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Public Service Commission

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COMMISSION
CLERK

-M-E-M-O-R-A-N-D-U-M-

DATE: September 21, 2006

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

FROM: Division of Economic Regulation (Kummer)
Office of the General Counsel (Gervasi) *RES* *WAT* *10/2* *W*

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: 10/03/06 – Regular Agenda – Tariff Filing – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 10/19/06 (8-Month Effective Date)

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\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 of its current Ninth Revised Tariff Sheet No. 6.020, Access to Premises, to expand its authority to not only remove trees and vegetation within the utility's designated rights-of-way (ROW), but also to trim or remove vegetation adjacent to its easements and ROW and/or the location of its facilities. Under its current tariff, FPL is authorized to, among other things, trim trees within its easements and ROW. 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.

By Order No. PSC-06-0340-PCO-EI, issued April 24, 2006, in this docket, the Commission suspended its decision on this proposed tariff to allow time for full and careful

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review of its provisions. In so doing, the Commission noted that approval of the proposed tariff would appear to expand FPL's authority to trim or remove vegetation on private property if FPL believed it would potentially affect its facilities.

Expansion of tree trimming was discussed during the Infrastructure Workshop held on January 23, 2006, as a potential area for legislative action because of the private property issue. The utilities supported legislation which would address the extent to which a private utility could trim or remove trees or vegetation that interfere with utility facilities. By Order No. PSC-06-0340-PCO-EI, the Commission found it prudent to wait for any legislative guidance before moving forward in this area, as Commission action on the proposed tariff could have potentially conflicted with such legislation. FPL requested that its petition be acted upon on an expedited basis due to an expressed concern for mitigating storm damage from vegetation. The Commission found that concern to be valid. However, the Commission also found that in the absence of legislation which clearly gives the utility the right to trim or remove vegetation outside of its ROW, it should look further into the property rights issues.

The Commission has jurisdiction to consider this proposed tariff filing pursuant to sections 366.04, 366.05, and 366.06, Florida Statutes.

Discussion of Issues

Issue 1: Should FPL's proposed tariff filing to revise Section 2.8 of its current Ninth Revised Tariff Sheet No. 6.020, Access to Premises, be approved?

Recommendation: No, FPL's proposed tariff filing should be denied because the Commission lacks the statutory authority to approve it. FPL should be encouraged to coordinate its efforts to trim and remove vegetation outside of its easements and ROW with the local governments involved. (Gervasi, Kummer)

Staff Analysis:

Current Vegetation Management Program

Under its current tariff, FPL is authorized to, among other things, trim trees within its easements and designated rights-of-way (ROW). FPL seeks to expand its authority to not only remove trees and vegetation within the utility's ROW, but also to trim or remove vegetation adjacent to its easements and ROW and/or the location of its 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.

In response to a staff data request, FPL states that its current vegetation management program directs that trees be trimmed to protect its facilities, including trees where the tree trunk is located outside of a ROW but the limbs are encroaching into its facilities.¹ Under its current policy, FPL must request the property owner's permission before removing vegetation outside of the ROW. FPL does not trim or remove vegetation outside of the ROW if permission is denied. However, FPL will trim trees outside of the ROW at a customer's request after an inspection is completed and it is determined the work is necessary to protect the facilities. FPL is not specifically compensated for this work. Moreover, during its bi-annual inspection of its transmission lines, conflict timber is inspected and danger timber identified and evaluated for risk to the system. Danger timber and conflict timber is trimmed or removed to reduce or eliminate the risk. FPL defines "danger trees" as a dead, diseased, dying or leaning tree that if it were to fall would interrupt the line. "Conflict timber" is defined as a healthy tree that through its geometry and location could interrupt the line if it were to fall. The proposed tariff language, however, does not include any specific criteria that FPL will use to determine if a tree creates a potential for causing customer service interruptions.

