

State of Florida



Public Service Commission

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

DATE: March 15, 2007

TO: Commission Clerk (Cole)

FROM: Division of Economic Regulation (Draper, Breman, Kummer, Trapp)
Office of the General Counsel (Gervasi)

RE: Docket No. 060150-EI – Petition for approval of revisions to contribution-in-aid-of-construction definition in Section 12.1 of First Revised Tariff Sheet No. 6.300, by Florida Power & Light Company.

AGENDA: 03/27/07 – Regular Agenda – Tariff Filing - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: Administrative

CRITICAL DATES: 8-Month clock – May 21, 2007

SPECIAL INSTRUCTIONS: None

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

Case Background

On February 20, 2006, Florida Power & Light Company (FPL) filed a petition for approval of revisions to the Contribution-In-Aid of Construction (CIAC) definition in Section 21.1 of its First Revised Tariff Sheet No. 6.300. FPL's tariff provides the general provisions and terms under which FPL and a customer (applicant) may enter into a contract for the purpose of converting existing overhead electric facilities to underground. The customer is required to pay FPL a CIAC, which represents the conversion costs incurred by FPL. FPL has proposed to revise the definition of CIAC to include a governmental adjustment factor (GAF) of 25 percent when the applicant for conversion is a local government. The 25 percent GAF waiver is designed to encourage the installation of underground facilities by reducing the CIAC the customer is required to pay FPL. The GAF waiver is based on expected savings in storm

restoration costs when large contiguous areas are converted from overhead to underground service. FPL has proposed to charge the 25 percent not borne by the requesting municipalities as new plant-in-service for ratemaking purposes. In future rate cases, the 25 percent forgone CIAC would be recovered from FPL's general body of ratepayers.

At the time the tariff was filed, Rule 25-6.115, Florida Administrative Code (F.A.C.), "Facility Charges for Providing Underground Facilities of Public Distribution Facilities Excluding New Residential Subdivisions," required the customer requesting the conversion to pay the entire cost. Concurrent with the tariff filing, FPL filed a petition to initiate rulemaking to amend Rule 25-6.115, F.A.C., to allow for the 25 percent reduction as outlined in the proposed tariff.

Prior to the rule amendments adopted in Docket Nos. 060172-EU and 060173-EU, the rule provided that a utility could waive any or all of the CIAC, but the full amount of the applicable CIAC had to offset the costs as if it had been collected from the customer. In other words, this placed the entire cost of the conversion on the customer unless the utility was willing to forego recovery of those costs.

The Commission denied FPL's petition to initiate rulemaking and directed staff to initiate rulemaking to address strengthening of overhead infrastructure and issues surrounding the conversion of overhead infrastructure of underground facilities.¹ Accordingly, on March 1, 2006, staff opened Docket Nos. 060172-EU and 060173-EU to initiate comprehensive rulemaking proceedings to enhance the reliability of Florida's transmission and distribution system during extreme weather events.

On March 17, 2006, the Town of Palm Beach and the Town of Jupiter Island (the Towns) each filed a Petition to Intervene and Petitions for Tariff Amendment in this docket. Both towns have been engaged in discussions and negotiations with FPL toward converting the overhead facilities to underground. The petitions to intervene were granted.²

On April 24, 2006, the Commission suspended FPL's tariff filing pending further review and the conclusion of rulemaking in Docket Nos. 060172-EU and 060173-EU. The Commission further ordered that in the event that FPL's proposal is ultimately approved, FPL shall be permitted to apply any approved discount for local government-sponsored conversion projects to undergrounding contracts entered into with local governments on or after April 4, 2006.³

On September 21, 2006, FPL filed an amended petition to update and refine its tariff to reflect the recent staff-proposed revisions to the Commission's rules in Docket Nos. 060172-EU and 060173-EU. FPL agreed that this amended petition constitutes a substantive change to the original filing and therefore the eight-month clock restarted for the Commission. The eight-month clock expires on May 21, 2007.

¹ See Order No. PSC-06-0273-FOF-EI, issued April 6, 2006, in Docket No. 060149-EI, In re: Petition to initiate rulemaking to amend Rule 25-6115, F.A.C., Facility Charges for Providing Underground Facilities of Public Distribution Facilities Excluding New Residential Subdivisions, by Florida Power & Light Company.

² See Order Nos. PSC-06-0366-PCO-EI and PSC-06-0367-PCO-EI, issued May 1, 2006, in this docket.

³ See Order No. PSC-06-0339-PCO-EI, issued April 24, 2006, in this docket.

At its December 5, 2006, Agenda Conference, the Commission approved several revisions to its rules governing electric infrastructure and underground CIAC policies. With respect to Rule 25-6.115, F.A.C., the Commission approved the addition of new subsection (11), requiring investor-owned electric utilities to include the net present value of operational costs including the average historical storm restoration costs over the expected life of the facilities in a CIAC calculation. The Commission also approved language in new subsection (12) that allows the waiver of all or a portion of the CIAC for a customer requesting conversion without reducing net plant-in-service by the waived amount, if the Commission determines that there are quantifiable benefits to the general body of ratepayers.

The Commission further revised Rule 25-6.115(9), F.A.C., to require CIAC calculations to include cost impacts of any new storm hardening construction standards for underground and overhead facilities based on the requirements of Rule 25-6.0342, F.A.C., "Electric Infrastructure Storm Hardening." Rule 25-6.0342, F.A.C., requires investor-owned electric utilities to file a comprehensive storm hardening plan for review and approval by the Commission. The storm hardening plans are to be filed no later than 90 days after the effective date of the rules, which is February 2, 2007. The storm hardening plans are therefore due on May 2, 2007.

