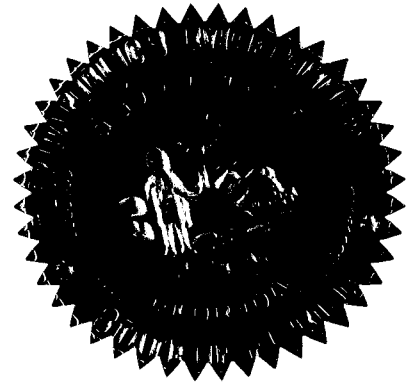


BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060198-EI

In the Matter of:

REQUIREMENT FOR INVESTOR-OWNED ELECTRIC
UTILITIES TO FILE ONGOING STORM
PREPAREDNESS PLANS AND IMPLEMENTATION
COST ESTIMATES.



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VOLUME 1

Pages 1 through 90

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LISA POLAK EDGAR
COMMISSIONER MATTHEW M. CARTER, II
COMMISSIONER KATRINA J. TEW

DATE: Monday, February 5, 2007

TIME: Commenced at 9:30 a.m.
Concluded at 3:30 p.m.

PLACE: Betty Easley Conference Center
Room 148
4075 Esplanade Way
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR
(850) 413-6732

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FLORIDA PUBLIC SERVICE COMMISSION

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1 APPEARANCES:

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5 North Miami.

6 BRIAN P. ARMSTRONG, ESQUIRE, Nabors Law Firm, 1500
7 Mahan Drive, Suite 200, Tallahassee, Florida 32308, appearing
8 on behalf of the City of North Miami.

9 ROSANNE GERVASI, ESQUIRE, and LARRY HARRIS, ESQUIRE,
10 FPSC General Counsel's Office, 2540 Shumard Oak Boulevard,
11 Tallahassee, Florida 32399-0850, appearing on behalf of the
12 Commission Staff.

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OPENING STATEMENT by Mr. Armstrong

OPENING STATEMENT by Mr. Butler

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P R O C E E D I N G S

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2 CHAIRMAN EDGAR: Call this hearing to order. Good
3 morning.

4 And we'll start by asking staff to read the notice.

5 MS. GERVASI: This time and place have been set for a
6 hearing in Docket Number 060198-EI, in re: Requirement for
7 investor-owned utilities to file on-going storm preparedness
8 plans and implementation cost estimates.

9 CHAIRMAN EDGAR: Thank you. We'll take appearances.

10 MR. BUTLER: Thank you, Madam Chairman.

11 John Butler of Florida Power and Light Company, 700
12 Universe Boulevard, Juno Beach, Florida.

13 MR. ARMSTRONG: Thank you, Madam Chair. Brian
14 Armstrong, Nabors, Giblin and Nickerson, on behalf of the City
15 of Miami, Tallahassee, Florida. And with me is Maria
16 Antonatos.

17 MS. ANTONATOS: Maria Antonatos, City of North Miami,
18 776 Northeast 125th Street, North Miami, Florida.

19 CHAIRMAN EDGAR: Thank you.

20 Staff.

21 MS. GERVASI: Rosanne Gervasi appearing on behalf of
22 the Commission. And with me is Larry Harris also with the
23 Commission staff.

24 CHAIRMAN EDGAR: Thank you. Ms. Gervasi, any
25 preliminary matters?

1 MS. GERVASI: We have only one preliminary matter
2 that we know of, and that is there is a list of documents which
3 the City has requested should be officially recognized, and we
4 would suggest that that list be identified with Exhibit 1, and
5 moved into the record at this time. And I understand that the
6 parties have no objection to it. The title is list of
7 officially recognized documents.

8 CHAIRMAN EDGAR: Okay. And both parties have a copy
9 of this document, which is a list, and no objections?

10 MR. ARMSTRONG: No objection.

11 MR. BUTLER: No objection.

12 CHAIRMAN EDGAR: Okay. Then we will, as Ms. Gervasi
13 has said, have this list as Exhibit Number 1, officially
14 recognized documents. That list as Exhibit 1 will be entered
15 into the record.

16 (Exhibit 1 marked for identification and admitted
17 into the record.)

18 Ms. Gervasi, any other preliminary matters?

19 MS. GERVASI: No, ma'am, none.

20 CHAIRMAN EDGAR: Okay. Are we ready to proceed to
21 opening statements? We are. Ten minutes each by the
22 prehearing order.

23 Mr. Butler.

24 MR. BUTLER: Would you prefer me to go first or the
25 City as Petitioner? I can do it either way.

1 CHAIRMAN EDGAR: Mr. Armstrong, are you ready?

2 MR. ARMSTRONG: That's fine with me, yes, Madam
3 Chair.

4 CHAIRMAN EDGAR: Okay. Then you are recognized.

5 MR. ARMSTRONG: Good morning, Madam Chair.

6 Commissioners, I'm here on behalf of the City of North Miami, a
7 city of 60,000 people covering approximately 8-1/2 square
8 miles. A city which for the past 17 years has been designated
9 Tree City USA. The City has approximately 15,000 trees in its
10 rights-of-way which the City is responsible for trimming.
11 These trees are not located near power lines, and thus do not
12 present a hazard to the public health and safety or threaten to
13 cause power outages during storm or wind events.

14 I would like to put the reason why we are here this
15 morning into an appropriate context. Our experiences with
16 hurricanes and storms in the past several years have revealed
17 just how devastating the economic, public health, and
18 environmental impacts of such events can be. Nowhere in the
19 state of Florida is the evidence of these catastrophic impacts
20 more clear than in the service territory served by Florida
21 Power and Light Company.

22 You must remember that 3.2 million people served by
23 Florida Power and Light were without any electric service for
24 periods ranging from one to 18 days as a result of Hurricane
25 Wilma in 2005. You must remember the economic damages suffered

1 by these millions of customers, including businesses. You must
2 remember as well the shock which these millions of people must
3 have suffered when they realized they would be without power,
4 and therefore without the use of even the most basic tools,
5 like even an electric can opener, for as much as 18 days.

6 Last year this Commission recognized these facts.
7 This Commission opened an investigation which embarked on an
8 examination of utility tree-trimming practices. The goal, to
9 minimize the hazards, outages, and restoration times inflicted
10 on utility customers by storm events. After hearing from many
11 individuals representing local governments, utilities,
12 customers, and other organizations, including your own staff,
13 this Commission issued an order in September 2006 requiring
14 utilities to implement a three-year cycle for trimming trees
15 located in or near distribution laterals.

16 A utility could only deviate from a three-year cycle
17 if it could propose an alternative which was equal to or better
18 than a three-year cycle in terms of both cost and reliability.
19 The City of North Miami intends to show this Commission that
20 Florida Power has not demonstrated that its proposed six-year
21 trimming cycle is equal to or better than a three-year trimming
22 cycle.

23 This Commission should recall that Tampa Electric
24 Company and Florida Public Utilities Corporation already have
25 agreed to a three-year trimming cycle for laterals. And TECO

1 will fully implement its three-year cycle within the next two
2 or three years. Florida Progress will even perform lateral
3 tree trimming on a five-year cycle, not six as proposed by
4 Florida Power and Light. The City of North Miami hopes that
5 this Commission will agree that it is wrong for the utility,
6 whose customers recently suffered the worst of any utility's
7 customers, a utility that watched 3.2 million people go without
8 power for as much as 18 days, to be the utility that does the
9 least to make its service more reliable. And, to add insult to
10 injury, the utility that will take the longest time to do the
11 very least.

12 In a report on service reliability issued by this
13 Commission staff as recently as December 2006, the staff
14 reported that Florida Power and Light's customers suffered from
15 the highest frequency of power outages of all utilities in 2005
16 which this Commission regulates, and that the number of FPL
17 customers who suffered five or more outages in 2005 must be
18 reduced. Despite these Commission staff findings, during this
19 hearing you will hear that Florida Power is satisfied with the
20 proposal which would potentially leave hundreds of thousands of
21 customers without power each year.

22 You will also hear that Florida Power does not intend
23 to fully implement even a six-year lateral trimming cycle until
24 the year 2013, six years from now. You will also hear that in
25 the year 2009 under Florida Power's current proposal, the

1 utility will actually trim fewer miles of laterals in the City
2 of North Miami than were trimmed as far back as 2004.

