

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for Approval of 2007)
Revisions to Underground Residential)
and Commercial Distribution Tariff, by) DOCKET NO. 070231-EI
Florida Power & Light Company.) FILED: November 27, 2007
_____)

**RESPONSE OF THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM
AND THE CITY OF COCONUT CREEK, FLORIDA IN OPPOSITION
TO FPL'S MOTION TO DISMISS**

The Municipal Underground Utilities Consortium (the "MUUC"), and the City of Coconut Creek, Florida ("Coconut Creek"), pursuant to Rule 28-106.204(1), Florida Administrative Code ("F.A.C."), and by and through their undersigned counsel, hereby file this Response in Opposition to Florida Power & Light Company's ("FPL") motion to dismiss the MUUC's and Coconut Creek's Petition Protesting Order No. PSC-07-0835-TRF-EI ("Petition") filed herein on November 6, 2007, and renew their requests that the Commission conduct a formal proceeding, including an evidentiary hearing if necessary, to resolve the issues raised in their Petition.

In summary, taking all facts pled by the MUUC and Coconut Creek, and all reasonable inferences arising from those facts, as true, the Commission should deny FPL's motion. Further, the Commission should flatly reject FPL's assertion that Commission Rule 25-6.078, F.A.C. ("Rule 25-6.078") does not apply to this case because proceedings are initiated by filing petitions or opening dockets that create a point of entry, and there was no

docket nor any point of entry to address FPL's new Underground Residential Distribution ("URD") charges until April 2, 2007, when FPL filed its petition that initiated the instant Docket No. 070231-EI.

Further the Commission should recognize that FPL's claims here are specious and that FPL's assertions contradict FPL's much-touted commitment to support undergrounding. FPL's claims are specious because FPL had, even before it filed its notice and months before filing its petition in this docket, already done - and filed with the Commission - the analysis to support the recognition of "avoided storm restoration cost savings to the general body of customers as a result of these facilities being placed underground" for "[t]he Commission's standard Low Density Subdivision model of 210 homes," which is one of the two principal categories to which the URD charge¹ applies. FPL's position herein - attempting to avoid giving appropriate credits based on storm restoration cost savings in calculating CIACs for new underground ("UG") construction where FPL has already developed the value for those credits and defended them to the Commission - contradicts FPL's own policy initiatives and the goals of its Storm Secure Plan, and the Commission should accordingly reject its position and deny FPL's motion to dismiss.

¹ This Response specifically addresses only FPL's URD charges. The Petitioners assert that FPL's Underground Commercial Distribution charges must also comply with Rule 25-6.078, F.A.C.

In further support of their Response and their Petition, the MUUC and Coconut Creek state as follows.

Standard of Review

The function of a motion to dismiss is to raise, as a question of law, the sufficiency of the facts alleged to state a cause of action upon which relief can be granted. Connolly v. Sebeco, 89 So. 2d 482 (Fla. 1956); Visor v. Buhl, 760 So. 2d 274 (Fla. 4th DCA 2000). For the purpose of considering a motion to dismiss, the moving party is deemed to admit all facts well pled in the complaint, as well as all reasonable inferences arising from those facts. See Simon v. Tampa Electric Co., 202 So. 2d 209 (Fla. 2d DCA 1967). Stated differently, in deciding whether to grant or deny a motion to dismiss, all allegations in the petition must be taken as true. See Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993).

ANALYSIS

FPL's motion to dismiss challenges the standing of the MUUC and Coconut Creek to participate in this docket, and further assert that there is no viable claim for relief posed by the MUUC's and Coconut Creek's Petition. Naturally, the MUUC and Coconut Creek disagree: as shown below, taking all facts pled in their Petition and all reasonable inferences therefrom as true, both the MUUC and Coconut Creek have established their standing. Moreover, information well-known to FPL, but ignored in its

motion to dismiss, further confirms the Petitioners' standing. FPL's principal argument that there can be no viable claim for relief under Rule 25-6.078 because it filed a "notice" before the current Rule took effect is simply misplaced, because any affected entity is entitled to the protection of the Commission's Rules when those rules are effective, and because there was no proceeding, no docket, and no point of entry regarding FPL's new URD charges until April 2, 2007, two months after Rule 25-6.078 became effective. Finally, the Commission should reject FPL's self-contradictory positions: here FPL is attempting to avoid giving fair credit for the benefits provided by undergrounding in its URD charges, which is directly contrary to FPL's avowed support for undergrounding in FPL's Storm Secure Plan filed in January 2006 and elsewhere. FPL's position here is particularly egregious here because FPL had - even before filing its "notice" - already done the analysis to support the inclusion of storm restoration cost savings in computing CIACs for typical low-density subdivisions as recognized under the Commission's rules and standard practices.

I. The MUUC and Coconut Creek Have Pled Sufficient Facts to Establish Their Standing.

As explained below, both Coconut Creek and the MUUC have pled sufficient facts that, taken with reasonable inferences arising from those assertions, establish their standing.

Moreover, information well-known to FPL, although not pled specifically in their Petition, further confirms their standing.

A. Coconut Creek's Standing

As alleged in its Petition, Coconut Creek has plans for development and redevelopment projects within the City that will include undergrounding of more than nine miles of existing distribution lines and the installation of new UG distribution lines in new development areas. The City is attempting to partner with developers - and with FPL - to ensure that these projects are completed as cost-effectively as possible. Among other things, the City has requested that FPL, subject to the City's commitment to be responsible for payment of applicable CIACs, include new-development areas as part of the City's contiguous areas for qualification for FPL's Governmental Adjustment Factor waiver (a 25 percent credit against otherwise applicable CIACs) and also that FPL provide the same or a similar credit for new construction that properly reflects the storm restoration cost savings, and other operational cost savings (e.g., avoided tree-trimming and pole inspection costs) that having such areas served by UG facilities will provide to FPL and its general body of customers, consistent with the Commission's rules.

While Coconut Creek believes that the foregoing allegations in its Petition are fully sufficient to support its standing

herein, information well-known to FPL further confirms the City's standing. Coconut Creek has requested a ballpark estimate for an extensive undergrounding initiative that the City expects will include several segments, including 3 specifically identified "greenfield" segments, which would obviously and inherently be covered by FPL's URD and UCD tariffs. Coconut Creek specifically advised FPL of its intentions and interest in incorporating these greenfield sites into its overall undergrounding initiative by its letter to FPL requesting ballpark estimates dated August 20, 2007. A copy of this letter is included as Exhibit 1 to this Response. Of particular note is the City's statement at page 2 of that letter describing the City's request for a ballpark estimate for its "Greenfield - Promenade at Lyons" segment (designated as 1b by the City), where the City stated as follows:

The interior area of The Shoppes development will be all new UG facilities. The City intends to be the applicant for this component of the work as well as for all other identified project segments, so we expect that this part will also qualify for the Governmental Adjustment Factor credit against the otherwise applicable Contribution in Aid of Construction (CIAC).

(The Shoppes project is being developed by Stanbery Development, the developer with whom Coconut Creek is attempting to partner to accomplish the subject undergrounding project.)

As described in the City's letter to FPL, this project will consist of 289,607 square feet of commercial space, 50,000 square feet of office space, and 456 residential units. Thus this

project would, in and of itself, almost certainly meet the size criteria for the applicability of the GAF Waiver (directly implying that it would provide comparable benefits) and would obviously, as greenfield construction consisting of a substantial number of residences and commercial facilities, be subject to FPL's URD and UCD tariffs. Any assertion by FPL that Coconut Creek's petition for formal proceeding is defective because it did not allege these specific project segments would be at best disingenuous. FPL knew and knows of these projects, and probably knew of the City's plans from even earlier conversations with City personnel.²

Finally, if the Commission were to allow FPL to continue collecting its URD charges without incorporating the storm restoration cost savings and other savings values required by Rule 25-6.078, the result will be that Coconut Creek (or Stanbery Development) or any other applicant will overpay for new UG facilities - an obvious adverse effect on Coconut Creek's and other applicants' substantial interests - and thus subsidize FPL's other customers. The Commission cannot reasonably apply Rule 25-6.078 to allow this result.

²Rather than respond cooperatively with an effort to provide appropriate credits, reflecting the cost savings provided by this undergrounding project and two other greenfield projects identified in the City's request, FPL simply ignored these requests in its response. A copy of that response is included here as Exhibit 2 to the City's and the MUUC's Response to FPL's motion.

The MUUC's Standing

FPL asserts that the MUUC should be dismissed because it has failed to allege with specificity that a significant number of its members will be affected by the Commission's decisions herein, and that its claims are basically about speculative economic injury. The MUUC disagrees. Among other things, the MUUC asserted the following in its Petition: that the vast majority of the MUUC's members are directly subject to FPL's tariffs, that the MUUC's members have ongoing interests in ensuring that new construction within their jurisdictions is served by UG electric facilities, consistent with the express pro-undergrounding policies and goals announced by FPL in its Storm Secure Initiatives in January 2006, and that the charges for new UG service are directly impacted by FPL's tariffs. The MUUC asserts that these allegations are sufficient to establish its standing to protect its members' interests.

Further, information well-known to FPL supports the MUUC's claim to standing here. As of June 2006, FPL had received 59 requests for ballpark cost estimates (from 58 different local governments) for UG conversion projects, and at least 8 requests for binding cost estimates for UG conversion projects, including such requests from a significant number of the MUUC's members. See Exhibit 3 to this Response, which is FPL's responses to the Staff's data request in Docket No. 060150-EI, which the MUUC and

Coconut Creek believe was submitted in late June or early July 2006. As of October 2007, the number of binding cost estimate requests received by FPL had reached 18. Testimony of Manuel Miranda in response to questioning by Commissioner McMurrin, Docket No. 070301-EI, Hearing Transcript at 220-221. The MUUC did not include this information in its initial Petition because it was and is obviously well-known to FPL. Surely FPL is not going to argue that none of these MUUC members is going to want to incorporate areas of new, greenfield UG construction into an overall UG initiative. Obviously, some members, such as Palm Beach and Jupiter Inlet Colony, are mostly built-out and will not; others, such as Coconut Creek and Flagler Beach, with areas that are not yet built out, probably will.

Moreover, these MUUC members will be subject to, and affected by, the URD tariffs (and possibly also by the UCD tariffs) if they are applicants for the UG service, which seems at least reasonably likely as demonstrated by the Coconut Creek example. The mere fact that only one or two³ of the MUUC's members have current projects that they would like to have treated fairly under the Commission's rules and FPL's URD tariffs does not change this fact. Accordingly, FPL's assertion that the

³ In addition to Coconut Creek, the City of Flagler Beach has advised the undersigned that it would be interested in pursuing undergrounding of new facilities, pending the outcome of current legal proceedings involving the financing for community redevelopment agencies.

MUUC's claims lack sufficient immediacy to justify the MUUC's participation here, as well as FPL's assertion that the MUUC's and its members' claims are based on future economic injury, in the context of an inherently prospective tariff proceeding, should not avail to dismiss the MUUC from this docket. The MUUC was formed for the purposes of promoting the installation of underground ("UG") electric and other utility facilities in the public interest, and ensuring that, to the maximum extent feasible and practicable, that underground installations and conversions are paid for through appropriate, fair, just, equitable, and reasonable combinations of utility funding and funding by entities such as the MUUC's members. This is exactly what it is doing here: seeking to obtain fair tariff treatment, under the Commission's applicable rules, for undergrounding projects that will provide the benefits of undergrounding that FPL claims it wants to promote.