On November 13, 2006, the Towns filed a cost-effectiveness study of undergrounding electric distribution facilities entitled Cost Effectiveness of Undergrounding Electric Distribution Facilities in Florida. The study was prepared on behalf of several municipalities known as the Municipal Underground Utilities Consortium (MUUC). This study was filed in this docket and in Docket Nos. 060172-EU and 060173-EU in the event the Commission or staff wished to consider the study in connection with the rulemaking dockets. This staff recommendation does not address the appropriateness of the study submitted by the Towns because the issue before the Commission is the FPL tariff as filed in this docket.

On January 16, 2007, the Town of Gulf Stream, in Palm Beach County, filed a resolution supporting the conversion of overhead distribution facilities to underground facilities and encouraging the Commission to implement all reasonable measures to encourage the conversion of facilities. The City of Rockledge, the City of Cocoa Beach, the City of Plantation, the Town of Palm Beach Shores, the City of Bonita Springs, the City of Satellite Beach, the City of Flagler Beach, the City of Gulf Stream, the City of Palm Beach, the Town of Briny Breezes, the Town of Palm Beach Shores, the City of North Bay Village, and the Town of Jupiter Inlet Colony filed similar resolutions.

On February 15, 2007, the Municipal Underground Utilities Consortium (MUUC) filed a petition to intervene. On February 20, 2007, FPL filed a response to MUUC's petition to intervene. On February 27, 2007, MUUC filed a request for oral argument and a response to FPL's request that the Commission reject certain issues raised by MUUC.

In Docket No. 060198-EI the Commission required the investor-owned electric utilities to file plans and estimated implementation costs for certain storm preparedness initiatives, including collaborative research.⁴ As a result of this Commission directive, FPL, Progress

⁴ See Order No. PSC-06-0781-PAA-EI, issued September 19, 2006, in Docket No. 060198-EI, In re: Requirement for investor-owned electric utilities to file ongoing storm preparedness plans and implementation cost estimates.

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Energy Florida, Tampa Electric Company, Gulf Power Company, Florida Public Utilities Company, Florida Municipal Electric Association, Florida Electric Cooperatives Association, and Lee County Electric Cooperative (collectively the project sponsors), are providing funding for the Public Utility Research Center (PURC) for the coordination of research to investigate the costs and benefits of undergrounding their existing infrastructures. The project sponsors have contracted with a vendor to perform a study in three phases. In Phase 1, the existing body of knowledge on the costs and benefits of undergrounding will be summarized and analyzed in a report due February 28, 2007. In Phase 2, a study and analysis of Florida cases where overhead facilities have been moved underground will be conducted and a report is due August 6, 2007. Phase 3 will, by March 30, 2008, result in the development of a methodology that can be used to consistently quantify the costs and benefits of undergrounding specific areas of existing electricity distribution infrastructure in Florida.

The Commission has jurisdiction pursuant to Sections 366.03, 366.04, 366.05, 366.06, and 366.075, Florida Statutes.

Discussion of Issues

Issue 1: Should the Municipal Underground Utilities Consortium's Request for Oral Argument be granted?

Recommendation: No, the Request for Oral Argument should be denied because it does not comport with Rule 25-22.0022, F.A.C. However, interested persons may address the Commission informally on this item at the agenda conference pursuant to Rule 25-22.0021, F.A.C. (Gervasi)

Staff Analysis: The Municipal Underground Utilities Consortium (MUUC) requests oral argument on its Response to FPL's Request that the Commission "Reject MUUC's Issues 5 to 8" and Otherwise Limit the MUUC's Ability to Raise Issues, and on FPL's Response to Petition to Intervene of the MUUC. The MUUC cites to no authority for the filing of this Request for Oral Argument and none exists for it.

Rule 25-22.0022(7)(a), F.A.C., which became effective on January 1, 2007, provides that "[o]ral argument at agenda conference will only be entertained for recommended orders and dispositive motions, such as motions to dismiss, motions for summary final order, and motions for reconsideration of non-final or final orders." Neither of the filings on which the MUUC requests oral argument are recommended orders or dispositive motions. Therefore, staff recommends that the MUUC's Request for Oral Argument should be denied because it does not comport with Rule 25-22.0022, F.A.C. However, interested persons may address the Commission informally on this item at the agenda conference pursuant to Rule 25-22.0021(2), F.A.C.

Issue 2: Should the Petition to Intervene of the Municipal Underground Utilities Consortium be granted?

Recommendation: Yes, the Petition to Intervene should be granted and all parties to this proceeding should be required to serve copies of all pleadings, notices, and other documents on the Municipal Underground Utilities Consortium's representatives, as indicated in the Petition. The MUUC's intervention should be limited to issues directly relevant to the proposed tariff that is the subject of this docket. (Gervasi)

Staff Analysis:

Petition to Intervene

Standing

In its Petition to Intervene, the MUUC states that it is comprised of approximately 30 political subdivisions of the State of Florida (i.e., Florida cities and towns), the majority of which are retail customers of FPL. Its members have ongoing interests in converting the existing overhead electric distribution lines in their jurisdictions to underground service, and the majority of its members would qualify as "local government applicants" within the scope of FPL's proposed tariff. The MUUC states that it is entitled to intervene because the interests of its members who are FPL customers will be directly affected by the Commission's decision in this docket.

