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August 28, 2009

-VIA HAND DELIVERY -

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

090422

COMMISSION
CLERK

09 AUG 28 PM 3: 58

RECEIVED-FPSC

**Re: Petition of Florida Power & Light Company for Extension of
Governmental Adjustment Factor Tariff and Approval of Seventh
Revised Tariff Sheet No. 9.725**

Dear Ms. Cole:

I am enclosing for filing the original and fifteen (15) copies of Florida Power & Light Company's Petition for Extension of Governmental Adjustment Factor Tariff and Approval of Seventh Revised Tariff Sheet No. 9.725, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows XP, and the word processing software in which the document appears is Word 2003.

If there are any questions regarding this transmittal, please contact me at 561-691-2512.

Sincerely,

Kenneth M. Rubin

Enclosures

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GCL	3
OPC	1
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SGA	3
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DOCUMENT NUMBER-DATE

08962 AUG 28 09

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition of Florida Power & Light)
Company for Extension of Governmental)
Adjustment Factor Tariff)
_____)

DOCKET NO. 090422

FILED: August 28, 2009

**PETITION OF FLORIDA POWER & LIGHT COMPANY FOR
EXTENSION OF GOVERNMENTAL ADJUSTMENT FACTOR TARIFF
AND APPROVAL OF SEVENTH REVISED TARIFF SHEET NO. 9.725**

Florida Power & Light Company (“FPL”), pursuant to Chapter 120, Florida Statutes, and Rule 28-106.201, Florida Administrative Code (“F.A.C.”), and in compliance with Order No. PSC-08-0414-TRF-EI entered in Docket No. 08-0223-EI (“Order Approving Extension of GAF Tariff”), by and through its undersigned counsel, hereby petitions for extension of FPL’s Governmental Adjustment Factor (“GAF”) Tariff. FPL respectfully requests that the Commission extend the effective period of the GAF Tariff so that it will be available to eligible applicants for an additional year beyond the Commission’s current approval, *i.e.*, until October 30, 2010; and approve a conforming modification to FPL’s Tariff Sheet No. 9.725. In summary, the requested extension will allow additional time for FPL to gather, analyze, and report to the Commission data regarding the quantifiable storm restoration benefits upon which the 25% GAF Waiver reflected in the GAF Tariff is predicated. The requested extension will also give local governments that have expressed interest in undertaking underground (“UG”) conversions pursuant to the GAF Tariff sufficient time to obtain full information as to the costs of those projects and then to proceed with the projects in an orderly manner.

In further support of its Petition, FPL states as follows.

PROCEDURAL BACKGROUND

1. The name and address of Petitioner FPL is:

DOCUMENT NUMBER-DATE

08962 AUG 28 09

FPSC-COMMISSION CLERK

Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408.

2. Copies of all pleadings, notices, and orders in this docket should be provided to:

R. Wade Litchfield, Esq.
Vice President of Regulatory Affairs and
Chief Regulatory Counsel
Florida Power & Light Company
215 South Monroe Street, Suite 810
Tallahassee, FL 32301-1859

and

John T. Butler, Esq.
Managing Attorney
Kenneth M. Rubin, Esq.
Senior Attorney
Florida Power & Light Company
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john.butler@fpl.com

FACTUAL BACKGROUND

3. FPL is a public utility subject to the regulatory jurisdiction of the Commission under Chapter 366, Florida Statutes.

4. In February 2006, FPL initiated Docket No. 060150-EI, In Re: Florida Power & Light Company's Petition for Approval of Revisions to Contribution in Aid of Construction Tariffs (the "GAF Tariff Docket"). By its petition, FPL sought the Commission's approval of revisions to its tariffs governing the contribution in aid of construction ("CIAC") applicable to government-sponsored UG conversion projects covering substantial geographic areas; the key provision was FPL's proposed GAF Waiver, by which FPL proposed to give local governments that sponsored

eligible UG conversion projects a 25 percent waiver (reduction) in the otherwise applicable CIAC. In turn, FPL sought approval to record as Plant in Service amounts equivalent to the credits against CIAC that FPL would provide as GAF Waivers. In September 2006, FPL filed an amended proposed GAF Tariff and provided the Commission an estimated range of storm restoration benefits from underground conversion of the large, contiguous areas to which the GAF Tariff applies. This estimated range of storm restoration benefits served as FPL's cost justification for the 25% GAF Waiver.

