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Sent: Wednesday, September 06, 2006 4:34 PM
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Subject: Electronic Filing \* Docket 060150-EI
Attachments: TPB.MotionforAbeyance.Sept06.doc



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a. Person responsible for this electronic filing:

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b. Docket No. 060150-EI

In Re: Petition for approval of revisions to contributions-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 the Town of Palm Beach.

d. There are a total of 14 pages.

e. The document attached for electronic filing is The Town of Palm Beach, Florida's Motion to Hold Proceedings in Abeyance.

(see attached file: TPB.MotionforAbeyance.Sept06.doc)

Thank you for your attention and assistance in this matter.

CMP \_\_\_\_\_

COM Rhonda Dulgar

Secretary to Schef Wright

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of )  
Revisions to Contribution-in-Aid-of ) Docket No: 060150-EI  
Construction Definition in Section )  
12.1 of First Revised Tariff Sheet ) Filed: September 6, 2006  
No. 6.300, by Florida Power & Light )  
Company )  
\_\_\_\_\_ )

**THE TOWN OF PALM BEACH, FLORIDA'S  
MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

The Town of Palm Beach, Florida ("Palm Beach" or "Town"), an intervenor party in this docket, pursuant to Rules 28-106.204 and 28-106.211, Florida Administrative Code ("F.A.C."), and by and through its undersigned counsel, hereby respectfully moves the Commission for an order holding further action by the Staff or the Commission in this docket in abeyance, pending the completion of a comprehensive engineering life cycle cost-effectiveness study of underground vs. overhead distribution facilities that is presently under way and that is being funded in part by the Town. Specifically, the Town of Palm Beach respectfully asks the Commission to defer any Staff recommendation or Commission action on this matter for approximately 75 days, which the Town believes will give the Staff and the Commission an adequate opportunity, as contemplated by Commission Order No. 06-0339-PCO-EI,<sup>1</sup> to fully review all aspects of Florida Power & Light Company's ("FPL") tariff revision proposal, including the opportunity to receive and review the results of the cost-effectiveness study mentioned

<sup>1</sup> Order Suspending Tariff and Applying Discount On or After April 4, 2006, issued April 24, 2006 (hereinafter "Order Suspending Tariff").

DOCUMENT NUMBER-DATE

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above.

In the simplest terms, the Commission has stated that it wishes to fully and carefully evaluate all aspects of FPL's proposal and also to carefully evaluate the Town's assertions in its petition to intervene, and the contemplated full evaluation should include consideration - before issuing a recommendation or a tariff order - of the results of the cost-effectiveness study. Moreover, FPL's preliminary analysis shows a wide range of potentially defensible credit amounts, from 20 percent to 40 percent; consideration of the aforementioned study before issuing a recommendation would obviously be the sound course of action, while still proceeding with all deliberate speed. Finally, noting FPL's specific request that the Commission not make the tariff effective before the Commission amends Rule 25-6.115, F.A.C., especially in light of the current schedule for the Commission's pending rulemaking dockets, it is readily apparent that the requested abeyance will really amount to deferring the Staff recommendation for a period of only a month or so after the new rules can reasonably be expected to become effective.

In further support of its Motion for Abeyance, the Town of Palm Beach states as follows.

#### PROCEDURAL BACKGROUND

FPL is a public utility subject to the Commission's full jurisdiction under Chapter 366, Florida Statutes.<sup>2</sup> This docket

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<sup>2</sup> All references in this Motion to the Florida Statutes are to the 2005 edition thereof.

was initiated on February 20, 2006, by the filing of FPL's Petition for Approval of Revisions to Contribution-In-Aid-Of-Construction Definition in Section 12.1 of First Revised Tariff Sheet No. 6.300 ("FPL's Petition"). In summary, FPL petitioned the Commission for approval of tariff revisions pursuant to which FPL would apply a 25 percent credit that would reduce contributions in aid of construction ("CIACs") for underground conversion projects where the applicant for such a conversion project was a local government and where the local government applicant satisfied certain conditions. FPL's Petition was part of FPL's comprehensive filing comprising its "Storm Secure Plan" that FPL made on the same day, which included several petitions to amend the Commission's rules relating to undergrounding and the standards to which electric distribution facilities are constructed.<sup>3</sup> Of significance to the Town's Motion for Abeyance, FPL specifically asked the Commission to approve its proposed amended tariff sheet "at the earliest opportunity, but in no event earlier than adoption by the Commission of FPL's proposed amendments to Rule 25-6.115." FPL's Petition at 4.