Moreover, many of the MUUC's members are awaiting the outcome of further negotiations with FPL⁴ and of further proceedings, including this proceeding, and also awaiting FPL's

⁴ The MUUC and FPL have continuing dialogue regarding other issues, which the MUUC is hopeful of resolving through the referenced negotiations. If these hopes are fulfilled, the MUUC would be back before the Commission with FPL seeking approval of the fruits of those negotiations. If their hopes are dashed, then the MUUC will likely be back before the Commission asking the Commission to redress the grievances of the MUUC's members.

long-promised submittal⁵ of its value for operational cost savings other than storm restoration cost savings before deciding whether and how to proceed with their contemplated undergrounding projects. All of the MUUC's members (except the City of Panama City Beach, which is served by Gulf Power Company) will be subject to FPL's applicable tariffs, including this tariff, and the argument that these members cannot seek fair treatment under these tariffs and under the Commission's rules, through their consortium formed for exactly this purpose, is misplaced.

⁵ On April 3, 2007, the MUUC's and Coconut Creek's attorney participated in a conference hosted by the Commission Staff to discuss FPL's GAF Waiver tariff. The participants included FPL representatives, several members of the Commission Staff, and the MUUC's and Coconut Creek's attorney. Among other things, the participants discussed FPL's value for estimated cost savings attributable to cost factors other than avoided storm restoration costs. In that conference, FPL's attorney John Butler stated that FPL would probably submit that information coinciding with FPL's filing of its Storm Hardening Plan in early May. Further, in response to a question from Mr. Jim Breman of the Commission Staff, Mr. Tom Koch of FPL stated that FPL's filing of the other operational cost values was probably thirty days away. In the intervening months, FPL's projected submittal date has continually been pushed out, incrementally, into the future, while the MUUC has waited patiently. Most recently, FPL has advised the mayor of one of the MUUC's members that FPL intends to file this value and supporting information by the end of 2007. While FPL's promise that cities and towns that go forward with UG projects in the meantime will receive credit for the amount ultimately approved is somewhat comforting, the uncertainty as to the value - and thus to the resultant CIACs - continues to cause some MUUC members to postpone their decisions because they cannot know what the cost of their projects will be.

**II. The MUUC and Coconut Creek Have Stated
Viable Claims for Relief.**

FPL asserts that neither Coconut Creek nor the MUUC can state a viable claim for relief as to the URD tariffs because FPL claims that it initiated these proceedings before Rule 25-6.078 became effective. FPL goes on to assert that the MUUC and Coconut Creek have not stated viable claims for inclusion of operational cost savings in FPL's URD charges, that FPL cannot incorporate the effects of storm hardening into its URD charges, and that the MUUC's and Coconut Creek's request that new UG construction projects be included as eligible projects under FPL's Governmental Adjustment Factor Waiver tariff is inappropriate in this docket. As explained below, with the exception of the last point, the MUUC and Coconut Creek believe that FPL's arguments are misplaced and self-contradictory. While the MUUC and Coconut Creek agree that the GAF tariff is not directly at issue in this docket, FPL's assertion elevates form over substance and is merely an attempt to avoid what is obviously a legitimate issue: whether new UG construction should be included within various aspects of the GAF tariff. For the obvious reason that undergrounding provides the benefits identified by FPL whether it is in a conversion or new construction context, the MUUC and Coconut Creek believe that it is obviously appropriate for inclusion, and if the Commission

wishes for the Petitioners to initiate a separate proceeding to address this issue, they are fully prepared to do so.

A. Proceedings Are Initiated By Filing Petitions and Applications, and by Opening Dockets, Not By Filing Preliminary Notices.

FPL's principal argument is that neither Coconut Creek nor the MUUC can state a viable claim for relief as to the URD tariffs because FPL claims that it initiated these proceedings before Rule 25-6.078 became effective. First, Coconut Creek and the MUUC respectfully but strongly disagree with this assertion: there was no proceeding before April 2, 2007 when FPL filed the petition that initiated this docket. There was no docket opened when FPL filed its notice in October, and no point of entry created for any party to address its issues. The proceeding was initiated, and the initial point of entry created, when Docket No. 070231-EI was initiated by FPL's petition on April 2, 2007.

It is well established in Florida administrative law that applications are governed, at a minimum, by the rules in effect at the time that the application is filed. Sexton Cove Estates v. Pollution Control Board, 325 So. 2d 468, 470 (Fla. 1st DCA 1976). Here, FPL's petition is comparable to a permit application, and the currently effective version of Rule 25-6.078 governs. Additional Florida administrative case law goes even further: in Guerra v. Dep't of Professional Regulation, 1986 WL 401566 at 3 (Fla. Div. Admin. Hrgs.), a rule challenge case

involving eligibility to take the M.D. licensure examination, the Hearing Officer stated that "a policy-making rule adopted subsequent to the filing of an application but before APA remedies, timely invoked, are fulfilled is binding on an applicant." In Turro v. Dep't of Health & Rehabilitative Services, 458 So. 2d 345, 346 (Fla. 1st DCA 1984), the court held that where rules were adopted after commencement of the hearings in the underlying administrative proceedings, and where an applicant was "aware of the impending amendment to the rule and had an opportunity to conform proofs" to the new rule's methodology, it was proper for the agency to apply the new rules.⁶ Note that this is a much more extreme case than posed in the instant docket, in that FPL didn't even file its petition until two months after the subject Rule 25-6.078 became effective and in that FPL was fully aware of the pending rule amendments.

As to the footnote on page 1 of the Commission's Order No. PSC-07-0835-TRF-EI, the MUUC and Coconut Creek believe that FPL simply led the Commission into inadvertent and unintentional error by imposing its gloss that these proceedings were initiated in October 2006. This is contrary to fundamental precepts of Florida administrative law that affected persons and entities are to be afforded appropriate points of entry into agency

⁶ See also Grove Isle, Ltd. v. Bayshore Homeowners' Ass'n, 418 So. 2d 1046, 1049 (Fla. 1st DCA 1982): "Grove Isle's argument that DER should be estopped from applying the new, more stringent water

proceedings. See, e.g., Dore, Access to Florida Administrative Proceedings, 13 Fla. St. U. L. Rev. 965, 1081: "The opportunity for an adjudicatory proceeding, either formal or informal, before an agency determines the substantial interests of a party was intended to be broadly available." See also Capeletti Brothers, Inc. v. Florida Dep't of Transportation, 362 So. 2d 346, 348 (Fla. 1st DCA 1978): "An agency must grant affected parties a clear point of entry, within a specified time after some recognizable event in investigatory or other free-form proceedings, to formal or informal proceedings under Section 120.57." Here, any review the Commission Staff were conducting of FPL's notice was at most free-form proceedings, and there was no "recognizable event" providing a clear point of entry at least until the Commission opened Docket No. 070231-EI on April 2, 2007. Regarding free-form agency action, the First DCA stated in Nelson v. Dep't of Agriculture, 424 So. 2d 860, 862 (Fla. 1st DCA 1983) that under APA concepts, "conceptually an agency's free-form action . . . is, with APA remedies timely requested and as yet unfulfilled, no agency action at all."

There was no docket, and thus no cognizable point of entry into any Commission proceeding, before April 2, 2007. FPL could have filed its petition prior to the effective date of Rule 25-6.078. However, it simply did not do so.

quality rule is without merit."

B. Persons and Entities Subject to the Commission's Rules Are Entitled to the Benefits and Protections of Those Rules When They Are Effective.

It is facially obvious that any person or entity subject to a utility's tariffs, where those tariffs are in turn subject to the Commission's rules, is entitled to the protections afforded by the Commission's rules as of the date that they are effective, or at worst, within a reasonable time after they become effective. Here, the lag has been at least 8 months, from February to October, which is at best on the outside "long" edge of what might be considered a reasonable time. If the Commission dismisses the MUUC's and Coconut Creek's Petition, then it will be even longer - unreasonably longer - before affected persons and entities will be given what Rule 25-6.078 purports to vouchsafe to them.

If Coconut Creek or any other affected applicant had petitioned the Commission for the benefits of the rules on February 6, the MUUC and Coconut Creek submit that the Commission would have been legally obliged to initiate a proceeding to determine the proper URD charges under those rules. The result should be no different where, as here, FPL filed its amendments two months later, and particularly where, as here, FPL had already done most, if not all, of the analysis required to support the inclusion of at least storm restoration cost savings in its new URD CIAC charges. It makes no sense at all that FPL

could escape the requirements of Rule 25-6.078 under a filing made two months after that Rule became effective, and it makes no sense that an affected entity - here Coconut Creek, which has specifically asked for appropriate credits for new UG construction projects, could be denied the benefits of the Commission's Rules more than 8 months after that Rule became effective.

C. FPL's Position Herein Contradicts Its Own Numerous Statements Supporting Undergrounding As a Meaningful Reliability Improvement Measure That Will Provide Significant Benefits to FPL and Its General Body of Customers.

It also makes no sense that FPL would even try to escape the Rule's requirements, and to avoid giving appropriate credit for benefits provided in new UG construction applications, but that is exactly what FPL is attempting here. FPL's basic argument here is incomprehensible in light of its avowed commitment to promote undergrounding as a means of improving reliability, in light of its express and explicit recognition of the cost savings benefits that undergrounding provides to FPL and its general body of customers, and in light of the fact that FPL had already done the calculations and analysis to support applying appropriate storm restoration cost savings credits in computing URD CIACs in September 2006, even before FPL claims to have initiated this proceeding.

At page 3 of its Storm Secure Plan, FPL declared its intent

to promote undergrounding by means of its GAF Waiver tariff, by aggressively encouraging local government undergrounding ordinances, and by further facilitating undergrounding by allowing UG facilities to be placed in road rights-of-way. It is plainly contradictory for FPL to claim to want to promote undergrounding as a key element of its Storm Secure Plan and at the same time attempt to avoid the Rule's requirement to give fair credit for storm restoration costs savings and other cost savings benefits provided by undergrounding.

The point is that FPL knows that there is substantial value to underground installations, and FPL's argument that the Rules should not apply is at best specious, because FPL had, even before it filed its notice and months before filing its petition in this docket, already done - and filed with the Commission - the analysis to support the inclusion of storm restoration cost savings from undergrounding in a typical 210-unit low-density subdivision. In Exhibit 2 to FPL's amended petition for approval of its GAF Waiver tariff, submitted on September 21, 2006, FPL included an analysis of the storm restoration cost savings from undergrounding. (This analysis is included as Exhibit 4 to this Response.) Most significantly here, this FPL analysis was based on the estimated "avoided storm restoration cost savings to the general body of customers as a result of these facilities being placed underground" for "[t]he Commission's standard Low Density

Subdivision model of 210 homes."

FPL then went on to defend these values and describe their meaning to the Commission. In a letter from FPL attorney John Butler to Ms. Blanca S. Bayo, Director of the Division of Commission Clerk and Administrative Services, dated January 16, 2007, FPL stated that the storm restoration cost savings value (24 percent of the otherwise applicable CIAC) reported in the MUUC's UG Cost-Effectiveness Study was "almost exactly the same as the 24% GAF Waiver that FPL has proposed and solidly within the range of estimated savings that FPL submitted as Exhibit 2 to its amended GAF tariff petition (i.e., 20%-41%, depending on assumptions)." A copy of this letter is included as Exhibit 5 to this Response. FPL went on to further defend its value, stating:

FPL estimated that the storm restoration cost savings for large, contiguous projects will range from 20% to 41%, meaning that the undergrounding benefits to the general body of customers are likely to be as much or more than the additional costs customers will pay to support the GAF Waiver.