5. The Commission approved the amended GAF Tariff, with minor modifications, by Order No. 07-0442-TRF-EI, issued on May 22, 2007 (the "GAF Approval Order"). The GAF Tariff was approved as a pilot project subject to subsequent Commission review. The GAF Approval Order required FPL to (a) file a report providing an updated quantification of storm restoration benefits based on any new storm-restoration data at least 60 days before October 2008; and (b) petition the Commission to continue, modify, or discontinue the tariff at that time, as necessary.

6. The Commission thereafter approved the further extension of the amended GAF Tariff through its Order Approving Extension of GAF Tariff. The Order Approving Extension of GAF Tariff required FPL to again (a) file a report providing an updated quantification of storm restoration benefits based on any new storm restoration data at least 60 days before expiration of the GAF Tariff in October 2009; and (b) petition the Commission to continue, modify, or discontinue the tariff at that time.

7. The principal source of additional data with which to quantify storm restoration benefits is experience in actual storm restoration. Fortunately for most purposes but unfortunately for the collection of such data, there have been no substantial storms impacting FPL's service territory since the GAF Tariff was approved in May 2007. Therefore, FPL has no additional data at this point with which to update the quantification of storm restoration benefits that it provided in support of the

GAF Tariff, and there is no legitimate basis at this point to change the GAF Waiver from the current 25% level.

8. The pilot period for the GAF Tariff will extend for approximately 3 ½ years from the time when the GAF Tariff was first proposed in February 2006. However, because of uncertainty over whether the GAF Tariff would ultimately be approved and the significant impact that the GAF Waiver would have on the economics of UG conversion projects, many local governments did not feel it was prudent to make major, irreversible commitments to those projects until the Commission had formally approved the GAF Tariff. By the time the GAF Tariff was formally approved in May 2007, only about 16 months of the pilot period remained. Moreover, in February 2007 the Commission amended Rule 25-6.115, F.A.C., governing the calculation of CIAC for UG conversions, and it has taken time for FPL and other utilities to develop the basis for revising their CIAC calculations as contemplated by the rule amendments.¹ Uncertainty over the impact of these revisions to the CIAC calculation has also caused many local governments to move slowly with their UG conversion projects. Finally, independent of the impact of any uncertainties about the economics of UG conversion, such projects require substantial lead times for local governments to develop community consensus on undertaking the considerable financial obligations associated with the projects and then putting the financing in place to fund those obligations. For these reasons, while there are several dozen local government UG conversion projects in at least the initial planning

¹ As amended, Rule 25-6.115 requires that the storm hardening requirements of Rule 25-6.0342, F.A.C., be taken into account in developing the cost of the hypothetical overhead distribution system that is avoided when service is converted to UG. The Commission did not approve FPL's or the other utilities' storm hardening plans until late December 2007, so the utilities were not in a position to take hardening costs into account in calculating CIAC until fairly recently. The amendments to Rule 25-6.115 also required utilities to take into account the net present value of differences in operational costs for overhead and UG systems in calculating the CIAC. FPL committed to and did file its operational cost differential by April 30, 2008 and is likely the first utility to do so.

stages, FPL anticipates that there are few local governments that will be in a position to have financed their projects and entered into binding commitments to proceed with them by October 2009.

9. In June of 2009, the parties to Docket No. 080244-EI and Docket 070231-EI reached a settlement which, subject to approval by the participating local governmental entities and of course subject to Commission approval, would (among other things) make the GAF Tariff a permanent tariff remaining subject to the Commission's continuing authority to conduct informal investigations and proceedings on the tariff on its own motion. The various participating members of the Municipal Underground Utilities Consortium ("MUUC") have consented to the settlement. However, despite repeated requests by counsel for FPL, Intervenor City of South Daytona ("CSD") has not taken a position regarding approval of the settlement. Notwithstanding the absence of a position being taken by CSD, FPL must now proceed with its filing of this Petition in compliance with the above referenced Order Approving Extension of GAF Tariff. In light of the fact that CSD has not taken a position on the settlement agreed to in June, FPL is not prepared to request that the GAF Tariff be made a permanent tariff but is prepared to request a further one (1) year extension of the tariff.