3 By the way, how many of the 171 miles of lateral
4 miles in the City of North Miami did Florida Power actually
5 trim in 2006? None. How many of those lateral miles in the
6 City of North Miami, 171 of them, did Florida Power and Light
7 trim in 2005? Five miles.

8 We ask you, Commissioners, to keep these facts in
9 mind when you hear Florida Power's witnesses testify that it
10 will do more for its customers in the City of North Miami under
11 its proposed six-year trimming cycle than it has done in the
12 past. If they trim more than five miles a year even that would
13 be a true statement, but that would not permit Florida Power to
14 provide reliable service to its customers.

15 Florida Power's analyses in this case are subject to
16 question. Florida Power has not examined available
17 alternatives to show how it proposes to implement its six-year
18 trimming cycle. There are alternatives available. The costs
19 that Florida Power's witnesses will present to you are suspect.
20 Florida Power's proposed six-year cycle does not provide
21 customers with the reliable service that would be achieved
22 under a three-year trim cycle. Florida Power should be
23 required to implement the three-year trim cycle for laterals
24 preferred by this Commission in its September 2006 order.

25 Thank you, Commissioners.

1 CHAIRMAN EDGAR: Thank you.

2 Mr. Butler.

3 MR. BUTLER: Thank you. Good morning, Commissioners.

4 In April of 2006, the Commission issued Order Number
5 PSC-06-0351, which required each Florida IOU to file a plan
6 that addressed ten separate storm preparedness initiatives. As
7 the first initiative, each IOU was to describe its plans to
8 implement a three-year vegetation management or tree-trimming
9 cycle for its distribution power lines. IOUs were also given
10 the opportunity to propose alternative trim cycles if they felt
11 that a three-year cycle would be unjustifiably expensive for
12 their respective systems. All IOUs filed their plans on
13 June 1, 2006.

14 FPL's storm plan proposed to continue tree trimming
15 along its main feeder lines on a three-year average cycle as it
16 was already doing. A short trim cycle for feeder lines had
17 been and remains appropriate for FPL because a feeder serves
18 many customers, about 1,500 on average, and all of those
19 customers will be interpreted if trees cause a power outage
20 along the feeder. However, FPL proposed that tree trimming
21 along its lateral distribution lines which branch off from
22 feeders and only serve about 35 customers each on average
23 should be on a six-year average cycle. Because of the
24 relatively low customer density along lateral lines, the
25 benefits of additional tree trimming expressed in terms of

1 avoided customer interruptions was relatively small for
2 laterals compared to feeders.

3 At the same time, because of the many thousands of
4 miles of laterals throughout FPL's system, the cost of trying
5 to implement a three-year trim cycle for laterals would be very
6 high. In fact, FPL expressed serious reservations about
7 whether there are even enough tree trimming resources available
8 to implement a three-year lateral trim cycle in the short run
9 regardless of cost.

10 FPL's June 1 filing contained tables summarizing its
11 cost/benefit analysis of the three-year and six-year lateral
12 trim cycles. Those tables showed that a three-year cycle would
13 cost more than twice as much per avoided customer interruption
14 as a six-year cycle, and that the six-year cycle was more
15 cost-effective for FPL and its general body of customers when
16 all the costs and savings of each alternative were compared.
17 These summary tables are included as Exhibits MBM-1 and
18 MBM-2 to Mr. Miranda's testimony in this hearing.

19 Throughout last summer the Commission staff carefully
20 evaluated the IOUs' June 1 plans. Staff asked numerous data
21 requests and held informal meetings to which all parties were
22 invited where the IOUs could explain their plans further.
23 Ultimately, staff recommended that FPL's six-year average
24 lateral cycle or lateral trim cycle be approved. The
25 Commission adopted this recommendation as Proposed Agency

1 Action in Order Number PSC-06-0781 on September 19, 2006. As
2 part of its approval, the Commission directed FPL to collect
3 forensic data to evaluate further the correlation between
4 storm-related customer interruptions and the frequency of trim
5 cycles, and the Commission provided for annual reevaluation of
6 FPL's trim cycles, using the new data as it becomes available.

7 The City of North Miami timely protested the
8 application of FPL's six-year average lateral trim cycle within
9 the City. However, as this matter has proceeded toward
10 hearing, the City has presented nothing whatsoever to justify
11 or support its protest. Neither of its witnesses has provided
12 a meaningful critique of FPL's cost/benefit analysis, either
13 for FPL's system generally, or for the City in particular. Nor
14 has either city witness prepared any alternative cost/benefit
15 analysis of trim cycles for the City.

16 Most of the City's testimony, instead, focused on how
17 tree trimming should properly be conducted for utility line
18 clearance and questions whether FPL can comply with
19 tree-trimming standards if it implements the six-year lateral
20 trim cycle within the City. On this issue, however, the
21 evidence will show that, one, neither City witness has pointed
22 to anything more than isolated occasional concerns over FPL's
23 trimming to date. Two, both City witnesses are generally
24 satisfied with FPL's existing trimming program. And, three,
25 both City witnesses were under the misimpression that FPL's

1 six-year trim cycle proposal would reduce rather than increase
2 tree-trimming frequency within the city.

3 In contrast, FPL's testimony will show the following.
4 FPL's six-year average lateral trim cycle is cost-effective for
5 our general body of customers whereas the three-year cycle
6 would not be. The six-year proposal will represent a large
7 increase in trimming activity throughout FPL's system compared
8 to FPL's current program, seventy percent more expenditures and
9 40 percent more lateral miles trimmed over the first six years
10 of implementation.

11 The six-year proposal refers to an average trim cycle
12 over the entire FPL service territory with flexibility to trim
13 particular regions or circuits more frequently than the average
14 as required. The six-year proposal will also continue FPL's
15 current practice of mid-cycle customer requests and hot spot
16 trimming to further ensure system reliability.

17 FPL employs a staff of arborists whose job it is to
18 interact with municipalities, such as the City of North Miami,
19 to coordinate vegetation management within their boundaries and
20 resolve concerns that might arise about that vegetation
21 management.

22 And, finally, FPL has been and remains committed to
23 implementing its tree-trimming program in compliance with all
24 applicable standards, codes, and regulations. From this
25 evidence only one conclusion could properly be reached, the

1 City's protest must be denied. FPL should be permitted to move
2 forward with implementing its three-year feeder/six-year
3 lateral average trim cycles without further disruption or
4 delay. Thank you.

5 CHAIRMAN EDGAR: Thank you, Mr. Butler.

6 Okay. We are going to move on to calling witnesses.
7 First, we need to swear the witnesses in. We will do that as a
8 group. So those of you who are scheduled to testify, please
9 stand and raise your right hand with me.

10 (Witnesses sworn.)

11 CHAIRMAN EDGAR: Thank you.

12 Mr. Armstrong, you can call your first witness.

13 MR. ARMSTRONG: Thank you, Madam Chair. I would like
14 to call Mr. Lytle, Terry Lytle to the stand, please.

15 **TERRY R. LYTLE**

16 was called as a witness on behalf of the City of North Miami,
17 and having been duly sworn, testified as follows:

18 **DIRECT EXAMINATION**

19 BY MR. ARMSTRONG:

20 Q Mr. Lytle, could you please state your name for the
21 record?

22 A Terry R. Lytle.

23 Q And by whom are you employed and what is your
24 business address?

25 A I am employed by the City of North Miami and my

1 business address is 810 Northeast 125 Street.

2 Q Thank you. And you have submitted prefiled direct
3 testimony in this case, is that true?

4 A Yes.

5 Q Mr. Lytle, if I were to ask you the questions
6 contained in the prefiled direct testimony, would your answers
7 be the same?

8 A Yes, they would.

9 Q And you don't have any changes to that testimony, do
10 you?

11 A No, I don't.

12 Q And you don't have any exhibits to that testimony
13 either, correct?

14 A No, I do not.

15 Q Do you have a brief summary of your testimony?

16 A Yes, I do.

17 Q Could you please present that to the Commissioners
18 now?

19 A Good morning, Commissioners. My name is Terry Lytle,
20 and I'm the Director for the Parks and Recreation Department
21 for the City of North Miami. I have been employed with the
22 City for the past 15 years primarily in landscaping and the
23 tree maintenance capacity. I have owned a plant nursery before
24 coming to work for the City and I am a certified arborist.