New Legislation

As stated in the case background, during the Infrastructure Workshop held earlier this year, the utilities supported legislation which would address the extent to which a private utility could trim or remove trees or vegetation which interfere with utility facilities. By Order No. PSC-06-0340-EI, the Commission found it prudent to wait for any legislative guidance before

¹ FPL trims the limbs and branches in accordance with the National Electrical Safety Code (NESC) and follows the American National Standards Institute (ANSI) A-300 pruning practices.

ruling on this proposed tariff revision, as Commission action could potentially conflict with such legislation. The Commission also found that in the absence of legislation which clearly gives the utility the right to trim or remove vegetation outside of its ROW, it should look further into the property rights issues as well as any potential conflict with local tree trimming ordinances.

Legislation was not enacted during this past legislative session to clearly give utilities the right to trim or remove vegetation outside of their ROW. Senate Bill 980, which became law on June 22, 2006, created section 163.3209, Florida Statutes – Electric transmission and distribution line right-of-way maintenance. Among other things, this section prohibits local governments from requiring any permits or approvals for certain vegetation maintenance in an established electric transmission or distribution line ROW. Section 163.3209 expressly states that “[t]he provisions of this section do not include the removal of trees outside the right-of-way, which may be allowed in compliance with applicable local ordinances.” Further, section 163.3209 requires that “[u]pon the request of the local government, the electric utility shall meet with the local government to discuss and submit the utility’s vegetation maintenance plan, including the utility’s trimming specifications and maintenance practices.” A copy of this legislation is attached to this recommendation as Attachment A.

Commission Authority to Approve Tariff

In response to a staff data request, FPL argues that the Commission’s authority to approve a tariff allowing a utility to trim or remove vegetation outside of the ROW is pursuant to section 366.04(1), (2)(c), and (5), Florida Statutes. FPL states that these statutory provisions grant broad powers to the Commission to regulate and supervise utilities with respect to service, to require reliability within a coordinated grid, and provide for the Commission’s jurisdiction over the maintenance of a coordinated grid to assure an adequate and reliable source of energy for operation and emergency purposes in Florida. FPL argues that expanded vegetation management rights would further the statutory goal of an adequate and reliable source of energy. FPL also believes that the Commission recognized and acknowledged its authority to approve the requested tariff when it approved FPL’s standard form easements (Tariff Sheets 9.770 and 9.775). These tariff sheets provide that FPL has the right “...to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the easement area which might interfere with or fall upon the lines.” Moreover, FPL states that the ANSI A-300 pruning standards require that a branch be removed at its point of origin, notwithstanding that portions of the branch may be outside the ROW, where the branch is growing, or will grow, into utility facilities. Staff believes the current tariff language and the ANSI language are consistent with current practices of trimming vegetation which intrudes into the ROW, even though the source tree may be outside of the ROW. However, neither the current tariff language nor the ANSI language confer the broader authority which FPL is seeking in the instant docket, to trim or remove vegetation adjacent to its easements and ROW and/or the location of its facilities.

Staff is not persuaded by FPL’s argument that the Commission has the statutory authority to approve its proposed tariff revision. Section 366.04(1), Florida Statutes, provides that the Commission has the “jurisdiction to regulate and supervise each public utility with respect to its rates and service....” Section 366.04(2)(c) provides that the Commission has the power to “require electric power conservation and reliability within a coordinated grid, for operational as

well as emergency purposes.” Section 366.04(5) provides that “[t]he commission shall further have jurisdiction over the planning, development, and maintenance of a coordinated electric power grid throughout Florida to assure an adequate and reliable source of energy for operational and emergency purposes in Florida and the avoidance of further uneconomic duplication of generation, transmission, and distribution facilities.”

The Commission is an administrative agency created by the Legislature, and as such, "the Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State." City of Cape Coral v. GAC Utilities, Inc. of Florida.² FPL apparently believes that section 366.04, Florida Statutes, impliedly confers authority upon the Commission to authorize it to trim or remove vegetation outside of its easements and ROW. Staff disagrees. Nowhere in section 366.04, Florida Statutes, is it expressly or impliedly conferred that the Commission may authorize a public utility to trim or remove vegetation outside of its ROW for the purposes of ensuring reliability or for any other purpose. And “[a]ny reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof. . . .” Id.