The Town of Palm Beach is a substantial customer of FPL, and the Town has ongoing interests in converting the existing overhead ("OH") electric distribution lines in Palm Beach to

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<sup>3</sup> The most relevant of these to this docket were FPL's Petition to amend Rule 25-6.115, Facility Charges for Providing Underground Facilities (assigned Docket No. 060149-EI), Excluding New Residential Subdivisions, and FPL's Petition to amend Rule 25-6.034, Standard of Construction (Docket No. 060147-EI).

underground ("UG") service, a transaction that is governed in part by the subject Tariff Sheet No. 6.300 that FPL proposes to amend. Consistent with these interests, the Town has been engaged in pre-contract discussions with FPL for several years on various issues relating to the Town's desired underground conversion project. The Town also belongs to an organization known as the Municipal Underground Utilities Consortium ("MUUC"), which is a group of more than 20 Florida cities and towns that have entered into an interlocal agreement for the purpose of funding a comprehensive engineering life cycle cost-effectiveness study of undergrounding and hardening of electric distribution facilities. As the Town has related to the Commission and to the Staff on several occasions, this study is under way, and it is expected to be completed in approximately mid-November 2006.

The Town of Palm Beach petitioned to intervene in this docket on March 17, 2006, and the Commission granted the Town's intervention on May 1, 2006 by Commission Order No. PSC-06-0367-PCO-EI. The Town of Jupiter Island also petitioned to intervene on March 17, and Jupiter Island's intervention was granted by Commission Order No. PSC-06-0366-PCO-EI on May 1, 2006.

On March 1, 2006, the Commission opened two closely related rulemaking dockets to address the issues raised in the Commission's ongoing consideration of electric distribution reliability issues, In Re: Proposed Rules Governing the Placement of New Electric Distribution Facilities Underground, and the Conversion of Existing Overhead Distribution Facilities,

to Address the Effects of Extreme Weather Events, Docket No. 060172-EU, and In Re: Proposed Amendments to Rules Regarding Overhead Electric Facilities to Allow More Stringent Construction Standards Than Required by the National Electrical Safety Code, Docket No. 060173-EU.<sup>4</sup> These dockets have been progressing on a consolidated basis and include the Commission's consideration of proposed amendments to Rule 25-6.115, F.A.C.

At its agenda conference on April 4, 2006, the Commission voted unanimously to suspend FPL's proposed tariff, subject to the provision that any local government that applied for an OH-to-UG conversion during the term of the suspension would be entitled to whatever CIAC credit or discount the Commission might ultimately approve at the conclusion of this docket. Order Suspending Tariff at 2-3.

In the Commission's Order Suspending Tariff, the Commission specifically stated:

We have decided to suspend our approval of this proposed tariff to allow time for full and careful review of its provisions.

Order Suspending Tariff at 2.

In that Order, the Commission also expressly noted the Town's position that "FPL's proposed 25 percent credit is a step in the right direction but does not go far enough to provide sufficient or appropriate incentives to local governments to undertake

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<sup>4</sup>These necessarily encompass the subject matter of FPL's rule amendment petitions, including its petition to amend Rule 25-6.115, F.A.C., and the Commission duly closed several of the other FPL-initiated dockets on April 6, 2006.

underground conversion projects." The Commission went on to state:

Suspension of FPL's proposed tariff revisions will afford us time to analyze [the Town's and Jupiter Island's] Petitions which relate to FPL's proposed tariff.

Order Suspending Tariff at 2.

The Commission Staff issued data requests to FPL on June 9, 2006, to which FPL responded on July 10, 2006. Among FPL's responses was a discussion of a "macro-level economic evaluation," which FPL asserted supports credits between 20 percent and 40 percent of the otherwise applicable CIAC for underground conversions. See Florida Power & Light Company's Responses to Staff's June 9, 2006 Data Requests, at 2.

The Town of Palm Beach and the Town of Jupiter Island propounded interrogatories and requests for production of documents to FPL on July 18, 2006. FPL responded to these discovery requests on August 17, 2006.