25 South Florida's climate is characterized as

1 subtropical. Unlike other parts of the state, trees in South
2 Florida grow year-round and they don't stop growing in the
3 wintertime. The City of North Miami spends between one and two
4 million dollars a year on tree maintenance.

5 Seventy-five percent of the trees in the City can be
6 characterized as fast growing. Some of these trees can grow as
7 much as six foot per year. The ficus, for example, can grow at
8 this rate and is a common tree in the City and along utility
9 lines.

10 There are certain pruning guidelines that should be
11 followed if you want to maintain trees in a good stable
12 condition. One of the cardinal rules is that you should not
13 trim more than 30 percent of a tree canopy at any given time.
14 If you do there is the potential for it to damage or kill a
15 tree, and if this doesn't happen the tree will almost surely
16 grow back in an unstable manner.

17 When trees are unstable, they are more susceptible to
18 having branches fly off in high winds or fall over entirely. A
19 common response to overpruning is witch-brooming by the tree.
20 The tree will send out numerous small sprout branches from one
21 large branch and it looks like a witch's broom. These small
22 branches soon become large and are not securely anchored and
23 can easily fly off in a wind event. They can cause serious
24 damage to property and utility lines.

25 When you trim a tree properly, you trim it

1 proportionately all around. Trimming all parts proportionately
2 ensures that the tree maintains good structure and, therefore,
3 good stability and health. If one side of the tree is heavily
4 trimmed and the other side is not, this makes the entire tree
5 unstable and significantly increases the likelihood of failure
6 in winds.

7 If you must trim a large portion of a tree, the best
8 way is over more than one pruning cycle. This ensures that the
9 tree maintains structural stability. The longer you wait to
10 trim a tree, the more you have to trim off. And if you have to
11 trim a lot, you need to do it in more than one pruning cycle.

12 Given that the majority of the trees in North Miami
13 are fast growing, trimming a lateral distribution line once
14 every six years as FPL proposes can result in tree and branch
15 instability and subsequent failure. We have had problems with
16 FPL coming in and trimming too much at one time. The
17 landscaping on a piece of property affects the value of that
18 property. If the trees are healthy and have good canopies,
19 that makes a property more valuable.

20 If FPL truly trims to cut back six years worth of
21 growth along laterals, residents will lose a lot of canopy in
22 their yards, back alleys, and neighborhoods in general. We
23 know that our residents complain when trees in the
24 neighborhoods are severely trimmed. Disfigured trees are
25 considered an impending expense by the majority of people, and

1 if they did not survive radical pruning, it's the homeowner
2 that is going to incur the cost of the removal.

3 MR. BUTLER: Excuse me. I don't believe that what
4 Mr. Lytle is saying right now is within the scope of his direct
5 testimony. He is kind of elaborating on the theme, and I would
6 ask that the summary be limited to his direct testimony.

7 CHAIRMAN EDGAR: Mr. Armstrong.

8 MR. ARMSTRONG: Madam Chair, my assistant, actually,
9 said she summarized -- went through his summary with him, and
10 that it all is contained in here, Mr. Butler. And I believe, I
11 didn't review it myself, and Mr. Lytle did it -- I went through
12 it with him last night, and said is everything you are saying a
13 summary of what is in your testimony, and he indicated to me it
14 was. So I have to believe that it is, unless Mr. Butler can
15 point to something.

16 CHAIRMAN EDGAR: Mr. Butler, can you be more
17 specific?

18 MR. BUTLER: Well, the discussion that Mr. Lytle is
19 engaging in at the moment about the impact of the tree trimming
20 on customers' perceived values, or residents' perceived values
21 of their trees, that sort of thing, I don't know where that
22 appears in his testimony. If I am missing something, I
23 certainly would be happy to be corrected, but I've been
24 flipping through here and don't find the reference to that.

25 MR. ARMSTRONG: On Page 14, the question what kind of

1 effects does a tree have on property values. Answer, it
2 increases the property values. People want to live, be into an
3 area that has shade. I haven't documented -- is that what you
4 are referring to?

5 MR. BUTLER: Sure, I agree it says that, and I was
6 thinking of that. But what he is talking about now is that if
7 they are trimmed a particular way it decreases their value, and
8 what their perceptions are of the decrease of value, and I
9 don't see that that is in his direct testimony.

10 MR. ARMSTRONG: I will ask the witness to make sure
11 that he is talking -- just a summary of what is in here. If
12 the witness believes that is in here, he can point it out to
13 us, too. But that was the specific direction, Madam Chair.
14 And, frankly, I wasn't even listening to his summary right now,
15 because I know --

16 CHAIRMAN EDGAR: I appreciate the candor, Mr.
17 Armstrong, as always.

18 Mr. Lytle, are you almost done with your summary?

19 THE WITNESS: Yes, I am.

20 CHAIRMAN EDGAR: Okay. I'm going to allow you to
21 finish, and would caution all the witnesses and both parties to
22 remember the purpose of summary is to be a summary and not to
23 expand beyond. There will be the opportunity to do that, of
24 course, seeing where cross takes us.

25 Mr. Lytle.

1 THE WITNESS: That concludes my summary. Thank you.

2 CHAIRMAN EDGAR: There you go. Okay.

3 MR. BUTLER: How fortuitous.

4 CHAIRMAN EDGAR: Thank you, Mr. Lytle.

5 Mr. Armstrong, do you want to move the prefiled
6 testimony into the record?

7 MR. ARMSTRONG: Yes, Madam Chair. I would like to
8 move the prefiled testimony into the record as if read.

9 CHAIRMAN EDGAR: Okay. The direct prefiled testimony
10 of this witness will be entered into the record as though read.

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1 Thereupon:

2 TERRY LYTLE

3 was called as a witness and, after having been first duly sworn, was examined and testified on
4 his oath as follows:

5 DIRECT EXAMINATION

6 BY MS. WHITFIELD:

7 Q State your name, please.

8 A Terry Lytle.

9 Q Ad what is your professional address?

10 A 810 Northeast 125th Street.

11 Q How are you employed?

12 A I'm the Director for Parks and Recreation for the
13 City of North Miami.

14 Q How long have you been employed in that position?

15 A Three or four months.

16 Q Okay. And prior to that, were you employed with the
17 City of North Miami?

18 A Yes, I was. I was.

19 Q And How many years have you been employed with the
20 City?

21 A Fifteen years this month.

22 Q Okay. And in what positions, basically, have you,
23 just briefly, gone through?

24 A Basically in the agricultural side, tree care,
25 landscaping and landscape design, maintenance and so on.

1 Q Tell us about your educational background.

2 A I don't have a college degree. I, of course,
3 completed high school, four years of military service, and I've
4 worked in the agricultural field owning a -- having a partner
5 and owning a nursery for a number of years, landscaping business, tree maintenance and so on.

6 Q And you supplied me with a document that indicates
7 that you are a certified -- how do you say -- arborist?

8 A Arborist.

9 Q And what is that, please?

10 A You have to pass minimum educational tests on tree
11 care through the International Society of Arboriculture, which
12 is an international organization that sets a standard on whether
13 you know what you are talking about on trees or not.

14 You have to pass an exam and you have to keep that
15 current with continuing education units, and then re-certify
16 every four or five years.

17 Q And when did you first become certified?

18 A Approximately eight years ago.

19 Q And have you gone through the re-certification, too.

20 A Yes, I have.

21 Q And does that require testing, or do you have to have
22 certain continuing legal -- continuing education courses?

23 A You have to have the CEU's in order to qualify to
24 take the re-examination.

25 Q And the CEU's are the certified education units?

1 A That's correct.

2 Q Now, as the Director of Parks and Recreation, do any
3 of your duties include overseeing maintenance of any trees in
4 the City of north Miami?

5 A The City Parks and Recreation Department is
6 responsible for taking care of all of the swale trees in the
7 right-of-ways and the park tree, City property.

8 Q Primarily what type of trees are found in this area?

9 A The majority are black olive. And there are
10 approximately 20 or 30 other species of significance. Primarily
11 in North Miami, it's black olives.

12 Q Black olives, are those fast-growing, slow-growing
13 trees?

14 A It's a fast-growing, hardwood tree.

15 Q Can you explain that for me, and those of us who
16 didn't take the courses, what that means?

17 A The wood is a hard tree. It roots fairly securely.
18 It is fairly quickly growing, not like some of the other species
19 you wait a lot longer to get a full canopy. They have a lot of
20 drawbacks if a lot are planted, not native.