Importantly, easements and ROW are property rights. A fundamental tenet of the law of property ownership is that property is a bundle of rights analogous to a bundle of sticks.³ “Thus, the scope of an easement is defined by what is granted, not by what is excluded, and all rights not granted are retained by the grantor.”⁴ Because the proposed tariff revision seeks to implicate private property rights, staff believes that the Commission’s authority to approve such a tariff revision would have to be expressly conferred by statute.

Impact of Proposed Tariff on Property Rights

In staff’s data request, staff asked FPL about the impact of the proposed tariff revision on property rights and the likelihood of lawsuits brought by property owners objecting to vegetation management on private property outside of the ROW. With respect to the lawsuit issue, FPL responded that it has not conducted any legal analysis. With respect to the impact on property rights, FPL asserts that compliance by a customer with a tariff, made in good faith and enforced without discrimination, which provides a utility with reasonable vegetation management rights on private property outside the ROW, would be a condition of service. FPL argues that essentially, the customer would make a limited waiver of rights to receive service.

FPL argues that Rule 25-6.033, Florida Administrative Code, authorizes a public utility to adopt non-discriminatory rules and regulations governing its relations with customers. Moreover, FPL cites to Florida Power & Light Co. v. State of Florida,⁵ which states that:

² 281 So. 2d 493, 496 (Fla. 1973).

³ City of Orlando v. MSD-Mattie, L.L.C., 895 So. 2d 1127, 1130, rehearing denied, 2005 Fla. App. LEXIS 5190 (Fla.5th DCA 2005).

⁴ Id.

⁵ 107 Fla. 317, 319-320 (Fla. 1932).

. . . the rule usually followed by the Courts is to hold justifiable a regulation which is made by a public utility company in good faith, and enforced by it without discrimination, unless it is plainly unreasonable or outrageous in its general operation. Whether the court might itself have done differently, or even if it sees hardships in particular cases, is not enough to induce the courts to set a regulation aside or hold it no justification.

Staff disagrees with FPL's analysis. In Florida Power & Light Co. v. State of Florida, FPL was authorized by City ordinances to prescribe reasonable rules and regulations for the management, operation and control of the service at issue. "Acting under the power thus given, the company duly adopted and promulgated [the] regulation. . . ." ⁶ In the instant docket, there is no authorized regulation for the utility to adopt and promulgate unless the Commission finds that it has the statutory authority to approve the proposed tariff revision, and so approves it. Staff recommends that it does not and should not.

Finally, citing to Landrum v. Florida Power & Light Co. ⁷ and Potts v. Florida Power & Light Co., ⁸ FPL argues that a customer is bound by the tariff regardless of his knowledge or assent thereto, and states that compliance with the tariff is therefore a condition of service. These cases apply to limitation of liability clauses contained within a tariff, and are inapplicable to the proposed tariff at issue. ⁹

Further, the Commission has found that the determination of property rights and the extent of allowable property uses are not within its jurisdiction. Florida's civil courts are the courts of competent jurisdiction to resolve real property rights issues. ¹⁰

Conclusion

Staff recommends that for the foregoing reasons, FPL's proposed tariff filing should be denied because the Commission lacks the statutory authority to approve it. In addition, the tariff lacks any criteria for determining when trees would be removed, leaving all discretion to the utility. Even the application of the criteria used for clearing transmission lines, when applied to a residential lot, could effectively eliminate almost any trees between a house and the line. Staff believes the enforcement of the requested tariff could generate numerous customer complaints

⁶ Id. at 320.

⁷ 505 So. 2d 552, 554 (Fla. 3rd DCA 1987), review denied, 513 So. 2d 1061 (Fla. 1987).

⁸ 841 So. 2d 671, 672 (Fla. 4th DCA 2003) (quoting Landrum).

⁹ "It is well established that a limitation of liability contained in a tariff is an essential part of the rate, and that the consumer is bound by the tariff regardless of his knowledge or assent thereto." Landrum v. Florida Power & Light Co., 505 So. 2d at 554. And ". . . a tariff validly approved by the Public Service Commission, including a limitation of liability for ordinary negligence, resulting in the interruption of the regular supply of electric service, is valid." Id. (emphasis added).

