

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 (Draper, Daniel, Stenkewicz) *ESD*
Office of the General Counsel (Gervasi) *JNJ*

RE: 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.

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

COMMISSIONERS ASSIGNED: All

PREHEARING OFFICER: Administrative

CRITICAL DATES: 04/21/06 (60-Day Suspension Date)
10/19/06 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: This recommendation should immediately follow the recommendation filed in Docket No. 060149-EI

FILE NAME AND LOCATION: S:\PSC\ECR\WP\060150.RCM.DOC

Case Background

On February 20, 2006, Florida Power & Light Company (FPL) filed a petition for approval of revisions to the Contribution-In-Aid of Construction (CIAC) definition in Section 21.1 of its First Revised Tariff Sheet No. 6.300. Concurrent with the filing of this petition, FPL has filed a petition to initiate rulemaking to amend Rule 25-6.115, Florida Administrative Code, Facility Charges for Providing Underground Facilities of Public Distribution Facilities Excluding New Residential Subdivisions. FPL's proposal to initiate rulemaking is addressed in Docket No. 060149-EI and is also scheduled to be addressed at the April 4, 2006, Agenda Conference.

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Both Rule 25-6.115 and FPL's tariff sheet No. 6.300 provide the general provisions and terms under which FPL and a customer may enter into a contract for the purpose of converting existing overhead electric facilities to underground facilities. The customer is required to pay FPL a CIAC, which represents the conversion costs incurred by FPL. Currently, customers are responsible for the full conversion costs. In the instant petition and Docket No. 060149-EI (rulemaking docket), FPL has proposed to invest 25 percent of the cost of local government-sponsored conversion projects otherwise borne by the requesting municipality. FPL is requesting the investment be recognized as new plant-in-service.

On March 17, 2006, the Towns of Palm Beach and Jupiter Island filed Petitions to Intervene and Petitions for Tariff Amendment in this docket. This recommendation is to suspend FPL's tariff filing pending further review.

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 petition for approval of revisions to the Contribution-In-Aid of Construction (CIAC) definition in Section 21.1 of its First Revised Tariff Sheet No. 6.300 be suspended?

Recommendation: Yes. (Draper, Slemkewicz, Daniel)

Staff Analysis: On February 20, 2006, FPL filed a petition for approval of revisions to the CIAC definition in tariff sheet No. 6.300. This tariff filing was made in conjunction with a proposed rule change filed in Docket No. 060149-EI, to allow an up to 25 percent reduction in the CIAC associated with the conversion of existing overhead facilities to underground installation when requested by local governments. This reduction in CIAC would facilitate conversions requested by cities and counties and is consistent with FPL's Storm Secure Plan as filed on February 20, 2006. FPL has requested that the Commission recognize the 25 percent of the CIAC as new plant in service. Since plant in service is a component of the utility's rate base, the inclusion of the 25 percent foregone CIAC will increase rate base for all regulatory purposes, including rate cases and earnings surveillance. In future rate cases, the 25 percent foregone CIAC would be included as an investment to be recovered from the general body of ratepayers.

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.

In addition, staff notes that FPL requested the proposed tariff revision be approved at the earliest opportunity, but not earlier than adoption by the Commission of FPL's proposed amendments to Rule 25-6.115, Florida Administrative Code. In a recommendation filed in Docket No. 060149-EI for consideration at the same April 4, 2006, Agenda Conference, staff is recommending that FPL's petition to amend Rule 25-6.0115, Florida Administrative Code, be denied and the matter incorporated into Docket No. 060172-EI, which is the rulemaking docket opened by staff on the feasibility of undergrounding distribution facilities ordered by the Commission at the February 27, 2006, Internal Affairs Conference. Staff agrees with FPL that this proposed tariff revision should not be approved before Rule 25-6.115 is amended. Absent a companion rule change, staff is concerned that the language proposed in the tariff may be in conflict with existing rule language on the treatment of CIAC.

Staff further notes that on March 17, 2006, the Towns of Palm Beach and Jupiter Island (Towns) filed Petitions to Intervene and Petitions for Tariff Amendment in this docket. Among other things, the Towns argue that FPL's proposed 25% 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 underground conversion projects. The time for filing a response to the Towns' Petitions has not run as of the filing date of this recommendation. Suspension of FPL's proposed

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tariff revisions will afford staff time to analyze these Petitions which relate to FPL's proposed tariff.

Issue 2: Should this docket be closed?

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

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