The MUUC states that it was created by an Interlocal Agreement dated June 2006, which provides, in pertinent part, that its purpose is to mutually promote the installation of underground electric and other utility and utility-type facilities in the public interest, and to promote and ensure that underground installations and conversions are paid for through appropriate, fair, just, equitable, and reasonable combinations of utility funding and funding by entities that apply for such underground installations and conversions. The MUUC's members own and operate numerous municipal facilities and utility equipment. Because a substantial number of its members are considering underground utility projects, MUUC argues that its substantial interests will be directly affected by the Commission's actions in this docket, and that it meets the standing test as set forth in Agrico Chemical Co. V. DER.⁵ Further, the MUUC states that it satisfies the associational standing requirements as set forth in Florida Home Builders Ass'n v. Department of Labor and Employment Security.⁶

⁵ 406 So.2d 478 (Fla. 2d DCA 1981), rev. denied, 415 So. 2d 1359 (Fla. 1982) (holding that an intervenor must demonstrate that it will suffer a sufficiently immediate injury in fact that is of the type the proceeding is designed to protect). See also Ameristeel Corp. v. Clark, 691 So. 2d 473 (Fla. 1997).

⁶ 412 So. 2d 351, 353-54 (Fla. 1982) (holding that an association representing its members' substantial interests must demonstrate that a substantial number of its members are substantially affected, that the intervention is within the association's general scope of interest and activity, and that the relief requested is of a type appropriate for an association to obtain on behalf of its members).

In its Response to the MUUC's Petition to Intervene, FPL states that it does not object to the MUUC's intervention in this docket. However, FPL points out that pursuant to Rule 25-22.039, F.A.C., the MUUC must take this proceeding as it finds it. FPL argues that certain of the disputed issues of material fact as set forth in the Petition to Intervene purport to expand the proceeding beyond its proper scope, as further discussed below.

Disputed Issues of Material Fact

In its Petition to Intervene, the MUUC states that it supports the proposed 25% credit value for the estimated avoided storm restoration cost component of FPL's CIAC calculation and also supports FPL's request that the Commission recognize the additional investment that would be made by FPL in underground facilities as new plant-in-service, subject to normal prudence criteria. However, the MUUC believes that greater credits than FPL's proposed 25% credit are warranted. Additionally, the MUUC has concerns with several tariff implementation issues, including the eligibility criteria set forth in FPL's proposal. The MUUC states that it has begun negotiations with FPL to resolve as many issues as possible and to clearly define any remaining areas of disagreement. Pending the outcome of these negotiations, the MUUC identifies the following as potential issues of material fact that will be decided in this proceeding, and believes that those items marked with an asterisk (*) are not in dispute:

- ISSUE 1: Is the 25% GAF Waiver Credit proposed by FPL fair, just, and reasonable?*
- ISSUE 2: Will FPL's proposed incentive provide an appropriate incentive to municipalities to undertake OH-to-UG conversion projects?
- ISSUE 3: Should FPL be allowed to include the amount that it pays for new UG facilities in its plant-in-service accounts?*
- ISSUE 4: Are the eligibility criteria set forth in FPL's proposed tariff fair, just, reasonable, and appropriate?
- ISSUE 5: What are the appropriate costs and benefits to be considered and reflected in the calculation of OH-to-UG conversion CIACs?
- ISSUE 6: What is the appropriate level of credit to be applied against in calculating OH-to-UG conversion CIACs?
- ISSUE 7: How should the CIACs for OH-to-UG conversions be calculated when municipalities undertake OH-to-UG conversion projects themselves (either with municipal employees or with an FPL-approved contractor), as is their right pursuant to Rule 25-6.115(3), F.A.C., and FPL's Tariff Section 12.2.11 on First Revised Sheet No. 6.330?
- ISSUE 8: Is FPL's proposed City/County Right-of-Way Agreement for Underground Conversions fair, just, reasonable, and appropriate?

Finally, the MUUC states that it reserves all rights to raise additional issues in accordance with the Commission's rules and any Order Establishing Procedure issued in this case.

In its Response to MUUC's Petition to Intervene, FPL argues that the MUUC should not be permitted to pursue Issues 5 through 8 as contained in its Petition to Intervene because these issues go beyond the scope of this proceeding. This proceeding was initiated by FPL to seek approval of tariff sheet revisions that would implement FPL's proposed GAF. The GAF tariff is voluntary and optional. No local government would be required to utilize it for underground conversions. Moreover, the GAF tariff would not affect the calculation of CIAC. It would instead implement a proposed waiver of part of whatever CIAC amount has otherwise been calculated under Rule 25-6.115, F.A.C., which has recently been amended to revise some of the elements in the calculation of CIAC. FPL has petitioned the Commission in this proceeding only for approval of the GAF tariff. It will petition separately for approval of the tariff revisions that implement the revised CIAC calculation.

According to FPL, the scope of this proceeding is properly limited to considering whether the GAF tariff should be approved, and only MUUC Issues 1 through 4 as contained in its Petition to Intervene properly relate to the subject matter of the proceeding. Approval of the GAF tariff would not affect the resolution of MUUC Issues 5 and 6 because the GAF tariff does not affect the calculation of CIAC. Because Issues 5 and 6 deal solely with what factors to consider in calculating the CIAC, they are irrelevant to determining whether to approve the GAF tariff. The same holds true for MUUC Issue 7, which is further illustrated by the fact that the tariff provision central to Issue 7 (Section 12.2.11, contained on Tariff Sheet No. 6.330) is not modified or even affected by FPL's GAF tariff filing. FPL argues that Issue 8 is perhaps the MUUC's greatest stretch. FPL's GAF tariff filing does not even include the referenced right-of-way agreement, and the GAF tariff neither affects nor is affected by that agreement.