RELIEF REQUESTED

10. FPL respectfully requests that the Commission: (a) extend the effective period of the GAF Tariff so that it will be available to eligible applicants for an additional one (1) year beyond the Commission's current approval, i.e., until October 30, 2010, and (b) approve the conforming modification reflected in FPL's Seventh Revised Tariff Sheet No. 9.725² which is attached as Exhibit A to this Petition. In terms of the requirements of the Order Approving Extension of GAF Tariff, the

² This tariff sheet is the first page of FPL's Underground Facilities Conversion Agreement – Governmental Adjustment Factor Waiver, which an eligible applicant must sign in order to qualify for the GAF Waiver credit. The only change is to make the Agreement available until October 30, 2010, instead of October 30, 2009.

requested extension and tariff sheet modification constitute FPL's petition to continue the GAF Waiver in effect for an additional one (1) year. FPL also respectfully requests that the Commission accept the report attached hereto as Exhibit B regarding the status of its continuing efforts to quantify storm restoration costs and benefits in fulfillment of the Commission's requirements in the GAF Approval Order.

11. Extending the availability period of the GAF Tariff will benefit local governments that are considering UG conversion projects by providing adequate time and opportunity for them to implement their projects based on complete information. FPL believes that the requested extension will result in more UG conversion projects being implemented than if the extension is not granted, and this in turn will enable FPL to gather additional cost and benefit information, regarding both storm restoration costs and other, non-storm-related costs and benefits, from additional UG conversion projects in the field.

12. Exhibit B addresses the status of efforts to obtain and provide "an updated quantification of storm restoration benefits based on any new storm-restoration data," as required by the Order Approving Extension of GAF Tariff. In summary, the report explains that because the 2006, 2007 and 2008 hurricane seasons were quiet for Florida, FPL has had no effective opportunity to gather additional data to support updated analyses of costs and benefits. Exhibit B also shows that many planned governmental UG conversion projects are in the early, preliminary planning stages. Because few local governments have had an opportunity to proceed into the construction phase of their planned UG conversion projects, FPL is unable to provide any additional analysis of the effectiveness of the GAF Waiver or of UG conversion projects. In practical terms, the report that FPL could produce by August 2009 in the form of Exhibit B to this Petition (*i.e.*, 60 days before October 2009) is not substantively different from the Exhibit B that was attached to the report filed by FPL in its 2008 report required by the GAF Approval Order. Even in the unfortunate event that a

tropical storm or hurricane struck FPL's service area in August or September, the interests of FPL's customers would be far better served by FPL's devoting resources to restoration efforts than to trying to compile and analyze data on the storm for incorporation into a report to be filed in August. FPL also believes that its customers' interests will be better served by getting more UG conversion projects under way as soon as practicable, both by virtue of the anticipated direct benefits (e.g., reduced storm restoration costs) of such UG projects, and also because of the additional information gained from those projects.

ISSUES OF MATERIAL FACT

13. FPL does not believe that there are any disputed issues of material fact relative to its petition to extend the GAF Tariff's availability until October 2010. Issues that the Commission must decide include, but will not necessarily be limited to, the following.

ISSUE 1: Whether the Commission should extend the eligibility period for the GAF Waiver credit as requested by FPL, and approve the proposed conforming amendment to FPL's Tariff Sheet No. 9.725.

ISSUE 2: Whether the Commission should accept the report attached to this Petition as satisfying the report requirement of the Order Approving Extension of GAF Tariff.

14. **Statement of Ultimate Facts Alleged.** The following facts entitle FPL to the relief requested herein.

a. Extending the availability of the GAF Waiver for one (1) additional year, as requested by FPL, will provide substantial benefits to FPL and FPL's customers through additional UG conversion projects that will be undertaken and also through the additional data on the costs and benefits of undergrounding that will be gained from those projects.