#### **DISCUSSION OF REQUESTED ABEYANCE**

Consistent with the Commission's reasoning articulated in its Order Suspending Tariff, the Town of Palm Beach respectfully moves the Commission to defer any Staff recommendation and Commission action on FPL's proposed tariff amendments until the Commissioners and the Commission Staff have had an adequate opportunity to review and consider the results of the undergrounding life cycle cost-effectiveness study that is being prepared through the efforts of the Municipal Underground Utilities Consortium. To be completely clear, the Town expects

that the Staff's data gathering and the Town's discovery will continue during the requested abeyance, so the Town's motion asks only for abeyance of formal action by the Staff and the Commission. The Town believes that an abeyance of approximately 75 days (relative to the schedule currently set forth in the Case Assignment and Scheduling Record) would accommodate the completion of the study in mid-November and allow the Staff adequate time to prepare their recommendation in time for consideration at the Commission's regularly scheduled agenda conference on December 19, 2006. Additionally, this requested abeyance cannot reasonably be expected to delay the Commission's report to the Legislature as required by Section 19 of Senate Bill 888. The Commission's report to the Legislature pursuant to that section is not due until July 1, 2007, and the study schedule anticipated by the Town will fit into the Commission's reporting schedule quite comfortably. The requested abeyance is entirely appropriate in this case because it is reasonable, because it is fully consistent with the Commission's rationale for suspending FPL's proposed tariff, because there is no urgency to act before the study is completed, and because no party will be prejudiced by the relatively brief abeyance requested.

Moreover, as noted above, the Commission's consideration of proposed amendments to Rule 25-6.115, F.A.C., is continuing in Docket No. 060172-EU, which is proceeding in tandem with Docket No. 060173-EU. The rule hearing was held on August 31, post-hearing comments are due to be filed on October 2, and the



Commission is scheduled to vote on the proposed rules at its regular agenda conference on October 24. Thus, depending on further actions in these dockets, it will almost certainly be early November before the Commission actually issues an order adopting the contemplated changes to Rule 25-6.115, F.A.C. With the study anticipated to be complete in mid-November, the impact of the abeyance would thus be minimal and essentially consistent with FPL's specific request that the Commission not approve its tariff amendment until it adopts changes to Rule 25-6.115, F.A.C.

Recent Commission orders on motions for abeyance have generally focused on reasonableness and on whether action was urgently needed.<sup>5</sup> In this case, the requested abeyance is

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<sup>5</sup> E.g., in In Re: Petition of KMC Telecom III LLC, KMC Telecom v, Inc., and KMC Data LLC for Arbitration of Interconnection Agreement with Sprint-Florida, Inc., the Prehearing Officer denied a motion for temporary abeyance with the following explanation: "With the present agreement between these two parties expiring in less than six weeks, and the length of time this docket has been pending, this matter should be concluded. Accordingly, KMC's Motion for Temporary Abeyance is denied." Docket No. 031047-TP, Order No. PSC-05-0074-PCO-TP, 2005 WL 230451 at 3 (January 20, 2005). In In Re: Application for Amendment of Certificates Nos. 340-W and 297-S to Add Territory in Pasco County by Mad Hatter Utility, Inc., the Prehearing Officer granted a motion for continuance in order to allow time for a court to act on certain matters in dispute. The movant contended that "until such time as that ruling is achieved, the Commission does not have the information necessary to rule on its requested extension of service territory," and the Prehearing Officer, in granting the motion, stated "Based on the pleadings of the parties, I find that [the movant's] request is reasonable." Docket No. 0421215-WS, Order No. PSC-05-0942-PCO-WS, 2005 WL 2416332 at 2 (September 26, 2005). In In Re: Petition for Authority to Recover Prudently Incurred Storm Restoration Costs by Florida Power & Light Company, where

reasonable in that it will allow the Commission to do exactly what it stated in the Order Suspending Tariff it intends to do with regard to FPL's proposed CIAC credit tariff amendment: to fully and carefully review and analyze the provisions and impacts of the proposed tariff and the Town's positions with regard to FPL's proposal. See Order Suspending Tariff at 2. In addition to the MUUC's cost-effectiveness study, the Commission Staff are continuing with their independent analysis of FPL's proposal, and in that regard have recently (on August 24) propounded additional data requests to FPL. Additionally, based on preliminary review of FPL's responses to the first interrogatories and first document production requests propounded by the Town of Palm Beach and the Town of Jupiter Island, the Town expects that additional follow-up discovery will be propounded to FPL on or before September 10. Postponing further action until the Staff have had an opportunity to review the further information that the Staff's recent data requests and that the Town's next round of discovery will yield is clearly consistent with the Commission's announced intent to fully evaluate FPL's filing, and the Town's positions, before

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petitioner FPL has significantly increased its estimated storm restoration costs and amended its petition accordingly, the Commission, apparently based on considerations of reasonableness of the schedule under the circumstances, denied the Public Counsel's Motion to Reschedule Hearing or Hold Proceeding in Abeyance but revised the procedural order to allow Public Counsel additional time to conduct discovery and to address the revised information in testimony. Docket No. 041291-EI, Order No. PSC-05-0283-PCO-EI, 2005 WL 704357 at 4 (March 16, 2005).

acting.