FPL points out that in the MUUC's Petition to Intervene at page 11, the MUUC seeks "relief in the form of OH-to-UG CIACs that fully reflect the benefits provided by OH-to-UG conversions and that are fully compliant with the Commission's rules and regulations." FPL argues that granting the relief the MUUC seeks is simply unnecessary and inappropriate to a decision on whether to approve the GAF tariff. FPL requests that if the Commission grants the MUUC's Petition to Intervene, that it strictly limit the intervention to issues directly relevant to review and approval of the GAF tariff and reject MUUC Issues 5 to 8 as unnecessary and inappropriate to this proceeding.

The MUUC filed what it styled as its Response to FPL's Request that the Commission "Reject MUUC's Issues 5 to 8" and Otherwise Limit the MUUC's Ability to Raise Issues. The MUUC states that it is entitled to reply to FPL's filing because FPL's request that the Commission reject certain issues raised by the MUUC is inherently a motion, or request for relief, as contemplated by Rule 28-106.204(1), F.A.C. Staff disagrees. The MUUC filed a Petition to Intervene, within which it identified eight disputed issues of material fact. FPL filed a response thereto in opposition to certain of those issues, arguing that they should not be addressed in this proceeding. The MUUC's response is in the nature of a reply to FPL's response to the MUUC's Petition to Intervene. As such, the Commission need not consider it.

The Uniform Rules of Procedure do not authorize a movant to reply to a response to a motion, and the Commission has routinely refused to consider such replies.⁷

Analysis and Recommendation

Because the MUUC has shown that it has standing to intervene because the interests of a substantial number of its members will be directly affected by the Commission's decision in this docket, staff recommends that its Petition to Intervene should be granted. All parties to this proceeding should be required to serve copies of all pleadings, notices, and other documents on the MUUC's representatives, as indicated in the Petition.

Pursuant to Rule 25-22.039, F.A.C., the MUUC takes the case as it finds it. No disputed issues of material fact exist, or can exist, at this time because the Commission has yet to rule on the tariff filing. The Commission is scheduled to rule on this tariff filing at its March 27, 2007 agenda conference, after which time a tariff order will be issued memorializing the Commission's decision. The Commission's forthcoming decision on this tariff will be interim in nature and will become final, unless a person whose substantial interests are affected by the proposed action timely files a petition for a formal proceeding, in the form provided by Rule 28-106.201, F.A.C. Rule 28-106.201(2)(d), F.A.C., requires persons whose substantial interests will be affected by the agency determination to include a statement of all disputed issues of material fact in the petition for formal hearing on the matter. The MUUC will thus have an opportunity to petition for a formal proceeding and raise disputed issues of material fact at the appropriate time.

That said, staff agrees with FPL that the MUUC's proposed Issues 5 through 8 go beyond the scope of this proceeding and need not be addressed. For the reasons stated by FPL, those issues are irrelevant to the Commission's review and decision on whether to approve the GAF tariff. Therefore, the MUUC's intervention should be limited to issues directly relevant to the proposed tariff that is the subject of this docket.

⁷ See, e.g., Order No. PSC-02-1451-PCO-EQ, issued October 21, 2002, in Docket No. 020898-EQ, In Re: Petition by Cargill Fertilizer, Inc. for permanent approval of self-service wheeling to, from, and between points within Tampa Electric Company's service area.

Issue 3: Should the Commission approve FPL's amended petition for approval of revisions to its tariff to implement a Governmental Adjustment Factor (GAF) for calculation of CIAC?

Primary Staff Recommendation: Yes; however, the GAF and associated tariffs should be effective for only two and a half years from the initial effective date, which is April 4, 2006. At least 60 days prior to the expiration of the GAF and associated tariffs, FPL should be required to file a report with the Commission providing an updated quantification of storm restoration benefits. FPL should also petition the Commission to continue the tariff, modify the tariff, or discontinue the tariff at that time as necessary. (Draper, Kummer)

Alternative Recommendation: The Commission should deny the tariff and require FPL to file tariffs implementing the requirements of Rule 25-6.115, F.A.C. (Breman, Trapp)

Primary Staff Analysis: Primary staff recommends approval of the tariff as filed with the provision that it be deemed a pilot program which must be reviewed by the Commission by October 30, 2008. The time frame is tied to the completion of the Commission's review and approval of FPL's storm hardening plans (due to be filed on May 2007) and the anticipated completion date of the PURC study (due March 2008).

Pursuant to recently revised Rule 25-06.0342, F.A.C., Electric Infrastructure Storm Hardening, the investor-owned electric utilities are required to file detailed storm hardening plans, including cost information, for review and approval by the Commission. The storm hardening plans are due in May 2007 and may impact the construction cost differential between overhead and underground systems.

In addition, the results of the PURC study will be valuable in better quantifying any savings attributable to underground facilities compared to overhead facilities. Allowing the GAF tariff to be in effect for another six months after the completion date of the PURC study will give the Commission adequate time to review the study and the study's impact on the GAF tariff. Furthermore, FPL recognized the potential need for review in its petition and proposed that it provide the Commission a report showing the impact of any new storm-restoration data on the quantification of benefits no later than three years after approval of the tariff.

During an informal conference call to discuss the filing, the parties indicated that the Towns and FPL believe the 25 percent is a reasonable percentage, based on the information provided by FPL in this docket. Primary staff believes approval of this proposal is an important first step in encouraging the installation of underground facilities, but that the GAF waiver may need to be fine-tuned as more information on costs and benefits become available.