Id. (Emphasis supplied.) It makes little difference whether the UG facilities are in a conversion setting or in new construction. The value of FPL not having to incur substantial storm restoration costs for a large, contiguous area served by UG facilities is the same (with the exception of conversion cases where the conversion is from overhead rear-lot construction to front-lot UG construction, where the benefits of the UG conversion would be even greater).

In the face of these facts, FPL's position herein - attempting to avoid giving appropriate credits based on storm restoration cost savings in the calculation of CIACs for new UG construction where FPL has already developed the value for those credits and defended them to the Commission - is astonishing, and the Commission should reject FPL's contradictory assertions and deny FPL's motion to dismiss.

D. It Is Appropriate To Incorporate the Effects Of Storm Hardening Into FPL's URD Charges Through Action In This Docket.

FPL argues that it is logistically impossible for it to have incorporated its storm hardening standards into its URD charges because its Storm Hardening Plan has not yet been approved by the Commission. The MUUC and Coconut Creek disagree: FPL has known for a long time - since January 2006 when it published and filed its Storm Secure Plan - what its proposed hardening standards are, and FPL could have incorporated those costs into its URD computations and thus advised the Commission, subject to the Commission's ultimate approval of FPL's Storm Hardening Plan.

Moreover, even assuming that FPL's "logistical impossibility" claim had any merit, it does not moot the issue of the proper inclusion of the cost of storm-hardened OH facilities into FPL's URD tariff through this proceeding. The issue of what the cost of an equivalent overhead system built to extreme wind loading criteria, or any other hardening standard approved by the

Commission in FPL's Storm Hardening Plan docket, is obviously an issue that is capable of factual proof in this proceeding. The Commission is scheduled to vote on FPL's Storm Hardening Plan on December 4, with a standard order to be issued on December 24. Thus, barring an appeal, by the time the issues in this proceeding are decided, FPL's Storm Hardening Plan will be fully effective.

E. Application of the GAF Waiver to New Underground Facilities.

The MUUC and Coconut Creek agree that FPL's GAF Waiver tariff, on its face, applies only to UG conversion projects. However, for FPL to assert that this cannot be raised here: (1) contradicts the purposes of the GAF Waiver tariff; (2) contradicts FPL's avowed support for undergrounding, as articulated in FPL's Storm Secure Plan filed with the Commission in January 2006; and (3) elevates form over substance. If the Commission tells the MUUC and Coconut Creek that they must file a new petition asking the Commission to amend FPL's GAF Waiver tariff to include new construction, the MUUC and Coconut Creek are fully prepared to make such a filing. Such filing would likely be accompanied by a motion to consolidate the issues raised therein with those raised here, which would seem likely to be granted.

As described above, Coconut Creek requested this treatment from FPL in its request for ballpark cost estimates in August.

This treatment - comparable credit for a comparable UG project - is obviously consistent with the purposes and goals of the GAF Waiver, which are to foster the undergrounding of significant areas, under the auspices of local government applicants, so as to provide the benefits of avoided storm restoration costs to FPL and its general body of customers.

Moreover, the issue of whether the GAF Waiver applies and whether applicants are entitled to properly calculated URD charges (i.e., charges that recognize the storm restoration and other operational cost savings provided by UG facilities) are not only separable issues, they were also identified as separate issues in the MUUC's and Coconut Creek's Petition. Specifically, Issues 1-3 in that Petition addressed the proper calculation of the URD charges, without any reference to the GAF Waiver, and are thus viable claims in this docket, even narrowly circumscribed to exclude GAF Waiver issues. The MUUC's and Coconut Creek's Issue 4 addresses the issue whether new developments within a municipality qualify for the Governmental Adjustment Waiver credit, where the Local Government is willing to be the applicant for service in order to ensure that the wide-area benefits of undergrounding are realized, consistent with the purposes of the GAF tariff and FPL's Storm Secure Initiatives. The MUUC and Coconut Creek believe that, because these issues all obviously relate to the same fundamental issue and the same core, operative

facts - providing appropriate credit, based on storm restoration and other cost savings, in the computation of CIACs for undergrounding - they should be addressed here, but as stated above, the Petitioners are fully willing to file a separate petition seeking modification of the GAF Waiver tariff to include new UG construction as eligible for credits and for inclusion in satisfying the eligibility criteria for larger undergrounding projects.

CONCLUSION

FPL's motion to dismiss is misplaced because affected entities are entitled to the benefits and protections of the Commission's rules when those rules become effective, and because the MUUC and Coconut Creek have pled sufficient facts to establish their standing in this proceeding.


The MUUC and its members, including Coconut Creek, are simply trying to obtain fair credit under FPL's tariffs for providing meaningful storm restoration cost savings and other cost savings benefits. As the applicant for UG service in new construction projects, a town or city will provide the assurance to FPL that the entire area will be undergrounded, just as it will in a conversion project.

If FPL truly supports undergrounding, and if it truly believes what it has repeatedly told the Commission - that undergrounding large, contiguous areas will provide substantial storm restoration cost savings to FPL and its general body of

customers - then FPL should readily embrace and implement its own values for those storm restoration cost savings in computing its URD CIAC charges, and it should readily commit to including appropriate values for such savings in computing CIACs pursuant to its UCD tariffs.

WHEREFORE, the Municipal Underground Utilities Consortium and the City of Coconut Creek, Florida respectfully ask the Florida Public Service Commission to deny FPL's motion to dismiss and renew their request that the Commission conduct a formal proceeding to investigate this matter, and to issue appropriate orders granting the relief requested in this docket and such other relief that the Commission deems appropriate.

Respectfully submitted this 27th day of November, 2007.



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CERTIFICATE OF SERVICE


I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following, by electronic and U.S. Mail, on this 27th day of November, 2007.

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Attorney

DOCKET NO. 070231-EI, IN RE: PETITION FOR APPROVAL OF FPL'S
UNDERGROUND RESIDENTIAL AND COMMERCIAL DISTRIBUTION TARIFFS

RESPONSE OF THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM
AND THE CITY OF COCONUT CREEK, FLORIDA IN OPPOSITION
TO FPL'S MOTION TO DISMISS

EXHIBIT 1



SHEILA N. ROSE
DEPARTMENT DIRECTOR

August 20, 2007

Ms. Jocelyn Wright
Florida Power and Light
7201 Cypress Road
Plantation, FL 33317

RE: **Coconut Creek's Request for Ballpark Cost Estimates
for Undergrounding Projects** ✓

Dear Ms. Wright:

Please accept this letter as The City of Coconut Creek's request for "ballpark" cost estimates for the undergrounding project consisting of the segments listed below. Most of the project segments involve the conversion of existing overhead (OH) to underground (UG) facilities; at least one, and perhaps two, project segments involve the installation of new UG facilities. These segments together comprise our overall desired project, which consists of several continuous miles of Lyons Road within the City (from the Sawgrass Expressway to Atlantic Boulevard), plus certain adjacent interior areas, as well as what the City refers to as our "Education Corridor," Coconut Creek Parkway from Banks Road to Florida's Turnpike.

Distribution Facilities

Phasing Plan

- 1a. Existing (OH) to (UG) – "Promenade at Lyons" (See Exhibit "A")
- South side of Wiles Rd. + - 900 LF east to Lyons Rd.
 - West side of Lyons Rd. + - 1,300 LF south to Cullum Rd.

- 1b.* Greenfield - "Promenade at Lyons" (See Exhibit "A")
This is a Commercial office development of +- 28 acres, consisting of (289,607 SF Commercial, 50,000 SF of Office, and 456 units of Residential.

*Note: The interior area of The Shoppes development will be all new UG facilities. The City intends to be the applicant for this component of the work as well as for all other identified project segments, so we expect that this part will also qualify for the Governmental Adjustment Factor credit against the otherwise applicable Contribution in Aid of Construction (CIAC).

- 2a. Existing (OH) to (UG) – "Paloma Lakes" (See Exhibit "A")
West side of Lyons Rd. from Hilton Estates south + - 1,300 lf on Lyons Rd. to Wiles then West + - 650 LF on Wiles Rd.

2b.* Greenfield - "Paloma Lakes" (See Exhibit "A")

This is a Residential Community of + - 29 acres, consisting of (300 units, 21 buildings, Residential).

***Note:** The Developer, Lennar Homes Inc., has previously contacted FPL with arrangements for pre-payment to UG the Greenfield internal development. The City would seek an identifiable credit of the amount paid for that UG installation as the City intends to be the applicant for this component of the work as well as for all other identified project segments, so we expect that this part will also qualify for the Governmental Adjustment Factor credit against the otherwise applicable Contribution in Aid of Construction (CIAC).

3a. Existing (OH) to (UG) - "Lyons Rd" (See Exhibit "A")

East and west sides of Lyons from Winston Park Blvd. south to Hilton Rd. then west on Hilton Rd. to 48th Ave.

3b. Existing (OH) to (UG) - "Lyons Rd" (See Exhibit "A")

East and west side of Lyons Road from Winston Park Blvd. north to the Sawgrass Expressway.

4a. Existing (OH) to (UG) - "MainStreet Development" (See Exhibit "A")

- West side of Lyons Rd. from Cullum Rd. south to Sample Rd.
- South side of Wiles Rd. from US 441 east + - 2,000 LF
- Cullum Rd. from US 441 east to Lyons Rd.
- 40th Street from US 441 east to Banks Rd.
- Banks Rd. from 40th Street South to Sample Rd.
- East side of US 441 from Wiles Rd. south to Sample Rd.

4b. Greenfield - "MainStreet Development" (See Exhibit "A")

A Regional Activity Center of 243 acres of mixed land use consisting of 850,000 SF of Office, 2,500,000 SF of Commercial, 2,700 dwelling units of Residential, 1,300 hotel rooms, and 303,000 SF of Community Facilities. Also included are a minimum of 5 acres of recreation with 14.7 acres of conversation area.

5a. Existing (OH) to (UG) - "Lyons Rd" (See Exhibit "A")

East side of Lyons Rd. from Wiles Rd. south to Sample Rd.

5b. Existing (OH) to (UG) - "Lyons Rd" (See Exhibit "A")

West side of Lyons Rd. from Sample Rd. south to Copans Rd.

5c. Existing (OH) to (UG) - "Lyons Rd" (See Exhibit "B")

East and west sides of Lyons Rd. from Copans Rd. south to Coconut Creek Pkwy.

5d. Existing (OH) to (UG) - "Lyons Rd" (See Exhibit "B")

West side of Lyons Rd. from Coconut Creek Pkwy. south to Atlantic Blvd.

6. Existing (OH) to (UG) - "Coconut Creek Pkwy" (See Exhibit "B")

South side of Coconut Creek Pkwy. from Banks Rd. east to the Florida's Turnpike

7. Existing (OH) to (UG) - "Lyons Rd" (See Exhibit "C")

East and west sides of Lyons Rd. from the Sawgrass Expressway north to the Palm Beach County line (Hillsboro Canal).

