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-VIA ELECTRONIC FILING-

Mr. Adam Teitzman
Division of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

RE: Florida Power & Light Company's Responses to Staff's First Data Request (Nos. 1-6) Regarding Miami-Dade County Department of Transportation and Public Works Easements for Coral Way, Central and Northeast Bus Maintenance Facilities to Florida Power & Light

Dear Mr. Teitzman:

Enclosed for filing on behalf of Florida Power & Light Company ("FPL") is FPL's response to the Staff of the Florida Public Service Commission's First Data Request (Nos. 1-6), regarding Miami-Dade County Department of Transportation and Public Works easements for Coral Way, Central and Northeast Bus Maintenance Facilities to FPL.

Thank you for your assistance. Please contact me should you or your staff have any questions regarding this filing.

Sincerely,

/s/ Joel T. Baker

Joel T. Baker
Fla. Bar No. 0108202

Enclosure

cc: Tripp Coston, Economic Supervisor (tcoston@psc.state.fl.us)
Corey Hampson, Public Utility Analyst I (champson@psc.state.fl.us)

Florida Power & Light Company

700 Universe Boulevard, Juno Beach, FL 33408

QUESTION:

Please explain the cause of the issue, any actions taken to resolve the issue, and FPL's proposed resolution to the issue.

RESPONSE:

The Miami-Dade County Department of Transportation and Public Works (DTPW) requested that FPL install certain distribution electrical facilities on the County's property to provide electric service to such property, and FPL desires to install such facilities in a manner consistent with FPL's tariff. DTPW has requested FPL to commence installation work prior to the Miami-Dade Board of County Commissioners granting FPL an easement, and the easement contain automatic termination language that is inconsistent with FPL's standard Underground Easement (Business) form (Tariff Sheet No. 9.778).

Typically, FPL first obtains an easement from a customer that is requesting service in accordance with FPL's tariff prior to the installation of any electrical distribution facilities on a customer's property. However, in Miami-Dade County, easement approval generally takes six months or more, so FPL often makes accommodations to help County departments avoid project delays while still protecting all FPL customers.

For the Coral Way, Central and Northeast Bus Maintenance Facilities project, as an accommodation to DTPW, FPL has been willing to commence the requested installation work prior to the County granting FPL an easement on the condition that DTPW commit to securing County approval of the easement as outlined in FPL's standard tariff form (*i.e.*, without automatic termination language included), and if in the event the County chooses not to grant the easement and requires FPL to remove or relocate the installed facilities, the County would reimburse FPL for the removal and/or relocation costs so these costs would not be borne by FPL's general body of customers. This is consistent with accommodations FPL has made with other Miami-Dade County departments in similar situations.

In this case, DTPW provided a letter to FPL dated April 27, 2021, which purported to obligate FPL to commence construction without the easement but did not contain any removal or relocation reimbursement language as required by FPL, nor did it contain an agreed-upon form of easement for FPL's approval; therefore, the County was notified that same day that its letter would not be accepted by FPL.

FPL has and will continue to work diligently with the County to begin installation work prior to the County granting FPL an easement, provided that the easement be consistent with FPL's standard tariff form of easement and that, in the event the easement is not later granted to FPL by the County, the County would reimburse FPL for its cost of removal or relocation of the facilities to ensure these costs are borne by FPL's general body of customers.

QUESTION:

For the purposes of rights of way and easements, does FPL consider public land owned by Miami-Dade County differently than private land owned by customers? Please explain.

RESPONSE:

For purposes of obtaining voluntary rights of way and easements from landowners, FPL does not consider public land owned by Miami-Dade County differently than private land owned by customers. In the event an owner will not grant an easement to install facilities, and FPL must condemn in order to obtain the necessary property rights, the Florida Legislature has delegated the power of eminent domain to FPL to acquire lands both "public or private." Because Miami-Dade County also has condemnation powers, it would likely be viewed as a co-equal condemning authority. Unlike private customers, during condemnation, the County could raise a prior public use defense. The issue would be whether FPL's use of the Miami-Dade land is compatible and can coexist without materially interfering with the prior public use, and is in the public interest. The prior public use doctrine does not apply to private land owned by a customer that does not have condemnation authority.