FPL's proposal. On September 21, 2006, FPL filed an amended petition for revised tariff sheets to implement FPL's proposed Governmental Adjustment Factor (GAF) for the calculation of CIAC. The GAF is 25 percent for all eligible local government applicants. The GAF is designed to reduce the CIAC amount that a local government applicant otherwise would pay to reflect storm restoration cost savings from undergrounding. The GAF tariff is optional, i.e., local governments are not required to utilize the GAF tariff for conversion projects. The GAF waiver would only apply when the applicant for conversion of overhead to underground distribution

facilities is a local government meeting specified criteria. FPL restricted the tariff to local governments because it believes that local governments are in the best position to guarantee a 100 percent customer conversion participation and to fulfill the GAF requirements, such as undergrounding generally contiguous facilities. The proposed GAF tariff is limited to large, contiguous areas because the storm restoration cost savings are likely to be less than 25 percent for small-scale isolated conversions. FPL has proposed to recover the amount of CIAC waived under the GAF waiver as new plant-in-service. In future rate cases, the forgone CIAC would be recovered from FPL's general body of ratepayers through base rates.

Under the GAF waiver, the local government must make a written request to FPL for the conversion of overhead facilities to underground and enter into a contract with FPL. The entity making the written request is referred to as the applicant. In the request to FPL to convert facilities, the applicant must also define the boundaries of the conversion area. Within the conversion area, all existing overhead facilities, including transformers and switch cabinets, will have to be converted to underground facilities.

To qualify for the GAF waiver, the applicant must meet certain eligibility criteria, which are outlined in FPL's proposed tariff. First, in order for the conversion to incorporate a sufficient amount of overhead facilities to provide electric continuity, the conversion must include a minimum of approximately three pole miles or 200 dwelling units. FPL's tariff allows for exceptions to the project size minimum in special circumstances, such as when a single lateral serves a critical infrastructure facility, or an island or peninsula converting all of its overhead facilities.

Other GAF eligibility criteria includes a provision that the applicant attest that there are no state or federal funds available to the local government applicant to cover any portion of the cost of the conversion. Also, all customers within the conversion area who have overhead service drops, must convert their service drops to underground within six months of completion of the underground facilities installation. Finally, FPL's proposed tariff includes language requiring that, if a local government applicant does not satisfy the eligibility criteria, the local government shall repay the GAF waiver within 30 days of written notice from FPL. Additionally, if at any point within 30 years of completion of the underground facilities installation, the local government elects to have electric service within the conversion area supplied by a provider other than FPL, the local government shall repay FPL a pro rata share, which shall reflect partial years, of the GAF waiver.

To support its petition, FPL states that, based on the fewer interruptions experienced by underground facilities than by overhead facilities during the 2004 and 2005 hurricanes, FPL expects converting overhead to underground in large communities will reduce the amount of infrastructure damage requiring repair, thereby reducing restoration costs. The general body of ratepayers would benefit from these avoided cost savings through the reduction in aggregate storm restoration costs shared by all. In addition, storm restoration overall may proceed more quickly if fewer areas require extensive rebuilding or repair. FPL further states that 25 percent would provide a significant incentive to encourage conversions, and thus help reduce the potential impact to all customers from future storms. FPL states that the estimated 25 percent

reduction represents avoided storm restoration costs resulting from undergrounding generally contiguous facilities.

Support for 25 percent. A summary of FPL's analysis supporting the 25 percent reduction in the otherwise applicable CIAC to recognize the estimated avoided storm restoration costs is shown in Attachment A.

FPL states that it expects to collect additional information on storm restoration costs over the coming years and will continue to monitor and evaluate the benefits justifying the GAF waiver. FPL proposed to submit a report to the Commission no later than three years after the GAF tariff is approved, showing the impact of any new storm-restoration data on the quantification of benefits and proposing revisions to the tariff if warranted.

Impact on the ratepayers. In response to staff's second data request, FPL provided an estimate of the rate impact of the proposed 25% GAF tariff assuming all known tentative projects with local governments went forward pursuant to the proposed 25% GAF tariff. In response to staff's first data request, FPL had provided a list of all local governments that have contacted FPL within the last 24 months regarding a conversion. FPL identified 59 projects that have received a ball park estimate, which is designed to provide an order-of-magnitude guidance to help the applicant decide whether to pursue the project. Only a small number of towns have proceeded and paid for a binding cost estimate and as of August 2006 only two towns have indicated a desire to move forward with a full conversion that will be done in multiple phases.

FPL estimated the total cost of the 59 projects to be \$700 million. The amount of the GAF waiver would be \$175 million ($\$175 = \700×0.25). FPL states that the estimated impact on a 1,000 kWh residential bill is an increase of approximately 0.2 percent assuming no base rate stipulation is in effect. FPL further states that the assumption in staff's question, i.e., that such a large volume of conversions will be implemented in one year, appears unrealistic. Therefore, FPL adds, it is reasonable to expect that any residential customer rate impact from reflecting the GAF waiver amount in rate base will probably be minimal.

Calculation of the CIAC. Under FPL's proposal in its amended petition, the GAF is expressed as a waiver of the CIAC that a local government applicant otherwise would pay. First, FPL calculates the otherwise applicable CIAC amount.

