

State of Florida



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 23, 2006

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Kummer)
Office of the General Counsel (Gervasi) *RS Ned JOS 19x*

RE: Docket No. 060151-EI – Petition for approval of revisions to access to premises section of Tariff Sheet No. 6.020, by Florida Power & Light Company.

AGENDA: 04/04/06 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All

PREHEARING OFFICER: Administrative

CRITICAL DATES: 04/19/06 (60-Day Suspension Date)
10/19/06 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: This recommendation should immediately follow the recommendation filed in Docket No. 060150-EI

FILE NAME AND LOCATION: S:\PSC\GCL\WP\060151.RCM.DOC

Case Background

On February 20, 2006, Florida Power & Light Company (FPL or utility) filed a petition to revise Section 2.8 on Tariff Sheet 6.020, Access to Premises, to expand its authority to not only remove trees and vegetation within the company's rights of way, but also to trim or remove vegetation adjacent to the utility's easements or facilities. FPL asserts that this change is necessary to clear lines to meet its Storm Secure Plan. FPL believes it would not only prevent outages but allow faster restoration of downed lines, and requests that the petition be acted upon on an expedited basis.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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The Commission has jurisdiction pursuant to Sections 366.03, 366.04, 366.05, and 366.06, Florida Statutes.

Discussion of Issues

Issue 1: Should FPL's proposed tariff revision be suspended?

Recommendation: Yes, FPL's proposed tariff revision should be suspended. (Kummer, Gervasi)

Staff Analysis: On February 20, 2006, FPL filed its Petition for Approval of Revisions to the Access to Premises Section of its Tariff Sheet No. 6.020. Under Section 2.8 its current Ninth Revised Tariff Sheet No. 6.020, FPL is authorized to, among other things, trim trees within its easements and rights of way. The proposed tariff revision would authorize FPL to trim and remove trees and other vegetation within and adjacent to its easements and rights of way and/or the location of its facilities. While these changes appear minor, staff believes that approval of the proposed tariff would expand FPL's authority to trim or remove vegetation on private property if FPL believed it would potentially affect its facilities.

Pursuant to Section 366.06(3), Florida Statutes, the Commission may withhold consent to the operation of all or any portion of a new rate schedule, delivering to the utility making the request a reason or written statement of good cause for doing so within 60 days. Staff recommends that the tariff be suspended to allow staff sufficient time to review the petition in order to present the Commission an informed recommendation on the tariff proposal. Staff believes that this reason is good cause consistent with the requirements of Section 366.06(3), Florida Statutes.

Staff notes that FPL's proposed tariff revision could result in disputes with local homeowners about exactly what constitutes a threat to FPL's facilities. Moreover, expansion of tree trimming was discussed during the Infrastructure Workshop as a potential area for legislative action because of the private property issue. The utilities supported and staff recommended at the February 27, 2006 Internal Affairs presentation that the Commission support legislation which would address the extent to which a private utility could trim or remove trees or vegetation which interfere with utility facilities. Staff believes that it is prudent to wait for any legislative guidance before moving forward in this area, as action by the Commission at this time could potentially conflict with such legislation.

Staff further notes that FPL requests that its petition be acted upon on an expedited basis. Although the petition gives no reason for the request for expedited action, FPL has expressed concern for mitigating storm damage from vegetation in the upcoming hurricane season. Staff believes that this concern is valid. However, staff also believes that in the absence of legislation which clearly gives the utility the right to trim or remove vegetation outside of its right of way, we should look further into the property rights issues as well as any potential conflict with local tree trimming ordinances. This issue will be addressed in the proposed overhead facilities hardening rulemaking docket, Docket No. 060173-EU, discussed in another item on today's Agenda. Given potential legislative guidance and the information collected in the overhead rulemaking docket, the utility may withdraw or modify the filing at a later date to conform to that additional information.

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Issue 2: Should this docket be closed?

Recommendation: No. The docket should remain open pending the Commission's vote on the proposed tariff revision. (Gervasi)

Staff Analysis: The docket should remain open pending the Commission's vote on the proposed tariff revision.