21 Q When you say a canopy tree, are those the trees you
22 see grow up and the branches come over so that they provide a
23 covering, you see the nicely tree-lined streets?

24 A Exactly. The canopy is the leaf portion or the
25 foliage portion of the tree that shades itself, circular, it

1 gives X number of shade on the ground.

2 Q Where the black olives, like palm trees, pretty much
3 go straight up in the air and the leaves only come out so far, the canopy is different?

4 A Yeah, a palm tree doesn't provide the shade quotient
5 a tree does.

6 Q Are palm trees fast-growing trees?

7 A Some are, some aren't. Palm tree is not a tree.

8 There is a difference between trees and palms, monocots and
9 dicots, two different sets of species that are cultivores.

10 A tree feeds through what they call a cambium, which
11 is the bark, and they grow out.

12 If you nick a tree, if you cut it, if a car hits it,
13 it will compartmentalize the damage. It won't heal like a human, but will scar over and try to
14 prevent decay. A palm tree
15 won't callus over.

16 Q The trees that North Miami has a lot of, the black
17 olives in the City of North Miami; right?

18 A The City has black olives, and there's a number of
19 them throughout Dade County.

20 Q And that would include the private residences also
21 having black olive trees in them?

22 A There's a lot of black olives in residences, depends
23 on the area you go within Dade County or what species is
24 prevalent.

25 Q In order to keep a fast-growing, such as a black

1 olive tree properly maintained, how often is a person required
2 to prune or trim that tree?

3 A We try to trim the -- The City tries to trim the trees
4 on less than a three-year cycle.

5 Q When you say, "Less than," is it a year, a year and a
6 half or what?

7 A It's properly a two-year or better, because we have
8 the -- or the City expends the funds to have two aerialist
9 trucks and crews, full-time, a ground crew, which is, literally,
10 a million or two million dollars worth of funds that the City
11 provides just to maintain these trees.

12 In addition, we go out to approximately a hundred
13 thousand dollars a year in additional maintenance by outside
14 contractor.

15 Q Just to keep the trees maintained in this area?

16 A That's correct.

17 Q Now, are there rules and regulations on when you are
18 dealing with trees and how much you trim off, how much you
19 shouldn't trim off and things of that nature?

20 A There are best management practices that are set up
21 and a standard by DERM.

22 Q And DERM is?

23 A The Department of Environmental Resource Management
24 within Dade County.

25 Q Okay.

1 A Now, what they specified and through -- This is Dade
2 County Ordinances -- they define what effective destruction of
3 a tree is and excessive pruning, hatracking, and a whole litany
4 of terms they define.

5 Q If a tree has to be trimmed so that more than 30
6 percent of the tree is trimmed off at the one time, is that acceptable under the standards for
7 DERM?

8 A More than 30 percent is not acceptable.

9 Q So, the standard is that you never trim more than 30
10 percent?

11 A You shouldn't ever trim more than 30 percent. Not
12 only is that a DERM standard, but that's an arborist standard,
13 as well, through the ISA, the International Society of Arborists.

14 Q Why is that, if you know?

15 A A tree manufactures it's own food. It's not like -- We can go out to a grocery
16 and buy us something to eat. The
17 tree can't do that. So, if you take off 30 percent of the tree,
18 it has to make up -- use food in reference to make that up.

19 Q And what percentage of the trees would you say that
20 you are aware of, in the City of North Miami area, are these fast-growing trees?

21 A Vast majority, 75 percent are fast-growing. One,
22 let me specify, black olives, are fairly fast-growing, but it's
23 a hardwood tree. Those are the ones the City has.

24 Q Right.

25 A There are a lot of other species which are invasive

1 species which are extremely fast-growing and not a hardwood.

2 Q Give me an example of that.

3 A Ficus, beschophia, hollies, which is invasive, those
4 things can grow anywhere from five or six foot a year up to
5 maybe 18 or 20 foot a year.

6 Q So, they would need trimming even more frequently than
7 the black olive tree?

8 A That's correct.

9 Q Okay. And you say about 75 percent of the trees in
10 the area, in the City of North Miami, would be fast-growing
11 trees?

12 A Yes.

13 Q Some species?

14 A Of sum species; correct.

15 Q Including the Ficus?

16 A Yes.

17 Q And Ficus is pretty predominant in the south Florida
18 area; isn't it?

19 A Yes, it is.

20 Q Now, let's say that you are on a cycle of six years,
21 as has been proposed by Florida Power and Light, and you have
22 these fast-growing trees that are not maintained but every six
23 years. What type of damage or -- if any, could that cause to the trees?

24 A You're going to have to remove well over the 30
25 percent because you're going to have to remove at least the six

1 years growth that's been on there, plus some, if you wanted it
2 to survive another six year cycle.

3 You'll probably have to remove -- The longer the waiting period, the larger the
4 branch that you have to trim off.

5 There is also a standard that says you shouldn't take
6 off a branch over a specific size. It ought to be no more than
7 30 percent of the parent branch you take off.

8 In order for a tree to compartmentalize or prevent
9 that infection or decay from entering the heart of the tree --
10 If it enters the heart of the tree, it rots out the center part
11 of the tree, it's going to lose its support, eventually.

12 And if you cut it off too much at one time, the tree's
13 response is to massively sprout back a mass of leaves. It's
14 going to make up what's been taken away from it, and usually you
15 get what they call witch broom.

16 You've seen a tree looks like a broom, all of a sudden
17 it would be a long limb and sprout out all over the place. The
18 new sprouts are not a hazard this year, but the year after, they're not securely attached to where
19 the previous cut was made, and that's where it will break off in wind.

20 Q When we start getting hurricane type conditions,
21 you've got danger of these branches breaking ?

22 A That's correct.

23 Q Okay. And now, some of these trees are where there
24 are electrical lines; correct?

25 A A lot of the trees, within a city right-of-way and

1 swales, and a lot of them in alleys, which we don't maintain.

2 They are private residence trees.

3 Q But a lot of these are electrical lines?

4 A That's correct. All sorts of utility lines.

5 Q That they interfere with?

6 A Uh-huh.

7 Q Is that yes?

8 A That's correct.

9 Q Now, are you saying that if we cut off -- we wait
10 six years, cut it off over the 30 percent and all the new shoots
11 are coming in and they're growing as fast as the rest of the
12 tree would have grown?

13 A Yes, maybe faster.

14 Q So, pruning is actually done, if I remember correctly
15 a little bit from my classes, to promote growth of plants and
16 trees sometimes?

17 A It not only promotes growth, but it's like grooming.

18 You have to get a good structure in a tree; and if you don't, it could be top heavy, lean to one
19 side or the other or enter
20 decay.

21 So, it's a matter of pruning it correctly, at the
22 appropriate time. Cut too much off, you can enter decay.

23 Q What if you don't cut enough off?

24 A You can always come back the next year and cut more
25 off.

1 Q Let's say you enter a six-year program and the trees
2 grow up around the lines and you cut just enough off to clear the line, but it's not -- Is there a
3 minimum that you should be
4 cutting off?

5 A Well, we don't have a minimum because we don't do line
6 clearance. FPL crews handle that, but they have a set line,
7 based on how much away they have to be from the line when they do a pruning.

8 So, they say a 14 KVA line, you have to be 14 foot
9 away. So, when they come out, typically on a four-year cycle,
10 they'll come cut 12 or 14 foot, considering it will grow back
11 again.

12 Q Do you know what the cycle is they're using so far?

13 A No. They were supposed to call us whenever they come
14 in, and they don't always do that.

15 We've been to FPL because if their crews just go in
16 there and illegally trim a tree, they cut too much off, it's
17 just aggravating a problem, aggravates a problem for them, as well as us, and it violates a lot of
18 standards.

19 Q So, even right now, you're finding that you're having
20 problems with them because they are cutting too much trees; right now?

21 A That's correct.

22 Q But the trees are being allowed to grow too big?

23 A Uh-huh.

24 Q Is that yes?

25 A That's correct.

1 Q So, whatever schedule they're using now is already
2 creating problems that you are concerned about, if they go to a
3 six-year --

4 A Yes.

5 Q Okay. Now, is there any problem with if they have to
6 wait long and have to cut back more than 30 percent? Is there
7 any problem with these trees falling over or being lopsided or
8 anything of that nature?