Transmission Facilities

The City understands that the undergrounding of transmission facilities is generally considered to be expensive. Nonetheless, we wish to actively consider undergrounding the following transmission facilities as part of our overall UG conversion project.

- State Road 7/US 441 from Wiles Rd. to Sample Rd.
- The Broward-Ranch transmission corridor that runs from Lyons Road to State Road 7/US 441
- Lyons Road from Cullum Rd. to Sample Rd.
- Any other transmission lines on Lyons Rd. from Sample Rd. south to Atlantic Blvd.

Please provide us with the ballpark cost estimate for each segment, FPL's initial thoughts on appropriate phasing for the segments as part of the total UG project, and an approximate schedule for completing the total project. Please provide any other instructions or information that will support our issuance of a purchase order for the completion of this work.

Also, with regard to phasing of the projects, please note that the Promenade at Lyons project, designated at Phases 1a and 1b above, is nearly ready for construction of the underground electric facilities, so we would ask that you provide us with the cost to prepare the "binding cost estimate" for that work as soon as possible. The City will negotiate an appropriate agreement with FPL for both the OH-to-UG conversion work and the "Greenfield" UG work for the Promenade at Lyons project. We understand that this "hybrid" project is somewhat new territory, but our attorney is in touch with FPL's Legal Department on this matter and we expect to be able to get the details squared away and the project underway very quickly.

We understand and expect that the ballpark estimates that FPL will furnish in response to our request will also include FPL's price for preparing "binding cost estimates" for the contemplated UG conversion projects. Also, please provide any and all relevant project information, contract forms, and any other appropriate documents with the Utility Coordination Agent we are working closely with for this effort:

Michael Weiss
CSI Associates, Inc.
100 S.E. 3rd Avenue – Suite # 800
Fort Lauderdale, FL 33394
Office: 954-767-0185 Cell: 251-269-4078 Fax: 954-767-9572
Email: mweiss@csiassociates.net

Per your request for posting of The City's representative for this project, please recognize the undersigned. Thank you.

Sincerely,

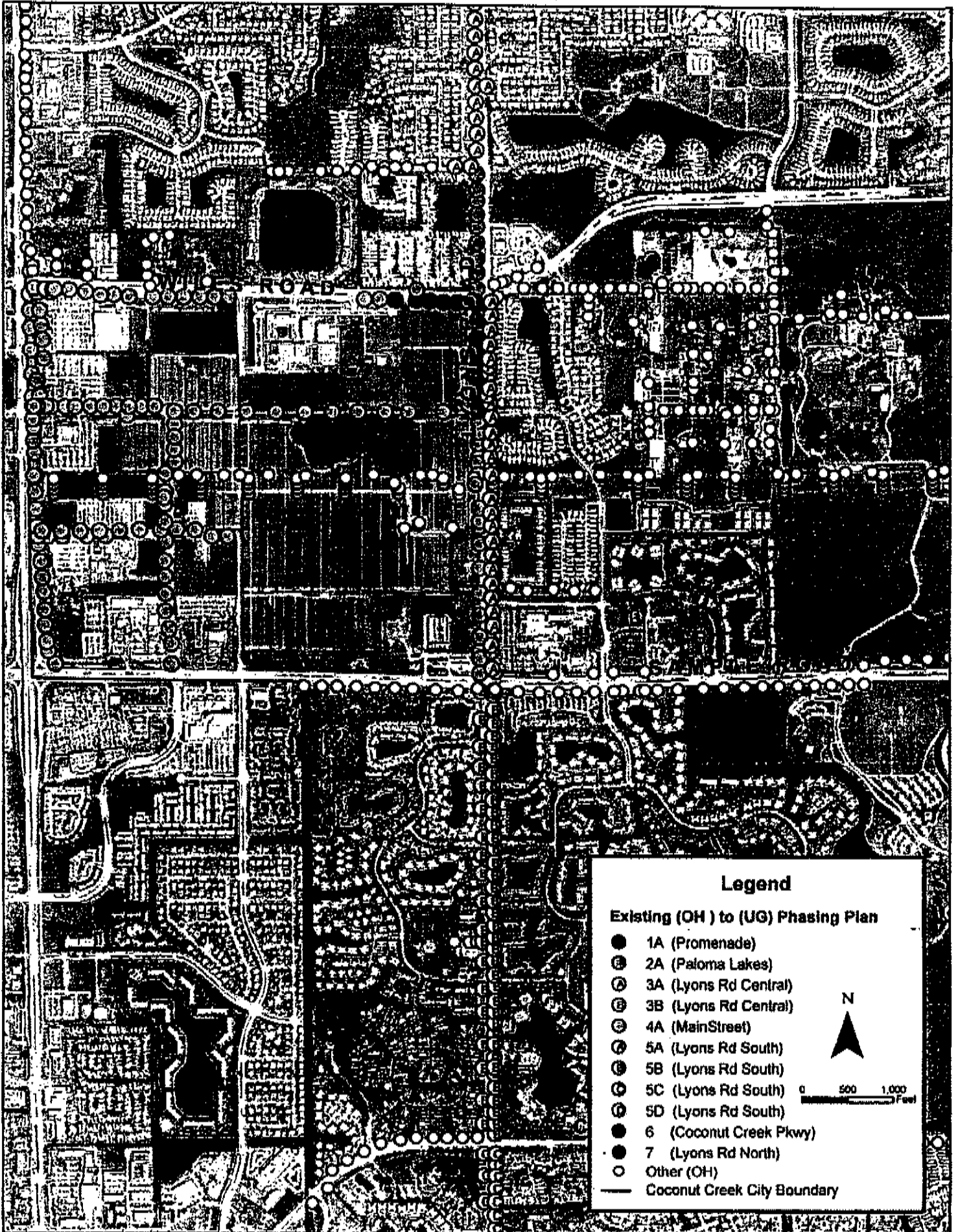


SHEILA N. ROSE, AICP, Director
Development Services Department

SNR/SW/ds
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Attachments: Exhibit A, Exhibit B, and Exhibit C

EXHIBIT A



Legend

Existing (OH) to (UG) Phasing Plan

- 1A (Promenade)
- ⊙ 2A (Paloma Lakes)
- ⊙ 3A (Lyons Rd Central)
- ⊙ 3B (Lyons Rd Central)
- ⊙ 4A (Main Street)
- ⊙ 5A (Lyons Rd South)
- ⊙ 5B (Lyons Rd South)
- ⊙ 5C (Lyons Rd South)
- ⊙ 5D (Lyons Rd South)
- 6 (Coconut Creek Pkwy)
- 7 (Lyons Rd North)
- Other (OH)
- Coconut Creek City Boundary

N



0 500 1,000 Feet

EXHIBIT B

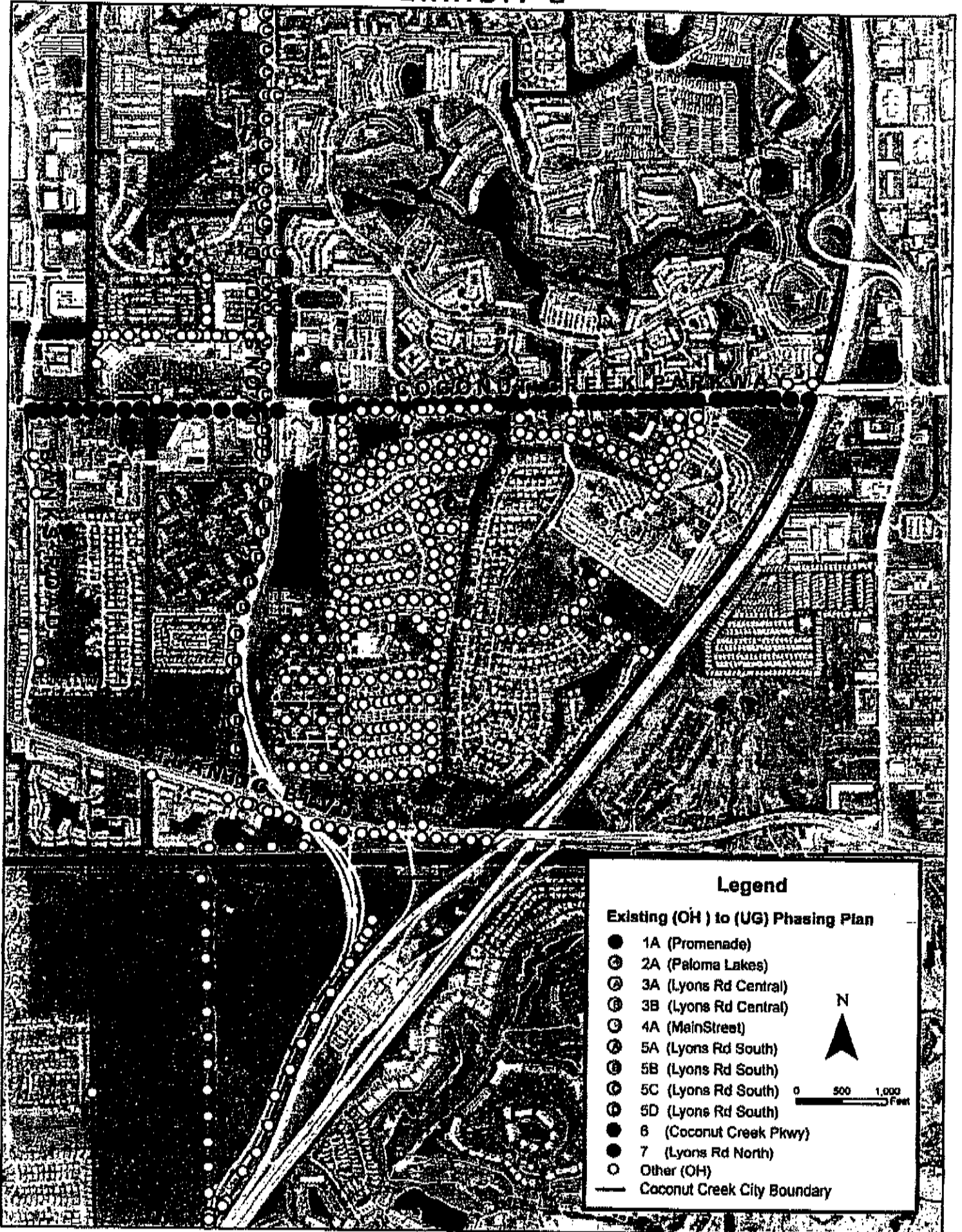
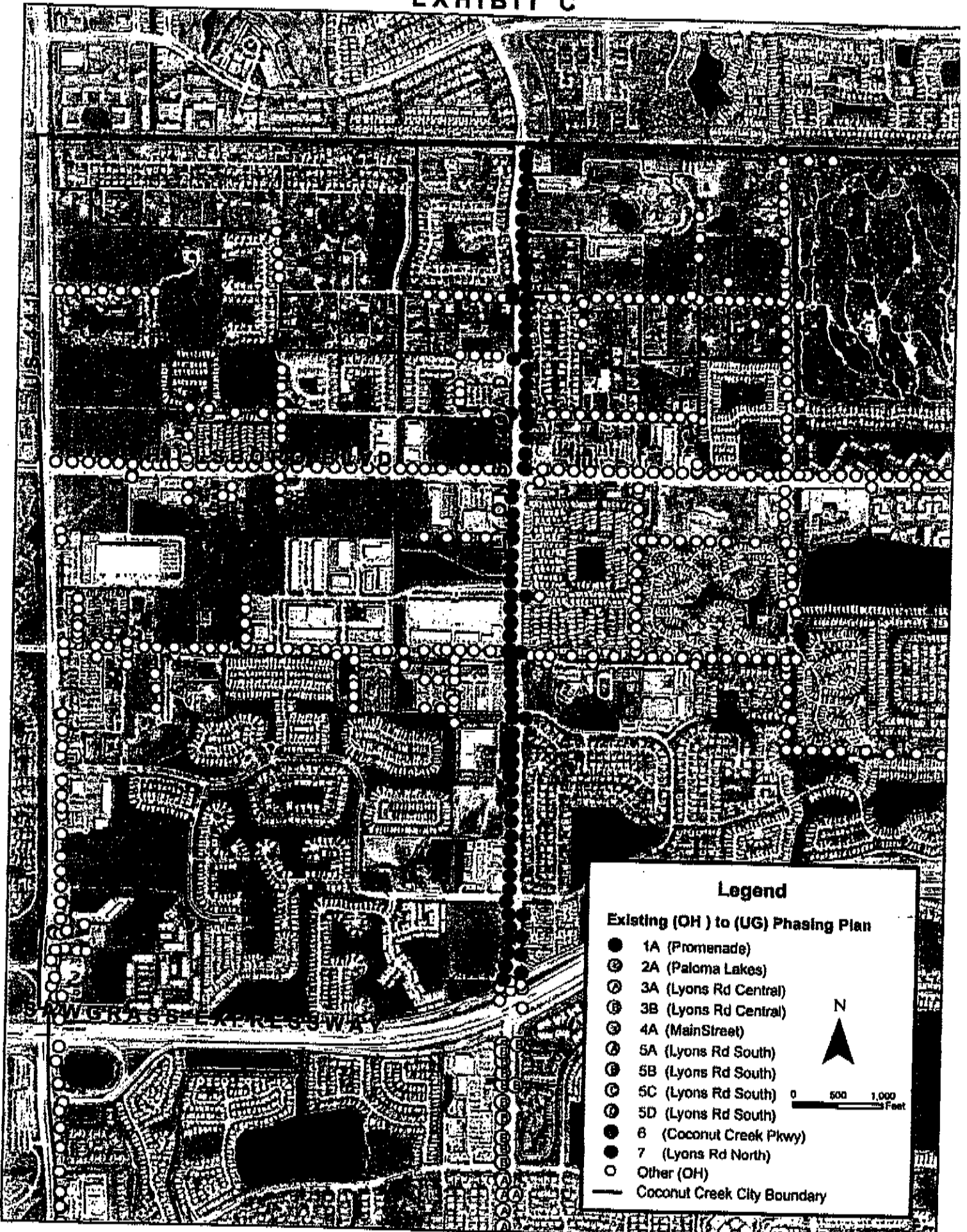


