

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Requirement for investor-owned electric utilities to file ongoing storm preparedness plans and implementation cost estimates.

DOCKET NO. 060198-EI
ORDER NO. PSC-07-0065-PHO-EI
ISSUED: January 25, 2007

Pursuant to Notice and in accordance with Rule 28-106.209, F.A.C., a Prehearing Conference was held on January 22, 2007, in Tallahassee, Florida, before Chairman Lisa Polak Edgar, as Prehearing Officer.

APPEARANCES:

MARIA E. ANTONATOS, ESQUIRE, Office of the City Attorney, City of North Miami, 776 N.E. 125th Street, North Miami, Florida 33161
BRIAN P. ARMSTRONG, ESQUIRE, Nabors, Giblin and Nickerson, P.A., 150 Mahan Drive, Suite 200, Tallahassee, Florida 32308
On behalf of the City of North Miami.

JOHN T. BUTLER, ESQUIRE, Florida Power & Light Company, 700 Universe Boulevard, Juno Beach, Florida 33408-0420
On behalf of Florida Power & Light Company.

ROSANNE GERVASI, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission.

PREHEARING ORDER

I. CASE BACKGROUND

On October 6, 2006, the City of North Miami (City) timely filed a Petition Requesting A Section 120.569 Hearing on the portion of Order No. PSC-06-0781-PAA-EI, issued September 19, 2006, that proposes to accept Florida Power & Light Company's (FPL) six-year average tree trimming cycle for its distribution laterals within the City's boundaries.¹ Therefore, a full evidentiary hearing has been scheduled for February 5, 2007, in this docket.

¹ The remainder of Order No. PSC-06-0781-PAA-EI was consummated by Order No. PSC-06-0859-CO-EI, issued October 13, 2006, in this docket.

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

II. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, F.A.C., this Prehearing Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, F.S. This hearing will be governed by said Chapter and Chapters 25-6, 25-22, and 28-106, F.A.C., as well as any other applicable provisions of law.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

Information for which proprietary confidential business information status is requested pursuant to Section 366.093, F.S., and Rule 25-22.006, F.A.C., shall be treated by the Commission as confidential. The information shall be exempt from Section 119.07(1), F.S., pending a formal ruling on such request by the Commission or pending return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in this proceeding, it shall be returned to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of this proceeding, it shall be returned to the person providing the information within the time period set forth in Section 366.093, F.S. The Commission may determine that continued possession of the information is necessary for the Commission to conduct its business.

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, F.S., to protect proprietary confidential business information from disclosure outside the proceeding. Therefore, any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, F.S., at the hearing shall adhere to the following:

- (1) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the court reporter, in red envelopes clearly marked with the nature of the contents and with the confidential information highlighted. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- (2) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise confidentiality. Therefore, confidential information should be presented by written exhibit when reasonably possible.

At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit

has been admitted into evidence, the copy provided to the court reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files. If such material is admitted into the evidentiary record at hearing and is not otherwise subject to a request for confidential classification filed with the Commission, the source of the information must file a request for confidential classification of the information within 21 days of the conclusion of the hearing, as set forth in Rule 25-22.006(8)(b), F.A.C., if continued confidentiality of the information is to be maintained.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to timely and appropriate objections. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and Staff have had the opportunity to cross-examine the witness, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issue 1</u>
<u>Direct</u>		
Terry Lytle	City	Mr. Lytle is the Director of Parks and Recreation, City of North Miami. He will discuss the type of trees which are grown in the City and the need for trimming them on a regular basis. He will also discuss the problems caused by infrequent trimming of trees such as trees falling and premature tree failure.
Keith Miller	City	Mr. Miller is the Parks Superintendent, City of North Miami, and he will discuss tree trimming standards, integrity of the tree, structural pruning, and the effect of extreme trimming.
William R. Slaymaker	FPL	Description of FPL's vegetation management practices and compliance with applicable standards, guidelines and codes for line clearing; response to comments on vegetation management by City witnesses.

<u>Witness</u>	<u>Proffered By</u>	<u>Issue 1</u>
John A. Harris	FPL	Description of vegetation management standards, guidelines and codes that apply to FPL's Vegetation Management Program; evaluation of FPL's compliance with those standards, guidelines and codes; and evaluation of overall adequacy of FPL's Vegetation Management Program.
Manuel B. Miranda	FPL	Description of FPL's Vegetation Management Program and proposal for a six-year average trim cycle for lateral distribution lines; explanation of why the six-year lateral trim cycle proposal provides the best balance for FPL and its customers.
<u>Rebuttal</u>		
Terry Lytle	City	Response to FPL witnesses Miranda, Slaymaker, and Harris's rebuttal testimony to the City's comments regarding the case and FPL's six-year trimming cycle.
Keith Miller	City	To refute and rebut the testimony of FPL witnesses Miranda, Slaymaker, and Harris.