9 A Definitely. The street trees, a lot of times, they do
10 what they call a drop-crotch cut. The branches go out to each
11 side. There's still canopy for the street and the house, but
12 you have the big, open space in the area.

13 All that weight can split a tree. There are a lot of
14 trees in alleys and right-of-ways in people's yards, where the
15 residents in this area don't go out and the don't buy the right
16 type of tree or a tree grows on the fence line and they don't
17 ever trim it.

18 So, it's under the utility lines, they'll come out and
19 remove the whole side of a tree. And these fast-growing hardwood tree, such as a Ficus or
20 holly, beschophia, the roots don't go in the ground and have the same capacity as an oak or
21 black olive have in the ground, and they tip over in the wind or
22 rain. And when FPL takes off one side of a tree, you get a good
23 rain or wind, and the whole tree comes down on someone's house.

24 And we've seen that happen over and over again.

25 Q What kind of effect does a tree have on property

1 values, as far as you know?

2 A It increases the property values. People want to go
3 into an area that has shade. I haven't documented -- I can say
4 what I read, and I believe it is that you go into a community --
5 Coral Gables rates their area as the number one area to live
6 because of the streets. So does North Miami. It's Tree City
7 USA for 15 years, based on the canopy.

8 Q Say that again.

9 A It's a Tree City USA for 15 years.

10 Q That's because of the trees located in the city?

11 A The number of trees we have, the amount of canopy we
12 have and the efforts we expend to maintain them.

13 Q Okay. And if FPL is allowed to continue with their
14 Six-Year Trimming Program, are you concerned, other than the
15 City's maintenance, are you concerned about the City and it's
16 Tree City designation?

17 A I think it could be in jeopardy. We're going to lose
18 a lot of canopy in people's yards and the alleys and so on.

19 Q Okay. So now, the six-year cycle that FPL is
20 proposing, do you see any problems with it as it relates to the
21 Miami-Dade County's Ordinance for Tree Abuse, and why?

22 A I, personally, think that it's in violation of their
23 codes, that you are going to be taking off more. And in my
24 experience, Florida Department of Transportation did some
25 excessive trimming, or FPL, on Northeast Sixth Avenue, and DERM

1 came down on them and issued a warning. And it wasn't anything on a six-year cycle.

2 They just took too much off. So, DERM issued a
3 letter of warning and said, "No, we're not going to fine them
4 at this time, but --"

5 Q Would a three-year program be better, in your opinion,
6 as it relates to the health of the trees and the future of the
7 trees?

8 A Oh, definitely. It's better for the health of the
9 tree, better for the structures, property values, liability, a
10 whole litany of reasons not to destroy the tree.

11 Q You say the City, itself, spends about a million plus
12 on it's tree maintenance?

13 A Yes.

14 Q So, it is kind of expensive?

15 A Yes, it is.

16 Q Do you think the expense is justified by saving the
17 trees?

18 A Yes, I do.

19 Q Anything else you think -- Well, let me ask you this,
20 because you've been here in North Miami for so long. Have you
21 had occasion, and do you study trees in other areas of the state?

22 A Not north of here, no, I have not had experience north
23 of here. One thing I can say, and again, this is because the

1 arborist groups are national and we subscribe to the publications, and there's a lot of
2 networking done with other areas is that South Florida is extremely unique to the rest of the
3 state of Florida.

4 Q Why is that?

5 A Because we're really in a tropical environment. The
6 trees don't stop growing here like they do in northern Florida.

7 Basically, when the temperature drops, they do not actively grow.

8 Here, they pretty much grow 365 days a year. So, they
9 don't lose the growth time. In fact, here, you won't find growth rings in many trees because
10 it's a continual growth.

11 If you see growth rings in school, you say, "Here is
12 the seasons," but you don't see that here because there's no
13 real season here.

14 Q We have more of a problem with tree growth being that
15 it's consistent, whereas in northern Florida, there's a period
16 of time when trees stop growing?

17 A That's correct.

18 Q Because the temperature drops below a certain degree,
19 like in northern states, when the leaves go off the trees?

20 A Exactly.

21 Q But here, we don't have that issue because of our
22 tropical area?

23 A Many trees here are tropical trees that grow 365 day a
24 year.

25 MS. WHITFIELD: Okay. I don't have any further

1 questions. Thank you very much.

2 (Thereupon, taking of the sworn statement was
3 concluded.)

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9 _____TERRY LYTLE

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1 CHAIRMAN EDGAR: And, Mr. Butler, do you have cross?

2 MR. BUTLER: I do. Thank you.

3 CROSS EXAMINATION

4 BY MR. BUTLER:

5 Q Good morning, Mr. Lytle.

6 A Good morning.

7 Q Do you have available to you at the witness stand a
8 copy of your deposition?

9 A Yes, I do.

10 Q Okay. Thanks. I'll be making some references to it,
11 and it will be easier if you have it available to you.

12 Mr. Lytle, you have not graduated from college,
13 correct?

14 A That's correct.

15 Q And you have not taken any college level courses in
16 performing economic analyses of business alternatives, is that
17 correct?

18 A That's correct.

19 Q And it's correct, also, that you have not ever
20 performed any economic analyses of the costs and benefits
21 associated with alternative vegetation management strategies,
22 is that correct?

23 A That's correct.

24 Q Your testimony states that -- I'm looking at Pages
25 6 and 7 of your testimony -- it states that the City tries to

1 trim its trees on less than a three-year cycle. Do you see the
2 reference to that?

3 A Yes.

4 Q It's actually the top of Page 7. Now, didn't you
5 acknowledge at your deposition that the City is always a little
6 behind in its attempt to trim on a three-year cycle?

7 A Yes, we are.

8 Q In fact, you said at your deposition that you really
9 didn't know the City's actual effective cycle for trimming
10 black olives, which is the majority tree species in the City,
11 correct?

12 A Correct.

13 Q A little further down on Page 7 your testimony says
14 that the City spends approximately \$100,000 a year for outside
15 tree-trimming contractors. Do you see that?

16 A Yes.

17 Q Is it true that the City uses outside contractors
18 when it needs additional resources to try to trim trees to the
19 desired cycle?

20 A Yes, it is.

21 Q And didn't you tell me at your deposition that the
22 City would need additional resources if it were going to try to
23 trim on a more rapid cycle?

24 A Yes, we would.

25 Q On Page 8 your testimony talks about DERM's tree

1 trimming standards, and you say that it is not acceptable to
2 trim more than 30 percent of a tree at one time. Do you see
3 that? Page 8, Lines 5 to 7, or 5 to 8.

4 A Yes.

5 Q I'm sorry?

6 A Uh-huh.

7 Q Isn't it correct that you acknowledged at your
8 deposition that there are times when the City itself trims more
9 than 30 percent of a tree when that is needed for road
10 clearance?

11 A Yes, it is.

12 Q But you said at your deposition that you considered
13 trimming the trees to more than 30 percent for road clearance
14 falls within an exception to DERM's standards when it's
15 necessary for public safety, is that right?

16 A It is an exception, yes.

17 Q And you agreed that the same exception would apply if
18 FPL had to cut more than 30 percent for line clearance due to
19 public safety reasons, correct?

20 A Yes.

21 Q And do you agree that the City's trimming for road
22 clearance often alters a tree's natural shape compared to what
23 it would look like in a forest environment?

24 A Yes.

25 Q On Page 9 of your testimony, Line 20, you refer to

1 the fact that if FPL trims on a six-year cycle it will have to
2 remove more than 30 percent of fast growing trees. Do you see
3 that reference?

4 A Yes.

5 Q Didn't you agree at your deposition that if FPL's
6 plan is to trim to a six-year average cycle then it would make
7 sense that some trees would be trimmed on less than a six-year
8 cycle while others would be on a longer cycle?

9 A I didn't understand that.

10 Q If FPL trims on a six-year average cycle, would you
11 agree that it would make sense that some trees may be trimmed
12 on less than a six-year cycle, and that other trees would be
13 trimmed on longer than a six-year cycle, so that it would turn
14 out as an average of six years?

15 A Yes.

16 Q But you didn't have any personal knowledge at your
17 deposition of what FPL's actual trim cycle would be for
18 specific portions of the City under its six-year average plan,
19 did you?

20 A No.

21 Q Page 10 of your testimony, and you were referring to
22 this in your summary also, you talk about witch's broom growth
23 forming when too much of a tree is cut off at one time. Do you
24 see that reference?