EXHIBIT C



Legend

Existing (OH) to (UG) Phasing Plan

- 1A (Promenade)
- ⊙ 2A (Paloma Lakes)
- ⊙ 3A (Lyons Rd Central)
- ⊙ 3B (Lyons Rd Central)
- ⊙ 4A (Main Street)
- ⊙ 5A (Lyons Rd South)
- ⊙ 5B (Lyons Rd South)
- ⊙ 5C (Lyons Rd South)
- ⊙ 5D (Lyons Rd South)
- 6 (Coconut Creek Pkwy)
- 7 (Lyons Rd North)
- Other (OH)
- Coconut Creek City Boundary

N



0 500 1,000 Feet

DOCKET NO. 070231-EI, IN RE: PETITION FOR APPROVAL OF FPL'S
UNDERGROUND RESIDENTIAL AND COMMERCIAL DISTRIBUTION TARIFFS

RESPONSE OF THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM
AND THE CITY OF COCONUT CREEK, FLORIDA IN OPPOSITION
TO FPL'S MOTION TO DISMISS

EXHIBIT 2



Florida Power & Light Company, 14159 State Road 7, Delray Beach, FL 33446

September 26, 2007

Ms. Shlela N. Rose, AICP
Director, Development Services Department
City of Coconut Creek
4800 West Copans Road
Coconut Creek, FL 33063

Re: **City of Coconut Creek
Overhead to Underground Electric Facilities Conversion -
Ballpark Estimate - Various Locations throughout the City
WR# 2889046**

Dear Ms. Rose:

In response to your letter dated August 20, 2007, FPL welcomes the opportunity to assist you in examining the feasibility of converting from overhead electric distribution facilities to an underground system at the following location: Various Locations throughout the City (See Exhibit 1).

As per your request, the non-binding "ballpark" estimate to complete this conversion is \$9,100,000.00 (entire project, see Exhibit 1 for individual segments). This estimate is provided strictly to assist you in preliminary decision making. It is not an offer from FPL to perform the requested conversion and should not be construed or used as such for detailed planning purposes. This represents an "order of magnitude" figure based on previous FPL experience and reflects the CIAC payment that the City would ultimately need to make to FPL if the conversion were performed at this point in time. However, given our understanding that the City doesn't expect to begin construction until late 2008 at the earliest, the City should make allowances for such factors as: phase timing and magnitude; potential price increases; planned financing levels, term, costs and issuance timing; possible adverse contractor bid risk (in a seller's market for contractor services); etc. It is our experience that conversions in developed areas are the most complex and challenging types of construction. The complex nature and impact of many variables associated with these types of projects. As such, this estimate likely will not precisely represent the City's ultimate actual cost to convert, but can assist the City in preliminary decision-making.

FPL estimates include only estimated charges to be paid by the City to FPL. The costs of the following items are not included with the estimate and are the responsibility of the City/residents. These potential costs should be included in future planning of the project:

- Site restoration (sod, landscaping, pavement, sidewalks, etc)
- Rearrangement of customer electric service entrances (requires electrician) from overhead to underground. Also, additional customer expense if local inspecting authorities require customer wiring to be brought to current codes.
- Trenching/backfilling for service laterals.
- Removal and undergrounding of other utilities (e.g. telecom, CATV, etc.)

- Acquiring, describing, securing and recording of easements for underground facilities. In underground systems, major components formerly attached to poles must now occupy "at grade" appurtenances, e.g., ground level pad mounted transformers and switch cabinets. Facilities of an underground distribution system will not be placed in road right-of-way, with the exception of cables required for crossings. (See special note below)

Note: Obtaining easements is typically the most difficult aspect of the conversion process; the time required to secure the easements may even exceed the 180 day binding estimate timeframe. FPL strongly suggests that all easements required for the conversion be described and secured prior to requesting the detailed cost estimate.

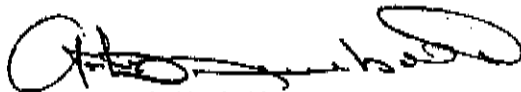
Recently, the Public Service Commission has approved FPL's 25% Governmental Adjustment Factor (G.A.F.) waiver for local government sponsored projects. In order to be eligible for the G.A.F. waiver a project must meet a series of criteria (see Attachment). Based on the preliminary information you provided for the proposed conversion area, this request would qualify the G.A.F. waiver. The ballpark estimate provided above does not include this G.A.F. waiver.

After reviewing the "ballpark" estimate, if you decide to move forward with the conversion project, you may request a detailed and "binding" estimate. Due to the complexity and time required to estimate such a conversion, a non-refundable engineering deposit is required prior to beginning the estimating process, as set forth in the Florida Administrative Code 25-6.115. For this conversion project the amount of the required engineering deposit is \$82,651.00. If you decide to proceed with the work contained in the estimate, the amount of this deposit would be applied toward the estimated amount owed to FPL for the conversion. The work must commence within 180 days of the date the binding estimate is provided.

The request for the binding estimate must be in writing, and must describe in detail the facilities to be converted. Binding estimates are valid for 180 days, and would be subject to change in the event of a work scope change. Should actual FPL costs exceed the binding estimate amount, the customer may be responsible for those additional costs up to a maximum of 10% of the binding estimate amount. Payment of customer costs, easements (with opinion of title and recorded), agreements from other utilities/pole licensees, and execution of a Conversion Agreement would be required before commencement of construction.

If you have any questions or wish to consider a binding cost estimate, please call me at 561-495-7603

Sincerely,



Anthony L. Newbold
Area Manager
FPL

Attachments

cc: Mr. Bret Beck - FPL
Mr. Erik Dillenkofer - FPL
Ms. Barbara Quiñones - FPL
Mr. John Lehr - FPL
Ms. Jocelyn Wright - FPL



FPL

Exhibit 1

City of Coconut Creek

Project Segment	Ballpark Estimate	Non-refundable Engineering Deposit
Paloma Lakes at Lyons - *	N/A	N/A
1A Promenade at Lyons	\$ 382,000	\$ 4,032
3A Lyons Rd Central	\$ 527,000	\$ 5,578
3B Lyons Rd central	\$ 275,000	\$ 2,000
4A MainStreet	\$ 2,750,000	\$ 26,171
5B Lyons Rd South	\$ 800,000	\$ 6,677
5C Lyons Rd South	\$ 922,000	\$ 7,177
5D Lyons Rd South	\$ 574,000	\$ 5,506
6 Coconut Creek Pkwy	\$ 1,280,000	\$ 11,584
7 Lyons Rd North	\$ 1,570,000	\$ 13,927
Total	\$ 9,100,000	\$ 82,651

*. Previous work request for conversion (WR # 1622729)

**INSTALLATION OF UNDERGROUND ELECTRIC DISTRIBUTION FACILITIES
FOR THE CONVERSION OF OVERHEAD ELECTRIC DISTRIBUTION FACILITIES**

SECTION 12.1 DEFINITIONS

APPLICANT - Any person, corporation, or entity capable of complying with the requirements of this tariff that has made a written request for underground electric distribution facilities in accordance with this tariff.

CONVERSION - Any installation of underground electric distribution facilities where the underground facilities will be substituted for existing overhead electric distribution facilities, including relocations.

CONTRIBUTION-IN-AID-OF-CONSTRUCTION (CIAC) - The CIAC to be paid by an Applicant under this tariff section shall be the result of the following formula:

CIAC =

- The estimated cost to install the requested underground facilities;
- + The estimated cost to remove the existing overhead facilities;
- + The net book value of the existing overhead facilities;
- + The net present value of the estimated operational costs of underground facilities over 30 years;
- + The net present value of the estimated average storm restoration costs of underground facilities over 30 years;
- The estimated cost that would be incurred to install new overhead facilities, in lieu of underground, to replace the existing overhead facilities (the "Hypothetical Overhead Facilities");
- The estimated salvage value of the existing overhead facilities to be removed;
- The net present value of the estimated operational costs of the overhead facilities over 30 years;
- The net present value of the estimated average storm restoration costs of overhead facilities over 30 years.

GAF Waiver

For Applicants entering into an Underground Facilities Conversion Agreement - Governmental Adjustment Factor Waiver with the Company, the otherwise applicable CIAC amount, as calculated above, shall be reduced by the GAF Waiver. If the Applicant elects to construct and install all or part of the underground facilities, then for purposes of calculating the GAF Waiver amount only, the otherwise applicable CIAC shall be adjusted to add FPL's estimated cost for the Applicant-performed work. The amount of the GAF Waiver shall be calculated as follows:

GAF Waiver =

- 25% x the otherwise applicable CIAC;
- + 75% x (the net present value of the estimated average storm restoration costs of underground facilities over 30 years less the net present value of the estimated average storm restoration costs of overhead facilities over 30 years).