VII. BASIC POSITIONS

CITY: It is the City of North Miami's position that FPL should maintain a three-year tree trimming cycle in the City of North Miami due to the nature of fast growing trees which are found in the City. North Miami is located in a hurricane prone area and is known for its tree lined streets and medians. A three-year tree trimming schedule would keep trees from interfering with FPL's facilities. Also, a three-year maintenance schedule is preferable to a six-year maintenance schedule for reducing Customer Interruptions (CI). The determining factor should be the need to best provide service and prevent service interruptions to the customers along

with maintaining the integrity of the trees and preventing tree failure, instead of just cost to FPL.

FPL: FPL has proposed to implement a 3-year feeder/6-year lateral average trim cycle (the “3-year/6-year proposal”) throughout its service territory. The 3-year/6-year proposal is appropriate for the City of North Miami, as it is for other parts of FPL’s system, because it provides the best balance of costs, benefits and feasibility for FPL and its customers. The 3-year/6-year proposal will result in both an increase in vegetation management activity and a reduction in the average lateral trim cycle within the City, compared to FPL’s current vegetation management program. The City has identified nothing that would make the 3-year/6-year proposal inappropriate or inapplicable within its boundaries.

STAFF: Staff agrees with FPL that the 3-year/6-year proposal will result in both an increase in vegetation management activity and a reduction in the average lateral trim cycle within the City, compared to FPL’s current vegetation management program. Staff’s final positions will be based upon all the evidence in the record.

VIII. ISSUES AND POSITIONS

ISSUE 1: **Should Florida Power & Light Company establish a three-year cycle for its vegetation management program within the City of North Miami?**

CITY: Yes.

FPL: No. FPL has proposed to implement a 3-year feeder/6-year lateral average trim cycle (the “3-year/6-year proposal”) throughout its service territory. The 3-year/6-year proposal is appropriate for the City of North Miami, as it is for other parts of FPL’s system, because it provides the best balance of costs, benefits and feasibility for FPL and its customers. The City has identified nothing that would make the 3-year/6-year proposal inappropriate or inapplicable within its boundaries. (MIRANDA, SLAYMAKER and HARRIS)

STAFF: No position pending further development of the record.

ISSUE 2: **Should the docket be closed?**

CITY: Yes, provided that FPL establishes a three-year cycle for its vegetation management program within the City.

FPL: If the docket is being held open solely for resolution of the City’s protest petition, then it should be closed upon the issuance of a final order on that petition.

STAFF: Yes, if no further action is necessary, the docket should be closed upon the issuance of a final order.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
Manuel B. Miranda	FPL	<u>MBM-1</u>	Cost analysis for trim cycle scenarios
Manuel B. Miranda	FPL	<u>MBM-2</u>	10-year present value cost analysis for trim cycle scenarios
John A. Harris	FPL	<u>JAH - 1</u>	Photographs of arboricultural work in City's public rights-of-way
John A. Harris	FPL	<u>JAH - 2</u>	Relevant pages of ANSI A-300 Standard
John A. Harris	FPL	<u>JAH - 3</u>	Relevant sections of Miami-Dade County Tree Preservation Code
John A. Harris	FPL	<u>JAH - 4</u>	Relevant sections of City of North Miami Landscape Standards and Tree Preservation Codes
John A. Harris	FPL	<u>JAH - 5</u>	Relevant pages of Best Management Practices (companion to ANSI A-300)

Rebuttal

Keith Miller

City

KM-1(1)

Map of USDA plant hardiness
zones by Florida County

The City will utilize two demonstrative exhibits to demonstrate types of tree cuts.

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

There are no pending motions at this time.

XII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.

XIII. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of this Prehearing Order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, F.A.C., a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages and shall be filed at the same time.

XIV. RULINGS

Opening statements, if any, shall not exceed ten minutes per party.

It is therefore,

ORDERED by Chairman Lisa Polak Edgar, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Chairman Lisa Polak Edgar, as Prehearing Officer, this 25th day of January, 2007.


LISA POLAK EDGAR
Chairman and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), F.S., to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, F.S., as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, F.A.C.; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, F.A.C. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.