interests’ are determined in an agency proceeding is entitled to have disputed issues of material fact resolved in a formal evidentiary hearing. To qualify as having a substantial interest, one must show that he will suffer an injury in fact which is of sufficient immediacy to entitle him to a hearing and that this injury is of the type or nature which the proceeding is designed to protect.”)

4. While the Palm Beach Petition acknowledges the “substantial interests” test, it makes no allegations suggesting that Palm Beach suffered or is in immediate danger of suffering

any injury at all, much less an alleged injury that is cognizable by the statutes that govern this proceeding. Rather, Palm Beach observed only that “[t]he Town is directly subject to the tariff that FPL seeks to amend. Thus, the interests that the Town seeks to protect are of sufficient immediacy to warrant intervention . . . .” See Petition and Request, ¶ 6. These allegations are made at a time when the Commission has expressed no intended course, and proposed no outcome, on FPL’s petition. Nor does the Palm Beach Petition seek a particular specific outcome or provide any basis for the Commission to act. Thus, at this time, Palm Beach has no legitimate claim to an “injury-in-fact” that entitles it to a hearing.

5. Indeed, Palm Beach’s general contention is that greater credits than FPL’s proposed 25% CIAC credit for overhead to underground conversions are warranted. Palm Beach states in its Petition that it intends to convert its overhead facilities to underground. Currently, FPL’s tariff includes no CIAC credit relative to conversions of overhead facilities to underground facilities. If FPL’s proposed rule and tariff amendments are approved, there would be a 25% credit for municipalities such as Palm Beach to convert facilities to underground. Yet, Palm Beach seeks additional monetary benefit in the form of an increased credit for something it already intends to do. If FPL’s petition is denied, it would simply maintain the status quo for Palm Beach. There is no potential injury to Palm Beach resulting from the Commission action in this proceeding.

6. Further, Palm Beach has provided no basis on which the Commission can grant the relief Palm Beach requests. Palm Beach asks that the Commission conduct proceedings to determine the proper, fair, just and reasonable CIACs for underground conversions. There is no automatic right to a hearing pursuant to Chapter 366. Rather, the Commission decides pursuant to Section 366.06(2) and 366.07, Florida Statutes, whether a hearing is warranted. Palm Beach’s

suggestion that it is “entitled” to a hearing is unsupported by Chapter 366 and the facts as alleged by Palm Beach.

7. In conclusion, FPL notes that it disputes a number of the alleged “Disputed Issues of Material Fact” and “Ultimate Facts Alleged” by Palm Beach as incorrect, irrelevant and inappropriate for inclusion in this Docket. In particular, FPL asserts that the following issues alleged by Palm Beach are among those beyond the scope of this proceeding:

**Issue 8:** Should FPL be allowed to include indirect and general costs (commonly referred to as “overhead” costs in an accounting sense) as part of the CIAC cost imposed on municipalities when such municipalities do the OH-to-UG conversion projects themselves (either with municipal employees or with an FPL-approved contractor), as is their right pursuant to Rule 25-6.115(3), F.A.C., and FPL’s Tariff Section 12.2.11 on First Revised Sheet No. 6.330?

**Issue 9:** Should FPL’s tariffs be amended to include provisions favoring the use of rights-of-way, as opposed to private easements, where practicable for the location of underground distribution facilities?

If the Commission grants Palm Beach’s Petition to Intervene and/or Petition for Tariff Amendment, the Commission should reject these and other alleged issues contained in Palm Beach’s Petition as beyond the scope of this proceeding addressing FPL’s proposed limited tariff revisions.

Respectfully submitted,

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By: /s/ Natalie F. Smith  
Natalie F. Smith

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail and United States Mail this 24<sup>th</sup> of March, 2006, to the following:

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