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 (new per rule)

- + The net present value of the estimated average storm restoration costs of underground facilities over 30 years (new per rule)
- The estimated cost that would be incurred to install new overhead facilities in lieu of underground
- 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 (new per rule)
- The net present value of the estimated average storm restoration costs of overhead facilities over 30 years (new per rule).

Calculation of GAF waiver. The GAF waiver represents the expected storm restoration savings that Rule 25-6.115, F.A.C., requires utilities to include in the CIAC calculation. Instead of performing separate analyses for each governmental underground conversion project, FPL has proposed to provide qualifying GAF applicants the same percentage reduction in storm restoration savings.

The GAF waiver is calculated as follows:

GAF Waiver =

25 percent x the otherwise applicable CIAC

+ 75 percent 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).

Since overhead storm restoration costs are typically higher than underground storm restoration costs, the net present value is a negative number, thus reducing the amount of the GAF waiver. The final term avoids double-counting the estimated average storm restoration costs embedded in the otherwise applicable CIAC calculation.

Attachment B is an illustrative example provided by FPL of the proposed CIAC and GAF waiver calculation.

Staff discussion. Primary staff recommends approval of FPL's proposed tariff revision as an important first step in encouraging the installation of underground facilities. Staff does not view the filing as a cure-all or as complete implementation of the requirements contained in the rule amendments adopted in Docket Nos. 060172-EU and 060173-EU. The GAF waiver is designed to represent the expected storm restoration savings by undergrounding projects that meet the GAF eligibility criteria. As stated in the case background, the Commission recently revised Rule 25-6.115, F.A.C., to include the net present value of average overhead and underground storm restoration costs in the CIAC calculation. Therefore, the GAF does not offer anything not otherwise available to all customers. However, it provides a short-cut for eligible

governments and may expedite construction in those areas. Staff recognizes that the 25 percent is an average. Some projects may provide greater or lesser savings to ratepayers. However, the overall benefits of encouraging undergrounding makes this an acceptable risk for a limited time period.

Since only local governments are eligible for the GAF, staff had concerns about other customers who may seek CIAC underground estimates. Discussions with FPL assured staff that for applicants who do not qualify for the GAF waiver, FPL will calculate a CIAC as required by rule 25-6.115, F.A.C. The GAF tariff is optional and does not preclude an applicant from justifying additional benefits from undergrounding. Rule 25-6.115(10), F.A.C., allows an applicant to challenge the utility's cost estimates under the Commission's complaint procedures.

Conclusion

Primary staff recommends approval of FPL's proposed tariff revision with the provision that it be deemed a pilot program which must be reviewed by the Commission at the end of two and a half years, i.e., by October 2008. The time frame is tied to the completion of the Commission's review and approval of FPL's storm hardening plans (due to be filed May 2007) and the anticipated completion date of the PURC study (due March 2008). While a measure of storm restoration savings is also available under the current language in Rule 25-6.115, F.A.C., the use of the GAF tariff could expedite calculations of a CIAC and subsequent construction of underground facilities. The GAF waiver represents a limited implementation of the recently revised Rule 25-6.115, F.A.C. The tariff is optional and does not preclude an applicant from justifying additional benefits from undergrounding.

At least 60 days prior to the expiration of the GAF and associated tariffs, FPL should be required to file a report to the Commission providing an updated quantification of storm restoration benefits based on any new storm-restoration data. Based on the analysis, FPL should also petition the Commission to continue the tariff, modify the tariff, or discontinue the tariff at that time as necessary.

Alternative Staff Analysis: Alternative staff believes it is premature to approve the tariff as filed because there are still too many unanswered questions. Alternate staff recommends that the Commission should deny the tariff and require FPL to file an amended petition to address the issues discussed below.

In April 2006, the Commission suspended FPL's proposed tariff because the rulemaking Docket Nos. 060172-EU and 060173-EU addressed, among other things, the appropriateness of the type of waiver FPL has proposed. However, FPL has not yet filed its plans to implement the requirements of amended Rule 25-6.115. Requirements of the rule include:

- that the CIAC calculations include construction costs that reflect and implement any new storm hardening construction standards for both overhead construction and underground construction;

- FPL has not supported the 25 percent GAF waiver considering new storm hardening construction standards as required by the new rule; and
- The tariff cannot be fully implemented until FPL files the information required by the new requirements of the rule.

No filing has been made addressing these storm hardening construction costs and operational expenses. No filing has been made addressing the average reduction in storm damage restoration costs due to underground construction. Thus, there is no sense of urgency associated with FPL's tariff because the tariff cannot be fully implemented until such filings are made. Yet, during discussions, FPL represented that 25 percent GAF waiver will be the ceiling of the credit associated with avoided storm restoration costs due to underground construction.

In support of its 25 percent GAF waiver, FPL did not consider the effects of storm hardening construction standards. It is possible that storm hardening construction standards may either increase or reduce the construction cost differential between overhead and underground systems. A reduction in the construction cost differential between overhead and underground systems would increase the GAF waiver, all other factors held the same. Conversely, an increase in the construction cost differential would decrease the GAF waiver, all other factors held the same.

Another factor impacting construction costs that was discussed at Commission workshops on storm hardening had to do with coastal requirements being different than inland requirements, as well as storm surge and flooding concerns. In its efforts to implement storm hardening, FPL announced that it will be implementing high wind speed standards of up to 150 miles per hour. However, FPL's proposed GAF is based on system averages and does not take into consideration differences between coastal and inland locations. These matters are not addressed by FPL and can significantly impact the construction costs of overhead and underground systems.