Note: The final term avoids double-counting the estimated average storm restoration costs embedded in the otherwise applicable CIAC.

DISTRIBUTION SYSTEM - Electric service facilities consisting of primary and secondary conductors, service drops, service laterals, conduits, transformers and necessary accessories and appurtenances for the furnishing of electric power at utilization voltage.

SERVICE FACILITIES - The entire length of conductors between the distribution source, including any conduit and or risers at a pole or other structure or from transformers, from which only one point of service will result, and the first point of connection to the service entrance conductors at a weatherhead, in a terminal, or meter box outside the building wall; the terminal or meter box; and the meter.

(Continued on Sheet No. 6.301)

**UNDERGROUND FACILITIES CONVERSION AGREEMENT -
 GOVERNMENTAL ADJUSTMENT FACTOR WAIVER**

This Agreement, which is available to customers that sign the Agreement on or before October 30, 2008, is made and entered into this _____ day of _____, 20____, by and between _____ ("Local Government Applicant"), a Florida municipal corporation or county with an address of _____ and FLORIDA POWER & LIGHT COMPANY ("FPL"), a Florida corporation with an address of P.O. Box 14000, 700 Universe Boulevard, Juno Beach, FL 33408-0429.

WHEREAS, the Local Government Applicant has requested that FPL convert certain overhead electric distribution facilities located within the following boundaries (the "Conversion"):

(collectively, the "Existing Overhead Facilities") to underground facilities, including transformers, switch cabinets and other appurtenant facilities installed above ground as set forth in Attachment A hereof (collectively, the "Underground Facilities").

NOW THEREFORE, in consideration of the foregoing premises and the covenants and agreements set forth herein, and other consideration the sufficiency of which is hereby acknowledged, the parties intending to be legally bound, hereby covenant and agree as follows:

1. **Governmental Adjustment Factor Waiver ("GAF Waiver") Eligibility Criteria.** The Local Government Applicant represents and warrants that it meets the following eligibility criteria for the Conversion:
 - a. In order for the Conversion to incorporate a sufficient amount of overhead facilities to provide electrical continuity, the Conversion must include a minimum of approximately 3 pole line miles or approximately 200 detached dwelling units within contiguous or closely proximate geographic areas (the "Conversion Area"). The Conversion may be completed in mutually agreed upon phases, with the project size minimums applying to the aggregate project - provided that any necessary subsequent phase begins within a 1 year period from completion of the prior phase and the minimums are met within, at most, 3 phases; and
 - b. The Local Government Applicant must require all customers within the Conversion Area who currently have overhead service directly from the Existing Overhead Facilities to convert their service entrances to underground within 6 months of completion of the Underground Facilities installation or each phase thereof; and
 - c. The Local Government Applicant must be willing and able to execute a right of way ("ROW") agreement with FPL if the Local Government Applicant requests that facilities be placed in the ROW; and
 - d. For any affected laterals, the complete lateral must be converted, including all stages of any multi-stage lateral; and
 - e. There are no state or federal funds available to the Local Government Applicant to cover any portion of the cost of the Conversion.

Special Circumstances. Conversions which do not meet the project size minimums described in section 1.a are eligible for the GAF Waiver in the following special circumstances:

- i. 100% of the Existing Overhead Facilities within the Local Government Applicant's corporate limits are to be converted, but are less than the pole line mileage or dwelling unit minimums; or
- ii. A single lateral that serves at least one Critical Infrastructure Facility as determined by the appropriate local agency with the mutual agreement of FPL; or
- iii. An island or peninsula where 100% of the Existing Overhead Facilities are to be converted; or

(Continued on Sheet No. 9.726)

(Continued from Sheet No. 9.725)

iv. When the aggregate size of the first 3 phases of a project would satisfy the minimum size criteria but, for mutually-agreed engineering or logistical reasons, those phases are non-contiguous; provided that (a) the next (4th) phase must be adjacent to one or more of the first 3 phases such that the combined contiguous area meets the minimum size criteria, and (b) this 4th phase begins within 1 year from completion of the 3rd phase.

2. **Contribution-in-Aid-of-Construction (CIAC).** The Local Government Applicant shall pay FPL a CIAC as required by FPL's Electric Tariff and Section 25-6.115 of the Florida Administrative Code with the Otherwise Applicable CIAC amount reduced by the GAF Waiver.

i. Otherwise Applicable CIAC	\$ _____
ii. GAF Waiver	\$ _____
iii. CIAC Due	\$ _____

In the event the actual cost of the Conversion exceeds the estimate, the Otherwise Applicable CIAC shall be adjusted by the lesser of (a) the difference between the actual cost of the Conversion and the estimate, or (b) 10% of the Otherwise Applicable CIAC identified above. The GAF Waiver shall also be adjusted accordingly and the Local Government Applicant shall pay FPL the resulting difference in the amount of the CIAC Due.

3. **Applicant-Installed Facilities.** The Local Government Applicant may, upon entering into an applicant-installed facilities agreement satisfactory to FPL, construct and install all or a portion of the Underground Facilities. Such work must meet FPL's construction standards and FPL will own and maintain the completed facilities. The Local Government Applicant agrees to rectify any deficiencies, found by FPL, prior to the connection of any customers to the Underground Facilities and the removal of the Existing Overhead Facilities.

4. **Compliance with Tariff.** The Local Government Applicant agrees to comply with and abide by the requirements, terms, and conditions of FPL's Electric Tariff.

5. **Timing of Conversion.** Upon compliance by the Local Government Applicant with the requirements, terms, and conditions of FPL's Electric Tariff, this Agreement and any other applicable agreements, FPL will proceed in a timely manner with the Conversion in accordance with the construction drawings and specifications set forth in Attachment A hereof.

6. **Relocation.** In the event that the Underground Facilities are part of, or are for the purposes of, relocation, then this Agreement shall be an addendum to the relocation agreement between FPL and the Local Government Applicant. In the event of any conflict between the relocation agreement and this Agreement or the Electric Tariff, this Agreement and the Electric Tariff shall control.

7. **Term.** This Agreement shall remain in effect for as long as FPL or any successor or assign owns or operates the Underground Facilities.

8. **GAF Waiver Repayment.** If the Local Government Applicant does not satisfy the relevant eligibility criteria, the Local Government Applicant shall repay the GAF Waiver within 30 days of written notice from FPL of such failure. Additionally, if at any point within 30 years of completion of the Underground Facilities installation, the Local Government Applicant elects to have electric service within the Conversion Area supplied by a provider other than FPL, the Local Government Applicant shall repay FPL a pro-rata share of the GAF Waiver. The pro-rata share (which shall reflect partial years) shall be determined as follows:

$$\text{GAF Waiver} * [(30 - \text{years since the Underground Facilities completion date}) / 30]$$

(Continued on Sheet No. 9.727)

(Continued from Sheet No. 9.726)

- 9. **Termination Prior to the Conversion Completion.** Failure by the Local Government Applicant to comply with any of the requirements, terms, or conditions of this Agreement or FPL's Electric Tariff shall result in termination of this Agreement. The Local Government Applicant may terminate this Agreement at any time prior to the start of the Conversion and the CIAC paid by the Local Government Applicant will be refunded to the Local Government Applicant; provided however, that the refund of the CIAC shall be offset by any costs incurred by FPL in performing under the Agreement up to the date of termination.
- 10. **Assignment.** The Local Government Applicant shall not assign this Agreement without the written consent of FPL.
- 11. **Adoption and Recording.** This Agreement shall be adopted by the Local Government Applicant and maintained in the official records of the Local Government Applicant for the duration of the term of this Agreement. This Agreement also shall be recorded in the Official Records of the County in which the Underground Facilities are located, in the place and in the manner in which deeds are typically recorded.
- 12. **Conflict between Terms of Franchise Agreement.** In the event of a conflict between the terms of this Agreement and any permit or franchise agreement entered into by Local Government Applicant and FPL, the terms of this Agreement shall control.

IN WITNESS WHEREOF, FPL and the Local Government Applicant have executed this Agreement on the date first set forth above.

LOCAL GOVERNMENT APPLICANT

FPL

Signed _____

Signed _____

Name _____

Name _____

Title _____

Title _____

Signed _____

Name _____

Title _____

Approved as to Terms and Conditions

Signed _____

Name _____

Title _____

Approved as to Form and Legal Sufficiency

Signed _____

Name _____

Title _____

DOCKET NO. 070231-EI, IN RE: PETITION FOR APPROVAL OF FPL'S
UNDERGROUND RESIDENTIAL AND COMMERCIAL DISTRIBUTION TARIFFS

RESPONSE OF THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM
AND THE CITY OF COCONUT CREEK, FLORIDA IN OPPOSITION
TO FPL'S MOTION TO DISMISS

EXHIBIT 3

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

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSES TO STAFF'S JUNE 9, 2006 DATA REQUESTS**

1. **If the Commission approves FPL's request to invest 25% of a local government's conversion project in rate base, how will the 25% investment for specific projects be collected from the general body of ratepayers in the utility's next rate setting proceeding?**
 - A. As prescribed in the Uniform System of Accounts, all capital expenditures related to underground conversion projects are recorded on a gross basis in the appropriate plant account, Any Contributions-In-Aid-of-Construction (CIAC) for these projects are recorded in plant-in-service as a credit (i.e., in an offsetting contra-account). This "net" plant-in-service amount (gross expenditures less the CIAC) is reflected in rate base. Approval of FPL's request to invest 25% of the cost of local government-sponsored underground conversions (the Government Adjustment Factor, or "GAF") will result in a commensurate reduction of CIAC received for those conversions and hence a higher amount of net plant-in-service. In turn, this will result in a higher rate base upon which future base rates will be determined. From an allocation standpoint, this rate base would be collected from the general body of customers consistent with the methods used to recover expenditures for other comparable distribution assets.
2. **What methodology did FPL use to decide the 25% reduction in CIAC proposed in the tariff was the appropriate discount?**
 - A. Analysis from the 2004 and 2005 hurricanes indicated that underground facilities incurred a lower rate of interruptions during each hurricane. While it is possible that some future hurricanes will involve weather conditions that do not favor underground facilities as much as was the case in 2004 and 2005 (e.g., less wind, but more rain causing inland flooding and/or storm surges in coastal areas), FPL concluded that conversion of overhead to underground facilities generally can be an effective mitigation strategy in spite of the longer restoration times associated with underground facility outages when they do occur. Accordingly, FPL proposed an investment for government-sponsored projects to encourage community-wide underground conversions that would otherwise not occur. The need for an incentive was based on input from community leaders, who indicated that cost is a major barrier to conversion. The need for an incentive is further supported by the fact that few conversions have been performed at customer request during the past few years. FPL concluded that 25% would provide a significant incentive to encourage conversions, and thus help reduce the potential impact to all customers from future storms.
3. **Please discuss in detail and quantify the benefits of undergrounding limited geographical areas to the general body of ratepayers who reside outside of the specific areas receiving underground construction, and explain how those benefits would be quantified.**
 - A. Based on the fewer number of interruptions experienced by underground facilities than by overhead facilities during the 2004 and 2005 hurricanes, FPL expects that converting existing overhead facilities to underground will reduce the amount of infrastructure damage requiring

repair and thereby restoration cost. The general body of customers would benefit from these avoided cost savings through the reduction in aggregate storm restoration costs shared by all. This restoration benefit would only be produced by undergrounding generally contiguous facilities so that overhead restoration crews could be deployed elsewhere. If conversions in a given area are scattered, restoration savings would not be realized.