¹⁰ See, e.g., Order No. PSC-02-0788-PAA-EI, issued June 10, 2002, in Docket No. 010908-EI, In Re: Complaint against Florida Power & Light Company regarding placement of power poles and transmission lines by Amy & Jose Gutman, Teresa Badillo, and Jeff Lessera.

and potential legal action against the utility. Furthermore, FPL stated in its response to staff's data request that it would not disconnect service if a customer contested any proposed tree removal, making enforcement of the tariff provision essentially non-existent. The utility remains in the position of relying on the permission of the homeowner.

Nevertheless, staff notes that newly enacted section 163.3209, Florida Statutes, provides that although its provisions do not include the removal of trees outside the ROW, the removal of trees outside the ROW may be allowed in compliance with applicable local ordinances. Further, section 163.3209 requires that "[u]pon the request of the local government, the electric utility shall meet with the local government to discuss and submit the utility's vegetation maintenance plan, including the utility's trimming specifications and maintenance practices." FPL should be encouraged to coordinate its efforts to trim and remove vegetation outside the ROW with the local governments involved. Staff believes it would more fruitful for FPL to intensify its efforts to work with local governments as discussed in Docket No. 060198-EI¹¹ to adopt tree planting and removal ordinances, which will accomplish the same task with fewer drawbacks from a regulatory perspective.

¹¹ See Order Nos. PSC-06-0351-PAA-EI and PSC-06-0781-PAA-EI, issued April 25, 2006 and September 19, 2006, respectively, in Docket No. 060198-EI, In Re: Requirement for investor-owned electric utilities to file ongoing storm preparedness plans and implementation cost estimates.

Docket No. 060151-EI
Date: September 21, 2006

Issue 2: Should this docket be closed?

Recommendation: Yes, if no timely protest is filed within 21 days of the issuance date of the Order, no further action will be necessary and this docket should be closed upon the issuance of a Consummating Order. However, if a protest is filed by a person whose interests are substantially affected within 21 days of the issuance date of the Order, the docket should remain open pending resolution of the protest. (Gervasi)

Staff Analysis: If no timely protest is filed within 21 days of the issuance date of the Order, no further action will be necessary and this docket should be closed upon the issuance of a Consummating Order. However, if a protest is filed by a person whose interests are substantially affected within 21 days of the issuance date of the Order, the docket should remain open pending resolution of the protest.

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1
2 An act relating to electric transmission and
3 distribution; creating s. 163.3208, F.S.;
4 providing legislative intent; defining the term
5 "distribution electric substation"; providing
6 criteria for adoption and enforcement by a
7 local government of land development
8 regulations for new electric substations;
9 providing that new substations are a permitted
10 use in all land use categories and zoning
11 districts within a utility's service territory;
12 providing for exceptions; providing standards
13 which apply if a local government does not
14 adopt reasonable standards for substation
15 siting; providing for approval of an
16 application for development of a proposed
17 distribution electric substation when the
18 application demonstrates that the design is
19 consistent with the local government's
20 applicable standards; providing alternative
21 procedures for site approval; providing for
22 application of certain local siting standards
23 to applications received after public notice of
24 the adoption hearing on those standards;
25 providing a timeframe and procedures for a
26 local government to approve or deny an
27 application for an electric substation;
28 providing that the application is deemed
29 approved if not acted on within the timeframe;
30 providing for waiver of timeframes; authorizing
31 the local government to establish timeframes

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1 for certain required information to be
2 furnished; creating s. 163.3209, F.S.;
3 prohibiting local governments from requiring
4 any permits or approvals for certain vegetation
5 maintenance in an established electric
6 transmission or distribution line right-of-way;
7 defining the term "vegetation maintenance and
8 tree pruning or trimming"; providing for a
9 utility to give notice to the local government
10 before conducting such vegetation-maintenance
11 activities; providing for exceptions; requiring
12 the utility to provide its
13 vegetation-maintenance plan to the local
14 government and discuss it with the local
15 government; specifying standards for vegetation
16 maintenance and tree pruning or trimming
17 conducted by utilities; providing for
18 supervision of vegetation maintenance and tree
19 pruning or trimming activities; limiting the
20 height and clearance distance of vegetation
21 that may be required by a local government in
22 an established right-of-way of certain lines;
23 providing for application and construction with
24 respect to local franchise authority and
25 ordinances or regulations governing planting,
26 pruning, trimming, or removal of certain trees;
27 providing for application when a local
28 government adopts a described plan for
29 vegetation maintenance, tree pruning, tree
30 removal, and tree trimming within established
31 rights-of-way; providing that vegetation

