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

DATE: May 8, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Economic Regulation (Baxter, Colson)
Office of the General Counsel (Jaeger)

RE: Docket No. 070231-EI – Petition for approval of 2007 revisions to underground residential and commercial distribution tariff, by Florida Power & Light Company.

AGENDA: 05/20/08 – Regular Agenda – Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\070231.RCM.DOC

Case Background

Rule 25-6.078, Florida Administrative Code (F.A.C.), defines investor-owned utilities' (IOU) responsibilities for filing updated underground residential distribution (URD) tariffs. This rule requires IOUs to file updated URD charges for Commission approval at least every three years, or sooner if a utility's underground cost differential for the standard low-density subdivision varies from the last approved charge by 10 percent or more. The rule requires IOUs to file on or before October 15 of each year a schedule showing the increase or decrease in the differential for the standard low-density subdivision.

On October 13, 2006, Florida Power and Light Company (FPL) notified the Commission, pursuant to Rule 25-6.078, F.A.C., that its underground cost differential for the standard low-

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density subdivision varied from the last approved differential by 31.01 percent. FPL's then current URD charges had been approved in 2005.

To comply with the 10 percent filing requirement of Rule 25-6.078, F.A.C., FPL filed a petition for approval of 2007 revisions to FPL's URD and underground commercial/industrial distribution (UCD) tariffs and their associated charges on April 2, 2007. The Commission suspended the tariff in Order No. PSC-07-0484-PCO-EI, issued June 8, 2007. On June 15 and July 30, 2007, FPL filed responses to the staff's data requests that contained clarifications and additional documentation. On October 16, 2007, the Commission issued Order No. PSC-07-0835-TRF-EI, approving revisions to FPL's URD and UCD tariffs and their associated charges.

On November 6, 2007, the Municipal Utilities Underground Consortium (MUUC) and the City of Coconut Creek, FL (Coconut Creek) filed a Petition protesting Order No. PSC-07-0835-TRF-EI and requesting a Formal Hearing. The protest maintained that the tariffs should reflect changes in Rule 25-6.078, Florida Administrative Code, which require CIAC calculations to address operating and maintenance costs and storm restoration costs. The rule change was effective February 1, 2008; however, FPL argued that since it had filed its intent to revise the tariffs in October 2007, it was not required to adhere to the new rule language in this filing. On November 20, 2007, FPL filed a Motion to Dismiss MUUC's and Coconut Creek's Petition protesting Order No. PSC-07-0835-TRF-EI and requesting a Formal Hearing. On November 27, 2007, MUUC and Coconut Creek filed its Response to FPL's Motion.

On January 30, 2008, the City of South Daytona, FL (South Daytona) filed a Petition to Intervene in the docket. On February 7, 2008, FPL filed a Response in Opposition to the Petition to Intervene by the City of South Daytona. On February 11, 2008, FPL filed an Agreed Motion for Continuance of Protest and Request for a Formal Proceeding by MUUC and Coconut Creek in which FPL agreed to file revised URD and underground commercial/industrial distribution tariffs and their associated charges by April 1, 2008 if MUUC and Coconut Creek agreed to a continuance of their protests. FPL was not able to contact South Daytona by the time the Agreed Motion was filed. On April 1, 2008, FPL filed the revised URD and UCD tariffs.

Per Order No. PSC-07-0835-TRF-EI, FPL's URD and underground commercial/industrial distribution tariffs have remained in effect with any charges held subject to refund pending resolution of the protest.

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

Discussion of Issues

Issue 1: Should Florida Power and Light Company's petition for approval of revisions to its Underground Residential Distribution (URD) and Underground Commercial Distribution (UCD) tariffs be suspended?

Recommendation: Yes. (Baxter)

Staff Analysis: On April 1, 2008, FPL filed a petition for Commission approval of revisions to its URD and UCD tariffs and their associated charges. Staff is recommending that the tariff be suspended to allow staff sufficient time to review the petition and gather all pertinent information in order to present the Commission an informed recommendation on the tariff proposal. Because this is the first URD filing incorporating the new rule requirements, it may be viewed as a template or precedent for other utilities.

Pursuant to Section 366.06(3), Florida Statutes, the Commission may withhold consent to the operation of all or any portion of a new rate schedule, delivering to the utility requesting such increase a reason or written statement of good cause for doing so within 60 days. Staff believes that the reason stated above is good cause consistent with the requirement of Section 366.06(3), Florida Statutes. Therefore, staff recommends that FPL's petition for approval of revisions to its URD and UCD tariffs be suspended.

Issue 2: Should this docket be closed?

Recommendation: No. (Jaeger)

Staff Analysis: This docket should remain open pending the Commission vote on the proposed tariff revision.