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**From:** John\_Butler@fpl.com  
**Sent:** Wednesday, September 13, 2006 4:01 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Robert Scheffel Wright, Esq.; Rosanne Gervasi  
**Subject:** Electronic Filing for Docket No. 060150-EI -- FPL's response to Town of Palm Beach's motion for abeyance

**Attachments:** Response to Palm Beach motion for abeyance FINAL.doc



Response to Palm  
Beach motion ...

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 060150-EI

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

d. There is a total of 8 pages.

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

(See attached file: Response to Palm Beach motion for abeyance FINAL.doc)

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ORIGINAL

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

In re: 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. )

Docket No. 060150-EI

Filed: September 13, 2006

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE TO THE TOWN OF  
PALM BEACH, FLORIDA'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE**

Florida Power & Light Company ("FPL") hereby responds to the Motion to Hold Proceedings in Abeyance (the "Abeyance Motion") filed in this docket on September 6, 2006 by the Town of Palm Beach, Florida ("Palm Beach"). For the reasons set forth below, FPL does not object to a short deferral of the Commission's decision on FPL's Governmental Adjustment Factor ("GAF") tariff filing, provided that the Commission schedules its decision for the December 19, 2006 agenda conference and sets a deadline of November 1, 2006 for Palm Beach to file the report on the cost-effectiveness of underground conversions referenced in the Abeyance Motion (the "Undergrounding Report").

**Background**

1. On February 20, 2006, FPL petitioned for approval of revisions to its contribution-in-aid-of-construction ("CIAC") tariff that would implement FPL's GAF, one of the storm-hardening initiatives in FPL's January 30, 2006 Storm Secure plan. The GAF is intended to reduce by 25% the CIAC that local government applicants otherwise would pay for underground conversion projects, in order to promote such projects and thereby reduce the likelihood of long term outages caused by extreme weather events. FPL's petition asked the

Commission to recognize the GAF investments as new plant in service. The Commission opened this docket for evaluation of FPL's GAF petition. Palm Beach petitioned to intervene in this docket on March 17, 2006, and the Commission granted that request on May 1, 2006 via Order No. PSC-06-0637-PCO-EI.

2. Simultaneously with its GAF petition, FPL also filed a petition to initiate rulemaking that would revise Rule 25-6.115, F.A.C. so that the rule would recognize GAF investments as plant in service. The Commission initially opened Docket No. 060149-EI to consider FPL's rulemaking petition, but then initiated its own storm-hardening rulemaking proceeding in Docket Nos. 060172-EU and 060173-EU and denied FPL's rulemaking petition as moot. Order No. PSC-06-0273-FOF-EI, Docket No. 060149-EI, dated April 6, 2006. One of the rules that the Commission proposed to revise in Docket Nos. 060172-EU and 060173-EU is Rule 25-6.115.

3. On April 4, 2006, the Commission suspended FPL's GAF tariff filing in this docket, pending the conclusion of rulemaking on Rule 25-6.115 in Docket Nos. 060172-EU and 060173-EU. Order No. PSC-06-0339-PCO-EIO, dated April 24, 2006.

4. The Commission Staff held a rulemaking workshop in Docket Nos. 060172-EU and 060173-EU on April 17, 2006. At that workshop, Palm Beach's counsel advised Staff that Palm Beach and other municipalities intended to engage experts who would produce an Undergrounding Report. Staff expressed concern that awaiting preparation of such a report before deciding on how to proceed with rule revisions could delay the Commission's storm-hardening program and asked how much time the municipalities would need. Palm Beach's counsel responded as follows:

Four months, five months. I mean, it's kind of getting ahead to the end of it, but I have been talking about five months with the consultants as the time for them to complete their work. I can probably twist their arms and get them to do it in four. So probably results in August and maybe further proceedings in September, something like that.

Tr. 148.

5. On June 9, 2006 and July 26, 2006, Staff served data requests on FPL in connection with the GAF tariff filing. FPL timely responded to those data requests on July 11 and August 16, 2006, respectively, and served copies of its responses on counsel for Palm Beach. Palm Beach first served FPL with discovery requests on July 18, 2006, approximately two and a half months after it was granted intervention. FPL responded completely to those discovery requests on August 17, 2006.

6. The Commission held a rulemaking hearing on its proposed revisions to Rule 25-6.115 on August 31, 2006. FPL understands that the Commission presently intends to vote on adopting those proposed revisions as final at the October 24, 2006 agenda conference.

7. In the course of responding to Staff's data requests, it became apparent to FPL that it should update and refine its GAF tariff proposal to include qualification criteria that reflect the assumptions of the economic justification for the GAF tariff that FPL provide to Staff, as well as to reflect changes to the underground conversion CIAC formula that the Commission proposes to make in Rule 25-6.115. On August 18, 2006, FPL sent Staff proposed revisions to the GAF tariff for preliminary review, with a copy to counsel for Palm Beach. Staff has recently provided FPL input on those proposed tariff revisions. FPL intends to file an amended petition in this docket next week that will seek approval of a GAF tariff that is revised consistent with the foregoing. The amended petition will ask that the Commission consider the revised GAF tariff at the December 19, 2006 agenda conference, which is consistent with FPL's understanding of the

time Staff needs to evaluate the amended petition fully and make a recommendation concerning it to the Commission.<sup>1</sup>

8. Palm Beach seeks to have the Commission “hold in abeyance any Staff recommendation or Commission action on FPL’s [GAF tariff] proposal for approximately 75 days, pending the completion of the [Undergrounding Report].” Abeyance Motion, at p. 12. While there is reference in the body of the Abeyance Motion to the abeyance accommodating a Commission decision on the GAF tariff filing at the December 19 agenda conference, nothing in the specific prayer for relief commits to that deadline.