Moreover, in its responses to Staff data requests and the Towns' discovery, FPL furnished estimates of potential credits between 20 percent and 40 percent. It seems overwhelmingly reasonable, if not facially obvious, that deferring the Staff's recommendation and Commission action to receive the aforementioned cost-effectiveness study, which should be expected to shed additional light on the appropriate amount of credits, is the sound and wise course for the Commission to take in this situation, where FPL's own estimates vary by 100 percent.

There is no urgency requiring immediate action because the Commission has appropriately protected all parties by the provisions of its Order Suspending Tariff, which provide that any local governments that apply for OH-to-UG conversions during the time that the proposed tariff is suspended will be entitled to receive whatever credit or discount the Commission ultimately approves, and that correspondingly permit FPL to apply any such later-approved credit amounts against the CIACs paid by such local governments. Moreover, it is unlikely that any undergrounding projects would be significantly postponed by the requested abeyance, particularly not if the Commission follows FPL's request not to make the changes effective until after the Commission amends Rule 25-6.115, F.A.C. Many of the MUUC's members are among those who have requested "ballpark cost estimates" or "binding cost estimates" from FPL. See FPL's Responses to Staff's June 9, 2006 Data Requests, Attachment A.

This attachment shows that, as of July 2006, approximately 59 local governments had requested ballpark cost estimates for OH-to-UG conversion projects, and that 13 of these had paid the requisite engineering deposit for a binding cost estimate. Of those 13, three projects are under way (City of South Daytona Beach, Town of Jupiter Island, Phase I, and City of Flagler Beach, Phase I), one has been completed (City of Lauderdale by the Sea, A1A section), eight are under review by the applicants, and one (Satellite Beach) is on hold pending Commission action on FPL's tariff proposal. Seven other local governments (Jupiter Inlet Colony, Palm Beach Shores, Ft. Lauderdale, Lauderdale by the Sea, Broward County, Lauderhill, and Rockledge) that have requested ballpark estimates, but which have not paid engineering deposits for binding cost estimates, have reported to FPL that they are deferring further action until a decision is made on FPL's tariff proposal. Based on communications with officials in as many of the respective communities as he was able to reach, as well as on discussions among the members of the MUUC, the undersigned represents the following:

1. that the requested deferral will not have a significant impact on the Town of Jupiter Inlet Colony's plans to proceed with its underground conversion projects;
2. that the requested deferral will not adversely affect the plans of the City of Rockledge regarding underground conversion projects;
3. that the requested deferral will not affect the current

plans of the City of Satellite Beach;

4. that the City of Fort Lauderdale is comfortable with the language set forth in this motion; and

5. that in conference call discussions among the MUUC, no participant objected to the requested deferral.

Similarly, the requested abeyance would not prejudice any party, for the same reasons.

#### POSITIONS OF THE PARTIES ON THIS MOTION

Pursuant to Rule 28-106.204(3), F.A.C., the undersigned represents that: he has conferred with counsel for Florida Power & Light Company regarding this motion, and that FPL opposes the motion; he has conferred with officials of the Town of Jupiter Island, and that the Town of Jupiter Island supports the motion and the requested deferral; and that he has conferred with counsel for the Commission Staff, and that the Staff take no position on the motion.

#### CONCLUSION AND RELIEF REQUESTED

The Town of Palm Beach is a substantial customer of FPL and an "Applicant" and a local government subject to FPL's existing and proposed UG CIAC tariffs. In furtherance of the Town's ongoing efforts to obtain conversion of existing OH facilities to UG facilities on fair, just, reasonable, appropriate, and cost-effective terms, the Town respectfully moves the Commission to hold in abeyance any Staff recommendation or Commission action on FPL's proposal for approximately 75 days, pending the completion of the engineering cost-effectiveness study described above. The requested abeyance or deferral of the Staff

recommendation and Commission action thereon is specifically consistent with the Commission's rationale set forth in the Order Suspending Tariff and will allow the Staff and the Commission to consider additional valuable and relevant information before taking further action.

**WHEREFORE**, the Town of Palm Beach, Florida respectfully requests the Florida Public Service Commission to enter an order GRANTING its Motion to Hold Proceedings in Abeyance as specifically described and prayed herein.

Respectfully submitted this 6th day of September, 2006.

S/Robert Scheffel Wright  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Town of Palm Beach's Petition to Intervene and Petition for Tariff Amendment has been furnished by electronic Mail and U.S. Mail this 6th day of September, 2006, to the following:

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