Some other unresolved factors are assumptions that FPL made regarding the frequency and severity of future hurricane events for which FPL has provided no scientific basis. The uncertainty of future hurricane frequency over the next 30 year period is not addressed by FPL. The following table is based on a spreadsheet FPL provided to staff that included all of its calculations and assumptions supporting the GAF tariff.

Impact of Hurricane Frequency on FPL's Proposed 25% GAF Waiver
10-year and 20-year old overhead system
All other FPL assumptions held constant

Years	Average Frequency of Hurricane Events over 30 Years					
	3	5	7	9	11	13
Estimated Restoration Costs Savings as a Percentage of CIAC	41%	26%	21%	18%	15%	15%
	-	-	-	-	-	-
	31%	20%	16%	14%	11%	11%

The above table shows that assumptions about the frequency of future storms impact the avoided storm restoration costs associated with undergrounding. Thus, it is premature to approve any specific percentage because FPL has not addressed the uncertainty associated with the avoided future storm restoration savings. Testimony provided by the Office of Public Counsel in Docket No. 060038-EI⁸ addressed concerns that FPL had overestimated the frequency of storm events, and suggested using the historical frequency of events to set the storm self-insurance accrual level.

Another assumption FPL makes is how much of the 2004 and 2005 storm damage restoration costs could have been avoided had the damaged overhead facilities been placed underground. FPL assumes as much as 90 percent. Yet FPL has never shown that it has substantive support for this assumption. Pursuant to Order No. PSC-06-0781-PAA-EI,⁹ the Commission required all investor-owned electric utilities to begin implementing methods to track such information because the utilities had no substantive support for such assumptions.

Uncertainty regarding FPL's estimates concerning future storm events and resultant restoration costs has been previously considered by this Commission. Testimony provided by the Office of Public Counsel, through Witness Stewart, in Docket No. 060038-EI,¹⁰ addressed the level of storm self-insurance based on FPL's actual storm costs from 1990 through 2005. The Commission implemented the recommendation of Witness Stewart by Order No. PSC-06-0464-FOF-EI, issued May 30, 2006.¹¹ The actual storm costs included in Witness Stewart's testimony are shown below.

FPL's Actual Storm Restoration Costs from Docket No. 060038-EI
Dollars in Millions

1991	1992	1996	1997	1998	1999	2000	2001	2002	2004	2005
\$1.3	\$445.0	\$4.0	\$1.1	\$27.6	\$57.6	\$17.6	\$27.2	\$3.4	\$890.0	\$879.0

⁸ In Re: Petition for issuance of a storm recovery financing order, by Florida Power & Light Company.

⁹ Issued September 19, 2006, in Docket No. 060198-EI, In Re: Requirement for investor-owned electric utilities to file ongoing storm preparedness plans and implementation cost estimates. This order was consummated, in relevant part, by Order No. PSC-06-0859-CO-EI, issued October 31, 2006.

¹⁰ Document No. 02905-06, filed March 31, 2006, in Docket No. 060038-EI, In Re: Florida Power & Light Company's petition for issuance of a storm recovery finance order.

¹¹ Order No. PSC-06-0464-FOF-EI at 25.

FPL's support for the 25% GAF waiver is based only on its 2004 and 2005 data and excludes all other years where lower storm damage restoration costs were incurred. Alternative staff questions the reasonableness of selecting only the 2004 and 2005 data for purposes of establishing FPL's proposed tariff.

The best means to test FPL's assumptions is to expose them to a hearing process which has not occurred. Consequently, it is premature to make a finding regarding the reasonableness of FPL's proposed 25 percent GAF waiver or the assumptions FPL used to support its proposal because all the appropriate information is not yet available for review.

Regarding policy matters, the Commission does not have the benefit of the state-wide collaborative research effort addressing underground conversion projects. Pursuant to Order No. PSC-06-0781-PAA-EI, all electric utilities are funding a joint project that is expected to address policy and cost allocation considerations. The final work product is not expected to be available until March 2008. The absence of the best available information to support a policy is of concern because the proposed tariff would place all risks associated with FPL's assumptions and implementation on FPL's general body of ratepayers.

Certain cities have shown interest in FPL's proposed tariff. By Order No. PSC 06-0339-PCO-EI the Commission provided for the possibility that cities may seek to pursue projects with FPL even though the tariff was suspended. The Order states:

Application of Discount On or After April 4, 2006

Although we suspend the tariff, we are keenly aware of the importance of hardening electric distribution facilities in a expeditious manner to prevent or mitigate potential storm related outages. We have opened two rulemaking dockets to address, among many other related topics, the appropriateness of the type of discount proposed by FPL in this docket. Moreover, we do not wish to discourage cities or counties who are willing to pursue undergrounding of their existing facilities at this time. Accordingly, in the event we decide it is appropriate for all ratepayers to share in the cost of converting existing overhead facilities to underground and we ultimately approve a tariff revision for FPL in this docket, FPL shall be permitted to apply any such later-approved discount to the cost of undergrounding facilities for local governments that proceed with underground conversion projects prior to our final decision on the issue. Any such later-approved discount for local government-sponsored conversion projects shall apply to undergrounding contracts entered into with local governments on or after April 4, 2006, the date of our vote on the matter.¹²

Consequently, the Commission has preserved the opportunity for customers to enter into agreements with FPL, subject to true-up once the Commission has made a final decision regarding the appropriate discounts addresses by Rule 25-6.115. The Commission should not decide the appropriate level of level of storm restoration savings due to conversions on overhead

¹² Order No. PSC-06-0339-PCO-EI at 2-3.

to underground systems pursuant to Rule 25-6.115 based on FPL's proposed tariff filings because FPL's filings are not complete and because the Commission does not have the best information before it at this time. Careful deliberation of all the relevant facts and policy matters should not be constrained by incomplete filings pertaining to Rule 25-6.115. Consequently, the Commission should deny the tariff and require the utility to file a petition which addresses Rule 25-6.115.