#### **Discussion**

9. Since FPL filed its Storm Secure plan in January, FPL has consistently endeavored to make the plan’s storm-hardening initiatives -- including the GAF tariff -- available to customers as soon as practical. The Commission has indicated on several occasions this year that it shares FPL’s sense of urgency. Accordingly, FPL is generally opposed to anything that would delay review and approval of those initiatives. However, in view of what FPL understands to be the Commission’s current schedule for finalizing the revisions to Rule 25-6.115 and for reviewing FPL’s amended GAF petition, it appears that little if any delay would result from scheduling the Commission’s decision on the GAF tariff for the December 19, 2006 agenda conference. Therefore, to the extent that this is what the Abeyance Motion seeks, FPL

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<sup>1</sup> Section 366.06 of the Florida Statutes requires the Commission to make a decision on tariff filings within eight months, which would end before December 19 as to FPL’s original GAF tariff filing. However, the amended petition will acknowledge that the original eight-month deadline does not apply to the revised GAF tariff. The amended petition will also acknowledge that it is subject to a new eight-month review period but will request that the Commission make its decision on the revised GAF tariff at the December 19 agenda conference.

does not oppose it. However, if the Commission is disposed to grant the Abeyance Motion, there are two clarifications that FPL believes are essential.

10. First, the prayer for relief in the Abeyance Motion does not expressly seek deferral of the Commission's decision on the GAF tariff to the December 19 agenda conference. Rather, as noted above, the Abeyance Motion asks the Commission to "hold in abeyance any Staff recommendation or Commission action on FPL's [GAF tariff] proposal for approximately 75 days, pending the completion of the [Undergrounding Report]." This could be read as seeking an open-ended abeyance, until sometime after Palm Beach and the other municipalities ultimately file the Undergrounding Report. Postponing a decision on the GAF tariff indefinitely would be a disservice to local governments in FPL's service territory that are waiting to know whether the GAF tariff will be available and, if so, when. It also would be inconsistent with FPL's and the Commission's expressed desire to move forward with storm hardening. Concern over delays in filing the Undergrounding Report is well-founded. As discussed above, Palm Beach has previously committed to Staff that the Undergrounding Report would be completed in August but the town now acknowledges (with no explanation) that it will not be completed until "mid-November" at best. Abeyance Motion, at p.7. If the Commission decides to defer its decision on the GAF tariff, it should explicitly schedule that decision for the December 19 agenda conference rather than leaving the deferral open-ended.

11. Second, the Abeyance Motion makes no express commitment as to when the Undergrounding Report will be filed. The closest it comes is a reference to "accomodat[ing] completion of the study in mid-November..." A "mid-November" deadline is both too uncertain and too late to be workable. In order to meaningfully evaluate the Undergrounding Report and its implications (if any) for the GAF tariff, FPL and Staff need to know specifically

when they can expect to receive the report and then have sufficient time thereafter to review and respond to it. If the GAF tariff is to be considered at the December 19 agenda conference, the Staff recommendation will have to be filed by December 7. FPL must be given a reasonable opportunity to review the Undergrounding Report and provide input to Staff for that recommendation. These timing considerations dictate that the Undergrounding Report be filed no later than November 1 if Palm Beach expects it to be taken into account by Staff and the Commission at the December 19 agenda conference. A November 1 deadline is more than fair to Palm Beach, which has known of FPL's GAF tariff filing for well over seven months now and has had the full opportunity as a party to seek information about that filing through discovery for over four months (since its intervention was granted on May 1).<sup>2</sup>

WHEREFORE, FPL respectfully requests that, if the Commission grants the Abeyance Motion, it expressly schedule the decision on FPL's GAF tariff for the December 19, 2006 agenda conference and set a deadline of November 1, 2006 for Palm Beach to file the Undergrounding Report.

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<sup>2</sup> If the Undergrounding Report is not filed timely in this docket, there will still be ample opportunity for it to be considered in connection with the report that the Commission must make to the Legislature by July 1, 2007. In that regard, FPL notes that the collaborative research group that was established in response to Docket No. 060198-EI intends for PURC to prepare and submit an evaluation of the costs and benefits of undergrounding in time to be used in the Commission's preparation of its July 1 report.

Respectfully submitted,

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By: /s/ John T. Butler  
John T. Butler



**CERTIFICATE OF SERVICE**  
**Docket No. 060150-EI**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished to the following by electronic mail this 13<sup>th</sup> day of September, 2006:

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By:           /s/ John T. Butler            
          John T. Butler