As discussed in the response to Request 2, FPL established the GAF amount at a level deemed significant enough to overcome the cost barrier which customers had indicated kept them from pursuing desired conversion projects. FPL has subsequently performed a macro-level economic evaluation, which is described below. The approach taken was dictated by the significant limitations of amount and granularity of data currently available to perform such an analysis. In the future, as more information is collected, FPL expects to be able to further hone our evaluations and would revise results if warranted. While recognizing this inherent level of uncertainty, FPL believes that the analysis supports the 25% GAF level, such that there is a reasonable expectation that adequate savings will accrue to the general body of customers to cover the GAF adjustments to rate base.

The Commission's standard Low Density Subdivision model of 210 homes was used as a basis for FPL's analysis. The average CIAC cost for converting the subdivision's overhead infrastructure was calculated. Two scenarios were created by varying the vintage of the existing overhead facilities being replaced – 10 and 20 years. This resulted in CIACs for the subdivision of approximately \$420,000 and \$320,000 respectively. The GAF is derived from avoided storm restoration cost savings to the general body of customers as a result of these facilities being placed underground. The cost basis used is the average of actuals from restoring the overhead distribution facilities after the 2004 and 2005 hurricanes (representing about 90% of the total distribution restoration costs). These costs were then unitized on a per affected customer basis and multiplied by 210 to match the subdivision size. The analysis used a 30-year forecast period for the avoided restoration costs. An assumed average storm frequency of one event every three years was used as the base case, reflecting the expected ongoing heightened incidence of storm activity and recent experience. A sensitivity case was also evaluated using the 100-year average storm frequency of about one event every five years. Base case results showed a savings range of approximately 30-40% of the CIAC amount. The range of savings for the 100-year average sensitivity case was 20-26%. These ranges bracket FPL's originally proposed GAF amount of 25% and thus demonstrate that there is reasonable assurance of a quantifiable benefit to the general body of customers.

4. **Please provide the following information: (a) the name of each local government that has contacted FPL in the past 24 months regarding the conversion of its facilities; (b) the name of each local government that has requested and paid for a binding cost estimate in the past 24 months; (c) the status of the negotiations between FPL and each local government listed in (a) and (b); and (d) an estimate of the conversion costs for each local government listed in (a) and (b).**

A. See Attachment A.

5. **Please state the total estimated conversion costs FPL will incur if the Town of Palm Beach enters into a contract with FPL to convert its overhead facilities to underground and the estimated cost to each homeowner. Has the Town of Palm Beach requested and paid for a binding cost estimate from FPL?**

A. The Town has not yet requested a binding cost estimate for the projects currently under consideration. See the response to Request 4 for ballpark estimates.

6. Has any city discussing conversion requested that FPL impose a surcharge on the affected customers' bills to pay for the conversion? If so, would all residents within the boundaries of the governmental entity be required to pay the surcharge?

A. No.

7. The Town of Jupiter Island states in its Petition to Intervene in Docket No. 060150-EI that it has requested and paid for a binding cost estimate from FPL for a conversion project. Please state the cost of the estimate, the total cost of the conversion project, and the cost to each homeowner. Please state whether the actual work has begun and the projected completion date.

A. The binding cost estimate FPL provided for converting the entire Town's existing overhead facilities was approximately \$8.2 million. This would translate to approximately \$15,400 per customer account. The Town paid \$95,500 as an engineering deposit for this estimate. The first phase of this project is currently planned to begin within the next couple months. The final completion timetable has not yet been established.

8. At the May 19, 2006 rule development workshop in Docket Nos. 060172-EU and 0601730-EU, FPL represented that it can justify an investment in the CIAC if FPL undergrounds an area that results in a significant reduction in storm restoration costs. See transcript, p 36. Please discuss and quantify the reduction in storm restoration costs resulting from the conversion project for (a) the Town of Palm Beach, and (b) the Town of Jupiter Island.

A. FPL has performed an analysis of the benefits of governmental underground conversion projects which meet the criteria we intend to file in our tariff (refer to the Request 3 response). However, FPL has not conducted, and does not plan to conduct, separate analyses that are specific to the circumstances of these two projects nor for any other projects which qualify for the GAF.

9. At the May 19, 2006 rule development workshop, FPL referred to a model. See page 37 of the transcript lines 6-7. Please provide a detailed description of this model, including all inputs and assumptions.

A. The approach FPL has used for developing the expected savings from avoided storm restoration costs which underlie the GAF, is discussed in the response to Request 3. In the cited reference below from page 37 of the transcript, the term "model" was being used to describe FPL's conceptual approach, not a quantitative, economic model:

"That is our model, save money based on the storm restoration cost reductions of having this contiguous area that you no longer have to go in and sort of do the hand-to-hand combat of getting back to service on an overhead basis, and you can justify making some sort of investment for that community...."

Local Government Requests for Underground Conversions

Attachment A

	Requesting Party	Status	Ballpark Cost Estimate	Engineering Deposit Paid?	Binding Cost Estimate	Binding Estimate Paid?
1	Bay Harbor Islands	Under review by Customer	\$5,800,000	No	No	No
2	Brevard County	Under review by Customer	\$206,000	No	No	No
3	Broward County - 9 portions	All - Customer reviewing, put projects on hold pending GAF decision	\$1,775,000 \$1,630,500 \$1,342,500 \$1,332,500 \$1,161,000 \$956,000 \$939,000 \$760,500 \$408,000	No	No	No
4	City of Atlantis	Project no longer being pursued	No	No	No	No
5	City of Cape Canaveral	Under review by Customer	\$837,000	No	No	No
6	City of Coconut Creek	Under review by Customer	\$1,845,000	No	No	No
7	City of Coral Gables - Entire & Portion	Under review by Customer	\$115,000,000 \$11,000,000	No	No	No
8	City of Deerfield Beach - 2 portions	Under review by Customer	\$1,066,000 \$702,000	Yes No	\$664,491 No	No No
9	City of Flagler Beach	Customer has asked FPL to decrease project scope	\$400,000	Yes	\$368,388	No
10	City of Ft Myers Bch	Right-of-Way Agreement under review by Customer	No	No	No	No
11	City of Ft. Lauderdale - 16 portions	All - Customer reviewing, but projects on hold pending GAF decision #14 - FPL waiting for engineering deposit payment #16 - ballpark estimate under development	\$5,833,000 \$5,500,000 \$5,166,000 \$4,500,000 \$3,510,000 \$3,000,000 \$1,660,000 \$1,574,000 \$1,500,000 \$1,417,000 \$1,250,000 \$824,000 \$673,000 \$400,000 \$200,000 TBD	No	No	No
12	City of Ft. Pierce	FPL presentation - estimate not yet requested	No	No	No	No
13	City of Hallandale Beach	Under review by Customer	\$1,030,000	Yes	TBD	No
14	City of Hollywood - Phase 1	FPL developing new estimate based on revised scope	\$2,500,000	No	No	No
15	City of Lauderdale by the Sea - A1A section, other portion	A1A - completed in 2005 Other portion - customer put project on hold pending GAF decision	N/A No	Yes No	\$1,905,262 No	Yes No
16	City of Lauderhill	Customer put project on hold pending GAF decision	No	No	No	No
17	City of Lighthouse Point	Under review by Customer	\$25,500,000	No	No	No
18	City of Margate	Under review by Customer	\$48,000,000	No	No	No
19	City of Miami	FPL presentation scheduled for 7/11	No	No	No	No
20	City of Miami Beach - 4 islands	2 - Customer evaluating placement of facilities 2 - Ballpark estimates requested	N/A TBD	2 - Yes 2 - No	TBD No	No
21	City of Naples	Under review by Customer	\$74,500,000	No	No	No
22	City of North Bay Village - 2 portions	Under review by Customer	\$2,880,000 \$960,000	No	No	No
23	City of Palm Beach Gardens	FPL presentation made - no further action to-date	No	No	No	No
24	City of Pembroke Pines	Project no longer being pursued	\$270,380	No	No	No
25	City of Plantation - 2 portions	All - Under review by Customer	\$834,000 \$90,000	No	No	No
26	City of Rockledge	Customer put project on hold pending GAF decision	\$235,250	No	No	No
27	City of S. Daytona Beach	Under construction	\$1,500,000	Yes	\$813,562	Yes
28	City of Sarasota	Under review by Customer	\$697,500	No	No	No
29	City of Satellite Beach - 2 portions	#1 - Customer put project on hold pending GAF decision #2 - under review by Customer	\$3,600,000 \$110,000	Yes No	TBD No	No
30	City of South Miami	Project no longer being pursued	\$43,000,000	No	No	No
31	City of Stuart	Under review by Customer	\$412,250	No	No	No

Local Government Requests for Underground Conversions

Attachment A

	Requesting Party	Status	Ballpark Cost Estimate	Engineering Deposit Paid?	Binding Cost Estimate	Binding Estimate Paid?
32	City of Sunny Isles Beach - First 3 of multiple phases	Phase 1 - Under review by Customer Phases 2 & 3 - FPL developing binding estimates	N/A \$435,000 \$425,000	All - Yes	\$559,142 TBD TBD	No
33	Collier County - 2 portions	Under review by Customer	\$6,151,000 \$5,905,000	No	No	No
34	Indian River County - multiple portions	5 Phases - ballpark estimate provided. Separate portion - FPL presentation made 6/20/06 - no further action to-date	\$2,732,750 No	No	No	No
35	Jupiter Inlet Colony	Customer put project on hold pending GAF decision	\$2,100,000	No	No	No
36	Martin County - 2 portions	Customer reviewing estimates	\$800,000 \$566,700	Yes No	\$467,457	No
37	Miami Shores Village	Under review by Customer	\$7,500,000	No	No	No
38	Miami-Dade County - 5 portions	- 4 under review by Customer - 5th portion - customer preparing ballpark request letter	\$1,750,000 \$190,000 \$160,000 \$150,000 No	No	No	No
39	Miami-Dade County / Coral Gables (Snapper Creek Lakes)	Customer reviewing estimate & taxing district options	\$2,289,100	No	No	No
40	Sarasota County - Portion, Siesta Village & crossing	Portion - Customer revising project boundaries Siesta Key - FPL developing on binding estimate Crossing - FPL presentation requested	\$5,800,000 \$872,000 No	No Yes No	No TBD No	No
41	St. Johns County	Waiting for Customer approval to proceed	\$657,625	Yes	\$336,547	No
42	Town of Cutler Bay - Entire & 2 portions	Entire - no longer being pursued Portions - both under review by customer	\$45,100,000 \$1,250,000 \$375,000	No	No	No
43	Town of Gulf Stream	FPL developing binding cost estimate	\$2,459,000	Yes	TBD	No
44	Town of Haverhill - Entire	Ballpark estimate under development	TBD	No	No	No
45	Town of Hillsboro Beach	Under review by Customer	\$2,700,000	No	No	No
46	Town of Juno Beach	FPL presentation made - no further action to-date	No	No	No	No
47	Town of Jupiter Island - Entire & Phase 1	Entire - Binding cost provided Phase 1 - binding cost estimate being adjusted to reflect Customer installing conduit	\$10,000,000 N/A	Yes	\$8,213,446 \$263,938	No
48	Town of Longboat Key	Customer is reevaluating project boundaries	No	No	No	No
49	Town of Manalapan	Customer developing detailed map of project boundaries	No	No	No	No
50	Town of Miami Lakes	Under review by Customer	\$4,825,000	No	No	No
51	Town of Palm Beach - Entire, Phase 1	Entire - split into phases Phase 1 - waiting for Customer decision to proceed	\$32,000,000 \$7,000,000	No	No	No
52	Town of Palm Beach Shores - 2 portions	All - Customer put project on hold pending GAF decision	\$3,200,000 \$281,500	No	No	No
53	Town of Sewall's Point	FPL awaiting engineering deposit from Customer	\$6,600,000	No	No	No
54	Village of Key Biscayne	Under review by Customer	\$11,200,000	No	No	No
55	Village of North Palm Beach	Customer reduced project scope, expected construction start within 4 months	\$182,700	Yes	\$18,955	No
56	Village of Palmetto Bay	Project no longer being pursued	\$61,000,000	No	No	No
57	Village of Pinecrest - Entire & Portion	Under review by Customer	\$72,000,000 \$17,500,000	No	No	No
58	Village of Tequesta	Customer passed a "Right Tree Right Place" ordinance instead of pursuing conversion	No	No	No	No
59	Village of Wellington	Ballpark estimate under development	TBD	No	No	No