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1 maintenance costs be considered recoverable;
2 creating s. 186.0201, F.S.; requiring electric
3 utilities to notify the regional planning
4 council of plans to site electric substations;
5 providing for content of the notification;
6 requiring that the information be included in
7 the regional planning council's annual report
8 and supplied to local governments under certain
9 conditions; amending s. 186.513, F.S.;
10 correcting a reference to a specified agency;
11 providing for application to the Florida
12 Electrical Power Plant Siting Act; providing an
13 effective date.
14

15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 163.3208, Florida Statutes, is
18 created to read:

19 163.3208 Substation approval process.--

20 (1) It is the intent of the Legislature to maintain,
21 encourage, and ensure adequate and reliable electric
22 infrastructure in the state. It is essential that electric
23 infrastructure be constructed and maintained in various
24 locations in order to ensure the efficient and reliable
25 delivery of electric service. Electric infrastructure should
26 be constructed, to the maximum extent practicable, to achieve
27 compatibility with adjacent and surrounding land uses and the
28 criteria included in this section are intended to balance the
29 need for electricity with land use compatibility.

30 (2) The term "distribution electric substation" means
31 an electric substation which takes electricity from the

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1 transmission grid and converts it to a lower voltage so it can
2 be distributed to customers in the local area on the local
3 distribution grid through one or more distribution lines less
4 than 69 kilovolts in size.

5 (3) Electric substations are a critical component of
6 electric transmission and distribution. Local governments may
7 adopt and enforce reasonable land development regulations for
8 new distribution electric substations addressing only setback,
9 landscaping, buffering, screening, lighting, and other
10 aesthetic compatibility-based standards. Vegetated buffers or
11 screening beneath aerial access points to the substation
12 equipment shall not be required to have a mature height in
13 excess of 14 feet.

14 (4) New distribution electric substations shall be a
15 permitted use in all land use categories in the applicable
16 local government comprehensive plan and zoning districts
17 within a utility's service territory except those designated
18 as preservation, conservation, or historic preservation on the
19 future land use map or duly adopted ordinance. If a local
20 government has not adopted reasonable standards for substation
21 siting in accordance with subsection (3), the following
22 standards shall apply to new distribution electric
23 substations:

24 (a) In nonresidential areas, the substation must
25 comply with the setback and landscaped buffer area criteria
26 applicable to other similar uses in that district, if any.

27 (b) Unless the local government approves a lesser
28 setback or landscape requirement, in residential areas, a
29 setback of up to 100 feet between the substation property
30 boundary and permanent equipment structures shall be
31 maintained as follows:

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1 1. For setbacks between 100 feet and 50 feet, an open
2 green space shall be formed by installing native landscaping,
3 including trees and shrub material, consistent with the
4 relevant local government's land development regulations.
5 Substation equipment shall be protected by a security fence
6 consistent with the relevant local government's land
7 development regulations.

8 2. For setbacks of less than 50 feet, a buffer wall 8
9 feet high or a fence 8 feet high with native landscaping
10 consistent with the relevant local government's regulations
11 shall be installed around the substation.

12 (5) If the application for a proposed distribution
13 electric substation demonstrates that the substation design is
14 consistent with the local government's applicable setback,
15 landscaping, buffering, screening, and other aesthetic
16 compatibility-based standards, the application for development
17 approval for the substation shall be approved.