25 A Yes.

1 Q Now, I asked you at your deposition about instances
2 you could recall where FPL trimming created witch's broom
3 growth, and isn't it true at your deposition that you could
4 recall only one such instance which occurred about seven or
5 eight years ago?

6 A Yes. We don't keep actual records of that, that's
7 correct.

8 Q On Page 12 of your testimony you refer to -- this is
9 Lines 15 to 18. There is a reference to FPL, what would happen
10 if FPL crews go in and illegally trim a tree. Do you see that?

11 A Which question was that?

12 Q I'm sorry, it's on Page 12. The answer starts on --
13 what I'm referring to starts on Line 15. We've been to FPL
14 because of their crews just going in and illegally trim a tree,
15 et cetera.

16 A I don't have that actual piece with it. I've got two
17 pieces here, the questions and the answers.

18 Q I'm sorry, you don't have a copy of your
19 November 7 sworn statement?

20 A But I don't have -- okay, Page 12, I'm sorry.

21 Q Sorry.

22 MR. ARMSTRONG: I'm sorry, are you talking about his
23 sworn testimony that he just put in, his direct testimony?

24 MR. BUTLER: That's right.

25 MR. ARMSTRONG: He is talking about your direct

1 testimony.

2 THE WITNESS: Okay.

3 MR. BUTLER: And I'm talking about Page 12 of it.

4 BY MR. BUTLER:

5 Q On Line 12 there is a question, "Do you know what
6 cycle is they are using so far?" And then part of that answer
7 starting on Line 15 is what I was referring to. Do you see
8 that?

9 A Is this where they say they have a 14 kVA?

10 Q No, this would be --

11 MR. BUTLER: Ms. Antonatos, do we have the problem
12 again that he is looking at a copy that is paginated
13 differently than what was filed with the Commission?

14 MS. ANTONATOS: That could be the case. I'm finding
15 it on Page 19 of my transcript from the court reporter.

16 CHAIRMAN EDGAR: Okay. But for us it would be
17 helpful if we are all looking at the same document, and what we
18 have is -- I think what we have up here is the prefiled direct
19 testimony.

20 MR. BUTLER: In yours, would you confirm, Madam
21 Chairman, that on Line 12 of Page 12 there is a question. "Do
22 you know what the cycle is they are using so far?"

23 CHAIRMAN EDGAR: That is what I have before me, yes.

24 Mr. Breman, can you help the witness by pointing
25 him -- Mr. Armstrong.

1 MR. ARMSTRONG: Yes, that's fine. Jim has allowed
2 him to use his.

3 CHAIRMAN EDGAR: All right, thank you. And let's
4 make sure the witness knows where we are, again. So why don't
5 we start there again, Mr. Butler.

6 MR. BUTLER: Sure.

7 BY MR. BUTLER:

8 Q Now, Mr. Lytle, I'm referring you to the part of the
9 answer to the question I just read to the Chairman that starts
10 on Line 15. We have been to FPL because of their crews just go
11 in there and illegally trim a tree, et cetera. Do you see
12 that?

13 A Yes.

14 Q At your deposition I asked you when the last time was
15 that you went to FPL to discuss illegal trimming by one of its
16 crews. Do you recall telling me that the last time you could
17 recall was a couple of years ago?

18 A Correct.

19 Q Do you also recall telling me that the problem
20 referenced in that instance a couple of years ago was discussed
21 with an FPL arborist and straightened out?

22 A At that time it was, yes.

23 Q In fact, didn't you tell me at your deposition that
24 the City works very closely with FPL and that trimming problems
25 have been kept to a minimum?

1 A Yes, we do.

2 Q And you characterized the responsiveness of FPL's
3 arborists to the City's needs as being very good, didn't you?

4 A Yes.

5 Q Turn to Page 13, please. I'm making reference to the
6 question and answer beginning on Line 5 that ends up talking
7 about drop-crotch cutting. Isn't it true that drop-crotch
8 cutting is permitted under the ANSI best practices for line
9 clearance trimming?

10 A It is as long as you maintain that percentage of
11 relationship, yes.

12 Q And the City follows ANSI best management practices
13 for its own tree trimming work, doesn't it?

14 A Yes, we do.

15 Q In fact, you agreed at your deposition that
16 drop-crotch cutting is an appropriate form of trimming practice
17 for utility line clearing purposes subject, as you just said,
18 to the percentage removal limitation?

19 A Yes.

20 Q On Page 13, further down the page, Line 22 and 23,
21 you make reference to what happens if FPL takes off one side of
22 a tree. Do you see that?

23 A Yes.

24 Q At your deposition, I asked you to describe instances
25 you are aware of where this happened, and isn't it true that

1 the only instance you could recall was a Ficus tree that was
2 cut a year and a half or so before Hurricane Wilma?

3 A That is what I said in the statement, yes.

4 Q And in your deposition, didn't you acknowledge that a
5 lot of other trees turned over or toppled over within the City
6 of North Miami during Hurricane Wilma, but that this was the
7 only one of the toppled trees that you are aware of where one
8 side had been removed for utility line clearance purposes?

9 A Yes.

10 Q On Page 14 of your testimony, you discuss what you
11 say was a violation of Miami-Dade County's ordinance for tree
12 abuse by FPL, starting at Line 19 with the question and then
13 your answer on Line 22. Do you see that?

14 A Uh-huh.

15 Q Now, at your deposition you confirmed to me that the
16 instance you are referring to here is the same one that we just
17 talked about a few minutes ago where I had asked you about
18 instances you could recall of FPL crews illegally trimming
19 trees, is that right?

20 A Well, this was -- the instance here was on a state
21 road.

22 Q Would you look at Page 37 of your deposition
23 transcript, please?

24 A Which is that page?

25 Q Page 37 of your deposition transcript.

1 A I'm not sure which document that is.

2 CHAIRMAN EDGAR: Mr. Armstrong, can you help?

3 MR. ARMSTRONG: Did you provide one?

4 MR. BUTLER: I'm sorry, I thought he said he had one
5 up there, or I would have provided one.

6 (Pause.)

7 Do you have it now, Mr. Lytle?

8 THE WITNESS: Yes, sir.

9 BY MR. BUTLER:

10 Q Look at Page 37, please.

11 A Okay.

12 Q And you will see that on Line 9, I asked you the
13 question is that the instance you were describing to me
14 earlier, and you said yes?

15 A Yes.

16 Q So, in fact, it is the same instance here that you
17 had previously discussed regarding FPL crews allegedly
18 illegally trimming trees, correct?

19 A That's correct.

20 Q Now, I would like you to stay on that page if you
21 would, please, in the deposition. I asked you if you know why
22 DERM apparently said we are not going to fine FPL at this time.
23 And your answer was because the trimming wasn't so severe.
24 They didn't take that much off. They just took -- just like
25 took a hedge trimmer and took the side of the tree off and it

1 wasn't severe enough to fine them.

2 Is that correct?

3 A That's correct.

4 Q And, in fact, subsequently you characterized it as
5 really more of a technical violation than a serious violation?

6 A Yes, uh-huh.

7 Q Look at Page 16 of your testimony now, please. This
8 is back to your prefiled testimony.

9 A Okay.

10 Q And starting on Line 14, you have a series of
11 questions and answers that talk about the difference in growth
12 between northern and southern parts of Florida. Do you see
13 that?

14 A Yes.

15 Q Didn't you agree at your deposition that under a
16 trimming program with a six-year average trim cycle it would be
17 possible for FPL to trim more frequently in southern areas with
18 rapid tree growth and less frequently in northern areas with
19 slower tree growth, yet still end up with an average six-year
20 cycle?

21 A I don't totally understand this average six-year
22 cycle.

23 Q Look at Page 66 of your deposition transcript,
24 please.

25 A Okay.

1 Q Starting on Line 6, I asked you whether you would
2 agree that if a cycle was on an average basis of six years, it
3 would be possible for there to be some instances where circuits
4 would be trimmed more frequently than every six years and then
5 others would be trimmed less frequently and it would come out
6 on average, and you said correct, right?

7 A Yes.

8 Q And then you see the next question I asked you do you
9 know whether FPL's six-year average lateral trim cycle proposal
10 envisions doing trimming more frequently in the southern part
11 of the state than it does in the northern part of the state,
12 and your answer was you didn't know one way or the other,
13 right?