QUESTION:

Please explain why FPL believes the standard Underground Easement (Business) form (Tariff Sheet No. 9.778) is the appropriate form to use for underground easements from Miami-Dade County.

RESPONSE:

FPL believes that the standard Underground Easement (Business) form (Tariff Sheet No. 9.778) is the appropriate form to use for underground easements from Miami-Dade County in order to assure consistency and to avoid preferential treatment of one customer over another. The modifications requested by the Miami-Dade County Department of Transportation and Public Works (DTPW) are significant deviations from the Commission-approved tariff easement form, as well as FPL's business practices. If FPL were to make the requested modifications for DTPW, it would create inequitable and preferential treatment of a customer, inconsistent with every other customer, thereby defeating a fundamental purpose of having an approved standard easement form. Costs for the general body of customers would increase significantly by having to negotiate individually every easement on the FPL system, and FPL's rights theoretically would be different in every single instance, presenting enormous complexities in compliance management for day to day operations. This also would impose costs and litigation risks ultimately borne by customers. Further, if there is no requirement of uniformity on one electric system, there would be little reason for that principle to be applied anywhere on utility systems subject to the jurisdiction of the Commission.

QUESTION:

Please refer to Attachment A. The letter of intent states, "FPL agrees to commence the job without the requested easements." Please explain why FPL cannot commence construction until the standard Underground Easement (Business) form has been signed.

RESPONSE:

FPL did not approve the letter of intent as drafted by the Miami-Dade County Department of Transportation and Public Works (DTPW). FPL's normal course of business is to first obtain an easement from a customer requesting service in accordance with FPL's tariff prior to installation of any distribution electrical facilities on the customer's property to service such customer. This prevents incurred costs for work and infrastructure that is never placed in service from being charged to the general body of customers, or to FPL if the Commission were to decide that it was unreasonable for FPL to undertake such work at the risk of not securing an appropriate easement. In this case, as an accommodation to DTPW, FPL was willing to commence the requested installation work prior to the County granting FPL an easement on the condition that, in the event the easement is not later granted, the County would reimburse FPL for its cost of removal or relocation of the facilities to ensure these costs would not be borne by FPL's general body of customers.

QUESTION:

Please refer to Attachment C for the following questions. Representatives of the Miami-Dade County DTPW expressed concerns to Commission staff regarding the perpetual duration of the easement, as required in the standard Underground Easement (Business) form (Tariff Sheet No. 9.778). Miami-Dade County requested to amend the standard form to "add language stating that when the FPL service is no longer needed, the easement would be vacated and the land returned to the County free and clear."

- a. Rule 25-6.033(3), Florida Administrative Code (F.A.C.) states, "No rules and regulations, schedules of rates or charges, or modification or revisions of the same, will be effective until approved by the Commission." Does FPL believe that amendments to its standard forms would require Commission approval? Please explain.
- b. Does FPL have any intention to petition the Commission to modify its standard forms at this time? If so, please explain.

RESPONSE:

- a. The Miami-Dade County DTPW's requested amendments would require Commission approval. If FPL were to make the requested modifications for the Miami-Dade County DTPW, then FPL, in order to provide equitable and non-discriminatory service, would have to make the same modification for every other customer. Globally incorporating an easement termination date in the tariff easement form creates uncertainty with regard to customer electricity service as it would unnecessarily introduce a litigable element into the form of easement. As it stands today, nothing in the tariff form of easement precludes FPL from executing a release of an easement at the request of the property owner at an appropriate point in time.
- b. FPL does not have any intention to petition the Commission to modify its standard forms at this time.

QUESTION:

Does FPL believe Rule 25-6.076, F.A.C. is applicable when easements are from government entities? If not, what rule does FPL believe is applicable? Please explain.

RESPONSE:

Yes, FPL believes Rule 25-6.076, F.A.C. is applicable when easements are from government entities.