18 (6)(a) This paragraph may apply to the proposed
19 placement or construction of a new distribution electric
20 substation within a residential area. Prior to submitting an
21 application for the location of a new distribution electric
22 substation in residential areas, the utility shall consult
23 with the local government regarding the selection of a site.
24 The utility shall provide information regarding the utility's
25 preferred site and as many as three alternative available
26 sites, including sites within nonresidential areas, that are
27 technically and electrically reasonable for the load to be
28 served, if the local government deems that the siting of a new
29 distribution electric substation warrants this additional
30 review and consideration. The final determination on the site
31 application as to the preferred and alternative sites shall be

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1 made solely by the local government within 90 days of
2 presentation of all the necessary and required information on
3 the preferred site and on the alternative sites. In the event
4 the utility and the local government are unable to reach
5 agreement on an appropriate location, the substation site
6 selection shall be submitted to mediation conducted pursuant
7 to ss. 44.401-44.406, unless otherwise agreed to in writing by
8 the parties, and the mediation shall be concluded within 30
9 days unless extended by written agreement of the parties. The
10 90-day time period for the local government to render a final
11 decision on the site application is tolled from the date a
12 notice of intent to mediate the site selection issue is served
13 on the utility or local government, until the mediation is
14 concluded, terminated, or an impasse is declared. The local
15 government and utility may agree to waive or extend this
16 90-day time period. Upon rendition of a final decision of the
17 local government, a person may pursue available legal remedies
18 in accordance with law and the matter shall be considered on
19 an expedited basis.

20 (b) A local government's land development and
21 construction regulations for new distribution electric
22 substations and the local government's review of an
23 application for the placement or construction of a new
24 distribution electric substation shall only address land
25 development, zoning, or aesthetic compatibility-based issues.
26 In such local government regulations or review, a local
27 government may not require information or evaluate a utility's
28 business decisions about its service, customer demand for its
29 service, or quality of its service to or from a particular
30 area or site, unless the utility voluntarily offers this
31 information to the local government.

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1 (7) Substation siting standards adopted after the
2 effective date of this act shall not apply to new distribution
3 electric substation applications that were submitted prior to
4 the notice of the local government's adoption hearing.

5 (8)(a) If a local government has adopted standards for
6 the siting of new distribution electric substations within any
7 of the local government's land use categories or zoning
8 districts, the local government shall grant or deny a properly
9 completed application for a permit to locate a new
10 distribution electric substation within the land use category
11 or zoning district within 90 days after the date the properly
12 completed application is declared complete in accordance with
13 the applicable local government application procedures. If the
14 local government fails to approve or deny a properly completed
15 application for a new distribution electric substation within
16 the timeframes set forth, the application shall be deemed
17 automatically approved and the applicant may proceed with
18 construction consistent with its application without
19 interference or penalty. Issuance of such local permit does
20 not relieve the applicant from complying with applicable
21 federal or state laws or regulations and other applicable
22 local land development or building regulations, if any.

23 (b) The local government shall notify the permit
24 applicant within 30 days after the date the application is
25 submitted as to whether the application is, for administrative
26 purposes only, properly completed and has been properly
27 submitted. Further completeness determinations shall be
28 provided within 15 days after the receipt of additional
29 information. However, such determination shall not be not
30 deemed an approval of the application.

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1 (c) To be effective, a waiver of the timeframes set
2 forth in this subsection must be voluntarily agreed to by the
3 utility applicant and the local government. A local government
4 may request, but not require, a waiver of the timeframes by
5 the applicant, except that, with respect to a specific
6 application, a one-time waiver may be required in the case of
7 a declared local, state, or federal emergency that directly
8 affects the administration of all permitting activities of the
9 local government.

10 (d) The local government may establish reasonable
11 timeframes within which the required information to cure the
12 application deficiency is to be provided or the application
13 will be considered withdrawn or closed.

14 Section 2. Section 163.3209, Florida Statutes, is
15 created to read:

16 163.3209 Electric transmission and distribution line
17 right-of-way maintenance.--After a right-of-way for any
18 electric transmission or distribution line has been
19 established and constructed, no local government shall require
20 or apply any permits or other approvals or code provisions for
21 or related to vegetation maintenance and tree pruning or
22 trimming within the established right-of-way. The term
23 "vegetation maintenance and tree pruning or trimming" means
24 the mowing of vegetation within the right-of-way, removal of
25 trees or brush within the right-of-way, and selective removal
26 of tree branches that extend within the right-of-way. The
27 provisions of this section do not include the removal of trees
28 outside the right-of-way, which may be allowed in compliance
29 with applicable local ordinances. Prior to conducting
30 scheduled routine vegetation maintenance and tree pruning or
31 trimming activities within an established right-of-way, the