14 A That's correct.

15 Q And then finally I said, if it did, would that at
16 least tend toward addressing your concern that southern Florida
17 has a faster growing, a longer growing season of faster growing
18 trees than northern Florida; and your answer was, yes, that
19 would tend to address your concern. Right?

20 A Yes.

21 Q Finally, Mr. Lytle, at your deposition you were asked
22 about your understanding as to FPL's existing trim cycle within
23 the City. Isn't it true that you said you understood FPL
24 currently has a trim cycle that's shorter than six years and is
25 asking to extend it to six years?

1 A Yes.

2 MR. BUTLER: Thank you, Mr. Lytle.

3 That's all the questions I have.

4 CHAIRMAN EDGAR: Other questions from staff?

5 MS. GERVASI: We have no questions.

6 CHAIRMAN EDGAR: Commissioners?

7 Mr. Armstrong, redirect?

8 MR. ARMSTRONG: Just some brief redirect, Madam
9 Chair.

10 REDIRECT EXAMINATION

11 BY MR. ARMSTRONG:

12 Q Mr. Lytle, I just want to set the stage here for your
13 testimony. You work for the City of North Miami, correct?

14 A That's correct.

15 Q And for how many years?

16 A Fifteen.

17 Q And you work, part of your job has to do with the
18 trees in the City?

19 A Yes, it is.

20 MR. BUTLER: I'm going to object. Mr. Armstrong is
21 leading the witness, and it is his witness.

22 MR. ARMSTRONG: Okay. Thanks.

23 BY MR. ARMSTRONG:

24 Q As part of your job -- let's say this, driving to and
25 from your job, do you drive through the streets of the City of

1 North Miami?

2 A Yes.

3 Q As part of your job when you are inspecting tree
4 trimming in the City of North Miami, do you drive through those
5 streets?

6 A Yes, I do.

7 Q Okay. You were asked a number of questions by
8 counsel for Florida Power and Light regarding the City's from
9 time to time trimming more than 30 percent of a tree in its
10 tree trimming. Do you recall that?

11 A Yes, I do.

12 Q Also, he referred to a portion of your testimony
13 where you said the City tries to trim its trees that it's
14 responsible for within a three-year cycle, correct?

15 A Yes.

16 Q Does the City condone and as a matter of practice
17 trim its trees by cutting more than 30 percent?

18 A No, we don't.

19 Q I believe it was your testimony that the City only
20 trims more than 30 percent when it falls behind in its cycle,
21 is that correct?

22 A That's correct.

23 MR. BUTLER: Again, object to the form of the
24 question. He is once again leading his witness.

25 MR. ARMSTRONG: Sorry, I'm just trying to speed it

1 along.

2 BY MR. ARMSTRONG:

3 Q In your experience, driving through the City of North
4 Miami, seeing the tree trimming that has occurred by Florida
5 Power and Light and its contractors, is it your opinion that
6 they also treat the 30 percent tree trimming standard the same
7 way that you do for the City of North Miami?

8 A In my opinion, no.

9 Q Okay. What does FPL and its contractors do that
10 differs from the City of North Miami with respect to this
11 30 percent tree trimming?

12 A They typically have a specified amount of space that
13 they are looking for around a line, and if there is a large
14 limb in there, they take it off to provide whatever clearance
15 that they need, plus some.

16 Q So you're familiar with the testimony, we have
17 reviewed the testimony of Florida Power and Light where they
18 suggest it has taken more than ten years to trim trees,
19 correct?

20 A Yes.

21 Q Now, as a matter of logic, if it takes more than ten
22 years to trim a tree, isn't it more likely that they are going
23 to have to cut more than 30 percent of a tree?

24 MR. BUTLER: I'm going to object to both the form and
25 now also the substance of this. This is going well beyond

1 anything that could be leveraged off of my cross-examination,
2 and it also happens to be leading.

3 CHAIRMAN EDGAR: Mr. Armstrong, I agree with the
4 objection. Although I am all for moving it along, and I
5 appreciate that effort, let's be careful with the phrasing of
6 the questions, please.

7 MR. ARMSTRONG: Okay.

8 BY MR. ARMSTRONG:

9 Q Mr. Lytle, counsel for Florida Power and Light
10 referred to some portions of your deposition testimony in which
11 you referred to one instance of this, or one instance of that.
12 I'd like you to tell this Commission what your experience has
13 been when you drive through the City of North Miami after wind
14 and storm events and view the tree trimming practices of
15 Florida Power and Light?

16 A We haven't been -- after the storms, we haven't been
17 able to drive. You have got to get out and walk around
18 everything.

19 Q Why is that?

20 A And more than the streets, it's the alleys will be so
21 crowded with debris and lines that have come down from the wind
22 events, and trees and some of them being too close a proximity
23 to the utility lines.

24 Q And is it the City of North Miami's practice to go
25 back to the office, for you to go back and write down each day,

1 each time, each location where you have seen the trees down?

2 A No, that is not our practice.

3 Q But it's your testimony to this Commission today that
4 when you drive through the City of North Miami after wind and
5 storm events that you see trees down, is that correct?

6 A Yes.

7 MR. BUTLER: I'm going to object to the form of the
8 question. I'm also going to object to the substance of it,
9 because I was asking Mr. Lytle to confirm instances of illegal
10 tree trimming that he had identified, and I don't think that
11 what he is talking about of what he sees in post-storm, you
12 know, trees being toppled, et cetera, really is something that
13 logically relates to what I had asked him.

14 MR. ARMSTRONG: Madam Chair, I gave a lot of latitude
15 to allow him to use the deposition testimony the way he did it
16 to speed this thing along. I repeated what the witness'
17 testimony was. What we have is an attempt to say, City,
18 because you didn't document every one of these instances, you
19 can only tell me about one today, that your whole testimony is
20 not credible. This witness under oath is testifying today --

21 CHAIRMAN EDGAR: I will allow.

22 MR. ARMSTRONG: Thank you, Madam Chair.

23 BY MR. ARMSTRONG:

24 Q So, Mr. Lytle, what is your personal experience
25 regarding FPL's tree trimming practices and particularly with

1 the regard to this 30 percent of the trees being cut?

2 A Typically, the practice takes off more than
3 30 percent on every tree that they trim to allow for their line
4 clearance. And I have had crews come up to me and say they
5 take into consideration the amount of space that's needed
6 around the lines and then they add some to it. In other words,
7 they are taking off more than what provides the actual
8 clearance that they need.

9 MR. BUTLER: I'm going to object to that answer as
10 hearsay that I strongly suspect isn't going to be substantiated
11 in the proceeding.

12 MR. ARMSTRONG: Madam Chair, it's his personal
13 experience.

14 CHAIRMAN EDGAR: The objection is noted for the
15 record.

16 You may proceed, Mr. Armstrong.

17 BY MR. ARMSTRONG:

18 Q Mr. Lytle -- and this is so critical in this case,
19 Commissioners. Mr. Lytle, you heard cross-examination, and you
20 were deposed about this, these questions. It's my
21 understanding that FPL is coming in saying we are going to trim
22 trees on a six-year cycle. You were just cross-examined and
23 you were cross-examined at your deposition about the fact that
24 this is an average six-year cycle.

25 Do you believe that means that FPL can continue to

1 take ten years between tree trimming of trees?

2 A Well, my understanding is that they will be in on a
3 cycle of every six years, which is too much. I don't
4 understand how they control what is coming in and saying it is
5 going to be an average and that they could be more frequently.
6 But it's saying the schedule is six years, and it's going to
7 take longer than that to implement it.

8 Q So in your experience and your opinion, if you would
9 understand FPL would take ten years for some trees, but they
10 might do another tree every two years, and it averages out to
11 six, would that give you any comfort in terms of the proposed
12 six-year lateral trimming cycle?

13 A Not a lot of comfort, no.

14 MR. ARMSTRONG: Madam Chair, that's all the redirect
15 I have. I appreciate it.

16 CHAIRMAN EDGAR: Thank you. Commissioner McMurrin
17 for a question.

18 COMMISSIONER McMURRIAN: Thank you.

19 MR. BUTLER: Congratulations on doing that right.

20 COMMISSIONER McMURRIAN: Mr. Lytle, I'm just trying
21 to clarify some of the questions I just heard. Is it your
22 understanding that the proposed average six-year cycle for
23 lateral trimming is less frequent than FPL's current trimming
24 cycle for laterals?