- b. The requested extension will enable a significant number of potential local government applicants for UG conversion projects to ascertain with reasonable certainty what their CIACs will be for those projects and thus to proceed in an orderly manner to arrange for their constituents' approval, financing and construction of those UG conversion projects.
- c. The requested extension and tariff modification will support the Commission's and FPL's policies to encourage cost-effective undergrounding in appropriate settings.
- d. The report that FPL provides in 2009 as Exhibit B is not materially different from that attached in 2008 in response to the GAF Approval Order .
- e. Extending the availability of the GAF Tariff and approving the proposed conforming tariff modification are in the public interest and in the best interests of FPL, its general body of customers, and local governments that intend to pursue UG conversion projects.

15. The foregoing facts provide the factual and legal basis for the Commission to grant the extension of the GAF Tariff as requested by FPL.

16. Statutes and Rules That Entitle FPL to the Relief Requested. The applicable statutes and rules that entitle FPL to the requested relief include, but are not limited to, Sections 366.06(1&2) and 366.07, Florida Statutes, and Rule 25-6.115 and Chapter 28-106, Florida Administrative Code.

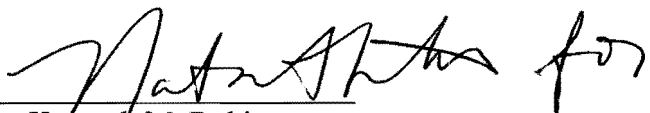
17. Statement Explaining How the Facts Alleged By FPL Relate to the Above-Cited Rules and Statutes. The above-cited sections of Chapter 366 generally provide that the Commission must ensure that all tariffs, rates, and charges, including contract terms and conditions, are fair, just, and reasonable. The facts in this case support the requested extension of the GAF Tariff's availability which will be implemented by the Commission's approval of the proposed modification to FPL's Tariff Sheet No. 9.725, FPL's Underground Facilities Conversion Agreement – Governmental Adjustment Factor Waiver.

WHEREFORE, Florida Power & Light Company respectfully requests the Florida Public Service Commission to enter its order extending the GAF Tariff's availability for one (1) year (to October 30, 2010), approving the proposed Seventh Revised Tariff Sheet No. 9.725 attached hereto

as Exhibit A, and accepting FPL's report attached as Exhibit B in satisfaction of the Order Approving Extension of GAF Tariff dated June 23, 2008.

Respectfully submitted,

R. Wade Litchfield, Esquire
Vice President of Regulatory
Affairs and Chief Regulatory Counsel
John T. Butler, Esquire
Managing Attorney
Kenneth M. Rubin, Esquire
Senior Attorney
Florida Power & Light Company
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By: 
Kenneth M. Rubin
Fla. Bar No. 349038

CERTIFICATE OF SERVICE

I, THE UNDERSIGNED COUNSEL, HEREBY CERTIFY that a copy of Florida Power & Light Company's Petition for Extension of Governmental Adjustment Factor Tariff and Approval of Seventh Revised Tariff Sheet No. 9.725 has been served via first class mail, postage prepaid to the parties listed below, this 28th day of August, 2009.

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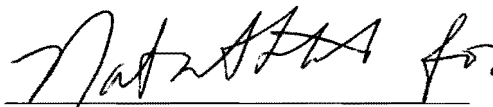
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Kenneth M. Rubin
Florida Bar No. 349038

EXHIBIT A

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

This Agreement, which is available to customers that sign the Agreement on or before October 30, 2010, 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)

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

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(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:

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 - 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)

EXHIBIT B

**FLORIDA POWER AND LIGHT COMPANY
EXHIBIT B**

Additional Storm Restoration Data

Due to the lack of any additional major storms impacting FPL's service territory in 2006, 2007 and 2008, FPL has not been able to gather any additional storm restoration data.

Note: Since 2006, FPL has enhanced its forensics tools and processes, including gathering more information that will enable improved evaluation of its overhead vs. underground facilities' storm performance.

Overview/Status – Municipal Overhead vs. Underground Conversion Projects (2/06-7/09)

Ballpark cost estimates:	112
Binding cost estimates:	29
Projects completed:	6
Projects in engineering design:	25
Projects under construction:	9