DOCKET NO. 070231-EI, IN RE: PETITION FOR APPROVAL OF FPL'S
UNDERGROUND RESIDENTIAL AND COMMERCIAL DISTRIBUTION TARIFFS

RESPONSE OF THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM
AND THE CITY OF COCONUT CREEK, FLORIDA IN OPPOSITION
TO FPL'S MOTION TO DISMISS

EXHIBIT 4

FPL's Quantification of Benefits for the Governmental Adjustment Factor (GAF) Waiver

Based on the fewer number of interruptions experienced by underground facilities than by overhead facilities during the 2004 and 2005 hurricanes, FPL expects that converting existing overhead facilities to underground will reduce the amount of infrastructure damage requiring repair and thereby restoration cost. Accordingly, FPL has proposed an investment for government-sponsored projects to encourage community-wide underground conversions that would otherwise not occur. The need for an incentive is based on input from community leaders, who indicated that cost is a major barrier to conversion. The need for an incentive is further supported by the fact that few conversions have been performed at customer request during the past few years. FPL concluded that 25% would provide a significant incentive to encourage conversions, and thus help reduce the potential impact to all customers from future storms. The general body of customers would benefit from these avoided cost savings through the reduction in aggregate storm restoration costs shared by all. This restoration benefit would only be produced by undergrounding generally contiguous facilities so that overhead restoration crews could be deployed elsewhere. If conversions in a given area are scattered, restoration savings would be much smaller.

FPL has performed a macro-level economic evaluation, which is described below. The approach taken is dictated by the significant limitations on the amount and granularity of data currently available to perform such an analysis. In the future, as more information is collected, FPL expects to be able to further hone its evaluations and will revise the results if warranted. While recognizing this inherent level of uncertainty, FPL believes that the analysis supports the 25% GAF Waiver, such that there is a reasonable expectation that sufficient storm restoration savings will accrue to the general body of customers to cover the GAF Waiver adjustments to rate base.

The Commission's standard Low Density Subdivision model of 210 homes was used as a basis for FPL's analysis. The average CIAC cost for converting the subdivision's overhead infrastructure was calculated. Two scenarios were created by varying the vintage of the existing overhead facilities being replaced – 10 and 20 years. This resulted in CIACs for the subdivision of approximately \$420,000 and \$320,000 respectively. The GAF Waiver is derived from avoided storm restoration cost savings to the general body of customers as a result of these facilities being placed underground. The cost basis used is the average of actuals from restoring the overhead distribution facilities after the 2004 and 2005 hurricanes (representing about 90% of the total distribution restoration costs). These costs were then unitized on a per affected customer basis and multiplied by 210 to match the subdivision size. The analysis used a 30-year forecast period for the avoided restoration costs. An assumed average storm frequency of one event every three years was used as the base case, reflecting the expected ongoing heightened incidence of storm activity and recent experience. A sensitivity case was also evaluated using the 100-year average storm frequency of about one event every five years. Base case results showed a savings range of approximately 30-40% of the CIAC amount. The range of savings for the 100-year average sensitivity case was 20-26%. These ranges bracket FPL's originally proposed GAF Waiver amount of 25% and thus demonstrate that there is reasonable assurance of a quantifiable benefit to the general body of customers.

Exhibit 2 - Governmental Adjustment Factor Waiver v. Storm Restoration Costs

CIAC Scenarios

20-Year OH	10-Year OH	Vintage
537,000	537,000	
12,000	113,000	
104,000	104,000	
(334,000)	(334,000)	
319,000	420,000	

I. Low Density Subdivision (LDS):

1	New Underground Facilities - Conversion	537,000
2	+ Existing Overhead Facilities Net Book Value	113,000
3	+ Overhead Removal Cost	104,000
5	- Overhead Salvage Value	(334,000)
4	- New Hypothetical Overhead Facilities	(334,000)
6	CIAC	420,000

II. Avoided Storm Restoration Costs:

	2004				2005			
	Charley	Frances	Jeanne	Dennis	Katrina	Rita	Wilma	Base Case 2-Yr Total
7	1,448,308	237,402	246,258	9,024	135,427	10,487	602,256	
8	1,303,477	213,662	221,630	8,122	127,884	9,438	542,030	
9	10,740,000	2,786,000	1,737,000	509,000	1,453,000	140,000	3,241,000	
10	121	77	128	16	84	67	167	
11	25,487	16,105	26,795	3,361	17,616	14,157	35,121	

III. 30-Year NPV of LDS Costs (line 11):

12	Base Case - Average 1 Storm Every 3 Years	129,269
13	Sensitivity - 100-Year Average (1 Every 5 Yrs)	82,120

IV. NPV of LDS as Effective % of CIAC (line 6):

14	Base Case - Average 1 Storm Every 3 Years	41%
15	20-Year Overhead Converted	31%
16	10-Year Overhead Converted	26%
17	Sensitivity - 100-Year Average (1 Every 5 Yrs)	20%
18	20-Year Overhead Converted	
19	10-Year Overhead Converted	

DOCKET NO. 070231-EI, IN RE: PETITION FOR APPROVAL OF FPL'S
UNDERGROUND RESIDENTIAL AND COMMERCIAL DISTRIBUTION TARIFFS

RESPONSE OF THE MUNICIPAL UNDERGROUND UTILITIES CONSORTIUM
AND THE CITY OF COCONUT CREEK, FLORIDA IN OPPOSITION
TO FPL'S MOTION TO DISMISS

EXHIBIT 5

John T. Butler
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Florida Power & Light Company
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January 16, 2007

- VIA ELECTRONIC DELIVERY -

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Docket No. 060150-EI

Dear Ms. Bayó:

On November 13, 2006, the Towns of Palm Beach and Jupiter Island filed in this docket and Docket Nos. 060172-EU and 060173-EU a document entitled "Cost-Effectiveness of Undergrounding Electric Distribution Facilities in Florida (the "UG Cost-Effectiveness Study"). The costs and benefits of undergrounding are evaluated for several different parameters in the UG Cost-Effectiveness Study. One of those parameters is the cost impact of undergrounding on storm restoration costs. That portion of the UG Cost-Effectiveness Study is relevant to this docket, because the GAF Waiver that FPL has proposed here is based on the expected savings in storm restoration costs when large, contiguous areas are converted from overhead to underground service. The remainder of the UG Cost-Effectiveness Study is not directly relevant to this docket, however, because it deals with cost parameters that were not part of FPL's calculation of the GAF Waiver and generally played no role in the GAF Tariff for which FPL seeks approval.

FPL has evaluated the UG Cost-Effectiveness Study and is in the process of preparing its response. Recognizing that the schedule in this docket calls for a Staff recommendation on the GAF Tariff in the near future, however, FPL focused its efforts initially on critiquing the portion of the UG Cost-Effectiveness Study that relates to storm restoration costs. I am submitting this letter as FPL's response to that portion of the Study.

Ms. Blanca S. Bayó, Director
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Although the UG Cost-Effectiveness Study's estimate of storm restoration cost savings from undergrounding is derived using a considerably different approach than FPL's estimate that was submitted in support of the GAF Tariff, the actual value derived in the Study is quite consistent with FPL's. The UG Cost-Effectiveness Study estimates that storm restoration cost savings will be approximately 24% of the CIAC required for underground conversions, almost exactly the same as the 25% GAF Waiver that FPL has proposed and solidly within the range of estimated savings that FPL submitted as Exhibit 2 to its amended GAF tariff petition (*i.e.*, 20% - 41%, depending upon assumptions). I should note that the estimate in the UG Cost-Effectiveness Study of *total* cost savings as a result of undergrounding is approximately 50%. FPL does not believe that this figure is realistic and will be submitting comments in the near future addressing that estimate. However, as noted above, the GAF Waiver is intended to reflect only storm restoration cost savings, and on that specific point the value estimated in the UG Cost-Effectiveness Study is consistent with FPL's estimated value.

I also want to point out that, as explained in Exhibit 2 to the amended GAF Tariff petition, FPL's savings estimates assume that a large, contiguous area will be converted to underground service, so that overhead restoration crews could be deployed elsewhere. FPL expects that the storm restoration cost savings associated with small-scale, isolated underground conversions will be considerably less and is currently evaluating an appropriate savings estimate for such conversions. It is unclear whether the 24% savings estimate in the UG Cost-Effectiveness Study is intended to be applied only to conversions of large, contiguous areas. If it is not, then FPL would disagree that the 24% figure could appropriately be used to estimate savings for small-scale, isolated conversions. However, again that is an issue which need not be resolved with respect to this docket, because the applicability of the GAF Tariff is expressly limited to large, contiguous areas and thus the appropriate savings value for small-scale isolated conversions is not at issue here.

At this point, FPL's 25% GAF Waiver has been fully "triangulated." As FPL explained in Exhibit 2 to the amended GAF Tariff petition, FPL's discussions with local governments indicated that a 25% GAF Waiver would provide a significant incentive to encourage undergrounding and is likely therefore to spur action that can help harden FPL's electric distribution system against the impacts of future storms. FPL estimated that the storm restoration cost savings for large, contiguous projects will range from 20% to 41%, meaning that the undergrounding benefits to the general body of customers are likely to be as much or more than the additional costs customers will pay to support the GAF Waiver. And now, an independent report prepared on behalf of towns that are FPL customers corroborates FPL's conclusion about the level of savings for such projects.

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FPL believes that these three sources of data clearly justify the proposed GAF Waiver and urges Staff to recommend approval of the GAF Tariff at the February 13, 2007 agenda conference.

Please feel free to call me at 561-304-5639 if you have any questions about this matter.

Sincerely,

/s/ John T. Butler

John T. Butler

Cc: Ms. Roseanne Gervasi, Esq.
Office of General Counsel
Florida Public Service Commission

Counsel for Parties of Record