

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Petition for Emergency Rule, or )  
Alternatively, for Declaratory Statement Prohibiting ) Docket No. 060355-EI  
Wireless Attachments in Electric Supply Space, )  
By Florida Power & Light Company ) Filed: Nov. 1, 2006  
\_\_\_\_\_ )

**FLORIDA POWER & LIGHT COMPANY'S  
STATUS REPORT RELATED TO STAY OF PROCEEDINGS**

**NOW, BEFORE THIS COMMISSION**, through undersigned counsel, comes Florida Power & Light Company (“FPL” or the “Company”), and pursuant to Order No. PSC-06-0541-PCO-EI, issued June 26, 2006 in the above-referenced docket, files this Status Report Related to Stay of Proceedings (“Status Report”) and in support states:

1. On April 24, 2006, FPL filed its Petition for Emergency Rule or, Alternatively, Declaratory Statement (“Petition”). In it, FPL requested that the Commission issue an emergency rule prohibiting wireless telecommunications attachments in electric supply space to remain effective until such time as the Commission completes its rulemaking in Docket No. 060173-EU and determines whether such a practice is a safe and advisable one in the State. Alternatively, FPL requested that the Commission issue a declaratory statement, pursuant to Rule 28-105.001, *et. seq.*, of the Florida Administrative Code (“F.A.C.”), that prohibits T-Mobile from attaching wireless telecommunications devices at the top of FPL’s electric distribution poles until the Commission concludes its review of its pole strengthening standards in the proceedings currently before it, including in Docket No. 060173-EU. As FPL stated in its Petition, FPL was motivated to seek emergency relief from this Commission, in part, because T-Mobile asserted, in a letter to FPL that was also sent to the FCC, that it believed that the law mandated that FPL provide access to the electric supply space on its distribution poles. T-Mobile threatened to file a formal

complaint against FPL at the Federal Communications Commission (“FCC”) if FPL did not accede to T-Mobile’s demands. FPL found itself in a quandary. On one hand, FPL is taking, of its initiative and at the behest of this Commission, steps to improve and strengthen its electric utility infrastructure in Florida as a result increased hurricane frequency and severity. This includes the hardening of its distribution poles by, among other things, implementing the strictest National Electric Safety Code (“NESC”) standards to reduce the risk of pole failure in severe weather. Related to this heightened standard is the necessary prohibition on certain types of attachments, including wireless attachments, which increase considerably the wind loading at the top of distribution facilities. On the other hand, taking such measures to protect its infrastructure, the reliability of its provision of electricity and the safety of the public and of workers on the utility pole, all in accordance with Chapter 366, Florida Statutes, and applicable regulations, appeared to subject FPL to legal action by T-Mobile because T-Mobile believed it should have access to the top of FPL’s utility poles.

2. On May 3, 2006, T-Mobile filed a Petition to Intervene and Notice of Opposition to FPL’s Petition. T-Mobile said it would provide a substantive response to FPL’s Petition on or before May 15, 2006. On May 12, 2006, T-Mobile filed a response requesting that the Commission dismiss FPL’s Petition (the “Response”). In it, T-Mobile assures FPL and the Commission that it will not seek FCC action at this time and that “at the moment” any fear that it will do so “is unfounded.” *See* Response, p. 11.

3. In light of T-Mobile's assurances that it would not pursue FCC action mandating access to the electric supply space on FPL's poles, as well as the Staff's draft rule amendments as they relate to attachments to distribution poles, on May 22, 2006, FPL filed a Motion to Stay the proceedings in Docket No. 060355-EI pending the outcome of rulemaking in the Storm Hardening Dockets.

4. By Order No. PSC-06-0541-PCO-EI, issued June 26, 2006 in this Docket, FPL's Motion for Stay of Proceedings was granted on a finding by the Commission that it could potentially resolve some or all of the issues set forth in FPL's Petition for Emergency Rulemaking/Declaratory Statement in Dockets Nos. 060172-EU and 060173-EU and proceeding with this matter may result in an unnecessary expenditure of time and resources. Further, the Commission determined that it did not appear that any party would be prejudiced if this matter was held in abeyance. FPL was directed to file a Status Report by November 1, 2006, and FPL does so through this filing.

5. On August 31, 2006, the Commission held a rulemaking hearing regarding proposed storm hardening rules in Docket Nos. 060172-EI and 060173-EI, and it may vote on adopting rules at an upcoming Agenda Conference. The outcome of the rulemaking proceedings could potentially resolve some or all of the issues in this proceeding. Therefore, in the interest of administrative efficiency, FPL believes it is appropriate for the proceedings in this Docket to continue to be held in abeyance until the rulemaking proceedings in Docket Nos. 060172-EI and 060173-EI are complete. In the mean time, if FPL believes that the threat to the safety and reliability of its system and the public associated with attaching wireless telecommunications devices at the top of FPL's electric distribution poles intensifies, FPL will file a motion to lift the stay and request that the proceedings in Docket No. 060355-EI be resumed. Alternatively, if FPL

believes that the threat to the safety and reliability of its system subsides as a result of the Commission's rulemaking proceedings or other activity, FPL would take appropriate action to terminate this proceeding and request that Docket No. 060355-EI be closed.

**WHEREFORE**, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission continue to hold in abeyance the proceedings on FPL's Petition for Emergency Rulemaking and Alternative Request for Declaratory Statement.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was furnished by electronic mail (\*) and by United States mail to the following this 1st day of November, 2006:

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