Conclusion

In summary, the Commission should refrain from approving FPL's proposed tariff at this time because:

- The proposed tariff does not appear to fully implement the new requirements of the rule which require the cost of storm hardening be reflected in the CIAC calculation;
- FPL has not supported the 25 percent GAF waiver considering new storm hardening construction standards as required by the new rule; and
- The tariff cannot be fully implemented until FPL files the information required by the new requirements of the rule.

Alternate staff recommends that the Commission should deny the tariff at this time because FPL has not adequately justified the 25 percent GAF waiver. FPL should be required to file tariffs implementing the requirements of Rule 25-6.115, F.A.C.

Issue 4: Should this docket be closed?

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

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

FPL's quantification of benefits for the GAF waiver

The Commission's standard low density subdivision model of 210 homes was used as a basis for FPL's analysis to calculate the percent storm restoration savings. First, FPL calculated the average CIAC cost for converting the subdivision's overhead facilities under rule 25-6.115, F.A.C., as the rule existed prior to the Commission's revision of the rule in Docket Nos. 060172-EU and 060173-EU. Two scenarios were created by varying the age of the existing overhead facilities being replaced, 10 and 20 years.

Table 1
 CIAC pursuant to Rule 25-6.115
 Without the Storm Restoration Cost Differential Component
 Without the Operating & Maintenance Cost Differential Component

	New Underground Facilities	Existing Overhead Facilities			New Overhead Facilities	CIAC
		Net Book Value	Removal Costs	Salvage Costs		
10-Yr Old Overhead	\$537,000	+\$113,000	+\$104,000	- \$ 0	-\$334,000	= \$420,000
20-Yr Old Overhead	\$537,000	+\$12,000	+\$104,000	- \$ 0	-\$334,000	= \$319,000

As shown in the above table, the CIAC for the subdivision is \$420,000 (10-year old overhead facilities) or \$319,000 (20-year old overhead facilities).

The GAF waiver is derived from avoided storm restoration cost savings to the general body of ratepayers as a result of these facilities being placed underground. FPL relied on its experiences during 2004 and 2005 to develop cost data for storm restoration costs to overhead and underground facilities. FPL assumes the 2004/2005 seasons may reoccur, on average, between three and five years over the next 30 years and used a 30-year forecast period for the avoided storm restoration cost. The 30-year cash flows are discounted to arrive at the annualized amounts of \$82,120 to \$129,269. These amounts are intended to represent the expected range in reduced annual storm damage costs due to underground systems on a per affected customer basis. Affected customers are those customers which experienced a service interruption. FPL then compared the estimated storm damage differential to a typical conversion scenario of a 20-year old overhead system and a 10-year old overhead system (as calculated in Table 1) and concludes that a 25 percent credit for certain conversion projects is appropriate.

Table 2
 CIAC Compared to Estimated Storm Restoration Cost Differential Between Overhead and
 Underground Distribution Facilities

	CIAC (from Table 1)	Storm Restoration Cost Differential				FPL's Estimated Credit
		3 Yr Basis		5 Yr Basis		
		Amount	Percentage of Subtotal CIAC	Amount	Percentage of Subtotal CIAC	
10-Yr Old Overhead	\$420,000	\$129,269	31 percent	\$82,120	20 percent	25 percent
20-Yr Old Overhead	\$319,000	\$129,269	41 percent	\$82,120	26 percent	

The above table shows that if a storm occurs every three years, the storm restoration savings due to undergrounding range from approximately 30 to 40 percent. If a storm occurs every five years, the savings range from 20 to 26 percent. FPL states that these ranges support FPL's proposed GAF waiver of 25 percent.

CIAC & GAF WAIVER EXAMPLES (\$000's) (Amounts Are Illustrative Only)				
1		Contribution-In-Aid-of-Construction (CIAC):		
2		The estimated cost to install the requested underground facilities	10,000	
3	+	The estimated cost to remove the existing overhead facilities	1,000	
4	+	The net book value of the existing overhead facilities	3,000	
5	+	The net present value of the estimated operational costs of underground facilities over 30 years (new per rule)	1,800	
6	+	The net present value of the estimated average storm restoration costs of underground facilities over 30 years (new per rule)	700	
7	-	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")	(7,000)	
8	-	The estimated salvage value of the existing overhead facilities to be removed	(1,000)	
9	-	The net present value of the estimated operational costs of overhead facilities over 30 years (new per rule)	(2,000)	
10	-	The net present value of the estimated average storm restoration costs of overhead facilities over 30 years (new per rule)	<u>(1,000)</u>	
11		CIAC	<u>5,500</u>	sum of lines 2 thru 10
12		<u>GAF Waiver:</u>		
13		CIAC * 25%	1,375	line 11 * 25%
14	+	(The net present value of the estimated average storm restoration costs of underground facilities over 30 years	700	line 6
15	-	The net present value of the estimated average storm restoration costs of overhead facilities over 30 years);	<u>(1,000)</u>	line 10
16		Subtotal - Estimated average storm restoration costs differential	(300)	line 14 + line 15
17	*	75%	<u>(225)</u>	line 16 * 75%
18		GAF Waiver	<u>1,150</u>	line 13 + line 17