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1 utility shall provide the official designated by the local
2 government with a minimum of 5 business days' advance notice.
3 Such advance notice is not required for vegetation maintenance
4 and tree pruning or trimming required to restore electric
5 service or to avoid an imminent vegetation-caused outage or
6 when performed at the request of the property owner adjacent
7 to the right-of-way, provided that the owner has approval of
8 the local government, if needed. Upon the request of the local
9 government, the electric utility shall meet with the local
10 government to discuss and submit the utility's vegetation
11 maintenance plan, including the utility's trimming
12 specifications and maintenance practices. Vegetation
13 maintenance and tree pruning or trimming conducted by
14 utilities shall conform to ANSI A300 (Part I)--2001 pruning
15 standards and ANSI Z133.1-2000 Pruning, Repairing,
16 Maintaining, and Removing Trees, and Cutting Brush--Safety
17 Requirements. Vegetation maintenance and tree pruning or
18 trimming conducted by utilities must be supervised by
19 qualified electric utility personnel or licensed contractors
20 trained to conduct vegetation maintenance and tree trimming or
21 pruning consistent with this section or by Certified Arborists
22 certified by the Certification Program of the International
23 Society of Arboriculture. A local government shall not adopt
24 an ordinance or land development regulation that requires the
25 planting of a tree or other vegetation that will achieve a
26 height greater than 14 feet in an established electric utility
27 right-of-way or intrude from the side closer than the
28 clearance distance specified in Table 2 of ANSI Z133.1-2000
29 for lines affected by the North American Electric Reliability
30 Council Standard, FAC 003.1 requirement R1.2. This section
31 does not supersede or nullify the terms of specific franchise

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1 agreements between an electric utility and a local government
2 and shall not be construed to limit a local government's
3 franchising authority. This section does not supersede local
4 government ordinances or regulations governing planting,
5 pruning, trimming, or removal of specimen trees or historical
6 trees, as defined in a local government's ordinances or
7 regulations, or trees within designated canopied protection
8 areas. This section shall not apply if a local government
9 develops, with input from the utility, and the local
10 government adopts, a written plan specifically for vegetation
11 maintenance, tree pruning, tree removal, and tree trimming by
12 the utility within the local government's established
13 rights-of-way and the plan is not inconsistent with the
14 minimum requirements of the National Electrical Safety Code as
15 adopted by the Public Service Commission. Provided, however,
16 such a plan shall not require the planting of a tree or other
17 vegetation that will achieve a height greater than 14 feet in
18 an established electric right-of-way. Vegetation maintenance
19 costs shall be considered recoverable costs.

20 Section 3. Section 186.0201, Florida Statutes, is
21 created to read:

22 186.0201 Electric substation planning.--Electric
23 utility substations respond to development and, consequently,
24 siting locations cannot be precisely planned years in advance.
25 Nevertheless, on or before June 1 of every year after the
26 effective date of this act, the electric utilities with
27 service areas within each regional planning council shall
28 notify the regional planning council of the utilities' current
29 plans over a 5-year period to site electric substations within
30 the local governments contained within each region, including
31 an identification of whether each electric substation planned

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1 within a general area is a distribution or transmission
2 electric substation, a listing of the proposed substations'
3 site acreage needs and anticipated capacity, and maps showing
4 general locations of the planned electric substations. This
5 information is advisory, shall be included in the regional
6 planning council's annual report prepared pursuant to s.
7 186.513, and shall be supplied directly to local governments
8 requesting the information.

9 Section 4. Section 186.513, Florida Statutes, is
10 amended to read:

11 186.513 Reports.--Each regional planning council shall
12 prepare and furnish an annual report on its activities to the
13 state land planning agency as defined in s. 163.3164(20)
14 ~~department~~ and the local general-purpose governments within
15 its boundaries and, upon payment as may be established by the
16 council, to any interested person. The regional planning
17 councils shall make a joint report and recommendations to
18 appropriate legislative committees.

19 Section 5. Nothing in this act is intended to
20 supersede the provisions of part II of chapter 403, Florida
21 Statutes.

22 Section 6. This act shall take effect upon becoming a
23 law.

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