25 THE WITNESS: That's not -- my understanding is it is

1 longer than what they are currently doing. The six year is
2 longer than what is currently going on.

3 COMMISSIONER McMURRIAN: So that would be less
4 frequent than they are doing it now.

5 THE WITNESS: Correct.

6 COMMISSIONER McMURRIAN: You think that it's going to
7 take -- it's going to take longer periods of time to get the
8 trimming done than they are currently doing under their current
9 plan before the Commission approved the six-year average?

10 THE WITNESS: Yes, ma'am.

11 COMMISSIONER McMURRIAN: Okay. I guess to follow up
12 on that, if the evidence shows that it is more frequent than
13 what they are doing now, would your testimony be the same?

14 THE WITNESS: We need more tree trimming now however
15 it is done. I'm not a number cruncher, so if it is more
16 trimming, yes, that is what we need. We need more trimming.
17 We need them checked on a very regular basis and trimmed.

18 COMMISSIONER McMURRIAN: And is there a certain
19 tree-trimming cycle that you are -- is it every three years, or
20 is there a certain number, or is it just more frequent than
21 what they are currently doing, is that what you are proposing?

22 THE WITNESS: It needs to be more frequently than
23 what they are doing now.

24 COMMISSIONER McMURRIAN: Thank you.

25 CHAIRMAN EDGAR: Okay. The witness may be --

1 MR. ARMSTRONG: I do have just a little bit of
2 redirect based on that.

3 CHAIRMAN EDGAR: Very brief.

4 MR. ARMSTRONG: Absolutely. I want the record to be
5 clear.

6 FURTHER REDIRECT EXAMINATION

7 BY MR. ARMSTRONG:

8 Q Mr. Lytle, by FPL's own admission they are going to
9 trim -- they trimmed zero lateral mains in 2006, are you aware
10 of that?

11 MR. BUTLER: I'm going to object to this. I don't
12 see how this is possibly following up on Commissioner
13 McMurrian's questions.

14 MR. ARMSTRONG: Commissioners, it's so important that
15 you understand. What you are being told is that FPL intends to
16 do more. But we need to know, well, it's not very difficult to
17 do more when you did no lateral miles in 2006 and you only did
18 five miles in 2005. You have to understand that.

19 MR. BUTLER: I'm going to object to Mr. Armstrong
20 testifying.

21 (Simultaneous conversation.)

22 CHAIRMAN EDGAR: Stop. Thank you.

23 Mr. Armstrong, please do not lecture the
24 Commissioners. Thank you.

25 Do you have a question as a follow-up to Commissioner

1 McMurrrian's question that you would like to direct to your
2 witness at this time?

3 MR. ARMSTRONG: One question.

4 BY MR. ARMSTRONG:

5 Q Mr. Lytle, do you know how many lateral miles the
6 City of -- I mean Florida Power and Light, lateral miles they
7 trimmed in 2006?

8 A No, I don't.

9 CHAIRMAN EDGAR: Mr. Armstrong, I'm not seeing the
10 connection.

11 MR. ARMSTRONG: Thank you.

12 CHAIRMAN EDGAR: Okay. All right. The witness may
13 be excused. Thank you.

14 And, Mr. Armstrong, you may call your next witness.

15 MR. ARMSTRONG: Thank you. The next witness is Mr.
16 Keith Miller.

17 MR. BUTLER: Mr. Armstrong, to avoid the confusion we
18 had on pagination, could you be sure that Mr. Miller has a copy
19 of his direct testimony that has the same pagination as was
20 filed with the Commission Clerk's Office? We had that problem
21 in the deposition with him, as well.

22 MR. ARMSTRONG: I will have to get it myself.

23 CHAIRMAN EDGAR: Okay. We are going to go off the
24 record for just a minute or two. Nobody go far while we make
25 sure that we have all of the correct documents.

1 (Off the record.)

2 CHAIRMAN EDGAR: We are going to go back on the
3 record. The parties are ready. Ready? The witness is ready?
4 Okay.

5 Okay. Mr. Armstrong.

6 **KEITH MILLER**
7 **was called as a witness on behalf of the City of North Miami,**
8 **and having been duly sworn, testified as follows:**

9 **DIRECT EXAMINATION**

10 BY MR. ARMSTRONG:

11 Q Will you please state your name for the record?

12 A Keith Miller.

13 Q Thank you. Who do you work for, Mr. Miller?

14 A The City of North Miami.

15 Q And your business address?

16 A 12181 Northeast 13th Avenue.

17 Q Did you submit prefiled testimony in this docket?

18 A Yes, I did.

19 Q If I were to ask you the questions contained in that
20 prefiled testimony, would your answers be the same today?

21 A Yes.

22 Q And you don't have any changes, correct?

23 A Correct.

24 Q And you don't have any exhibits?

25 A No. Wait.

1 Q You don't have any exhibits to your prefiled direct
2 testimony?

3 A No.

4 Q Do you have a brief summary of your testimony --

5 A Yes, I do.

6 Q -- that is limited to the content of your testimony.
7 Thank you. Could you please provide that now?

8 A Good morning, Commissioners. Forgive my
9 inexperience. My name is Keith Miller, and my testimony
10 discusses tree-trimming standards and integrity of trees,
11 structural pruning and the effects of extreme trimming.

12 I've got 35 years experience in horticulture,
13 including 19 with the City of North Miami. I'm currently the
14 parks superintendent. We have over 15,000 trees, and the City
15 has made a big investment in maintaining the health of those
16 trees and the canopy cover. We do this for a number of
17 reasons. We have employed two full-time bucket trucks that we
18 use to trim the trees on a regular basis. And we prune the
19 trees in a manner that maintains their integrity, and we remove
20 and replace trees as needed.

21 As a result of the City's effort, we have been named
22 Tree City USA for 17 years in a row. This award recognizes the
23 City's commitment to and success at maintaining urban forests.
24 It is important to understand that trees in South Florida grow
25 much faster than they do in the rest of the state, and in part

1 because they are actively growing year-round. The USDA has a
2 plant hardiness zone chart and the City of North Miami resides
3 in Zone 10B where the temperatures never fall or usually never
4 fall below 40 degrees, which means that unlike the northern
5 part of the state, trees grow all year-round. Because we live
6 in a subtropical area, we have a lot of invasive species such
7 as Ficus, Australian pines, and bischofias, and hollies, and
8 these trees can grow as much as six feet a year. Depending on
9 the specie -- let me move on.

10 So FPL's proposal to trim lateral distribution lines
11 in an average six-year cycle puts us in conflict. The problem
12 is that these trees growing at that rapid rate don't correspond
13 with the six-year cycle when you consider how much of the tree
14 they're going to have to remove. They may have to remove as
15 much as 15 or 20 feet. Proper trimming standards dictate that
16 you shouldn't trim more than 30 percent of a tree, but under
17 Florida Power and Light's proposal, that could happen as a
18 matter of course.

19 When large segments of trees are removed at one time,
20 there is a significant potential for adverse effects to the
21 tree and to Florida Power and Light's power lines and to
22 properties of the City and their residents. First, such
23 extreme trimming may kill the tree. If the tree continues to
24 live, it will respond as if it were dying. It will send out
25 many small branches from the cuts, and they will rapidly grow

1 back into the utility lines. In addition, this type of
2 regrowth is not well anchored to the tree. It's very likely
3 that these sprouts that are coming back after the trimming
4 could blow off in even the slightest little wind event.

5 Finally, if one side of the tree is trimmed, like the
6 side facing the distribution line, then the tree is very
7 unstable and will have a significant potential of blowing down
8 in a strong wind. Aside from the potential for damage or
9 instability, cutting significant portions of the tree off at
10 one time is very unsightly. We get calls from residents
11 constantly complaining about FPL tree crews in their
12 neighborhood butchering their trees. I know that appearances
13 aren't the primary concern in these proceedings, but the fact
14 is that if you trim the tree properly and consistently, not
15 only will you have a safer tree, an attractive tree, but it
16 will be better able to withstand the high winds that we have in
17 south Florida.

18 In order to derive the benefits, you can't come
19 around every six years and just hack off large portions of the
20 tree. You have to trim smaller portions on shorter intervals,
21 and you have to trim those trees properly. This concludes my
22 summary. Thank you.

23 CHAIRMAN EDGAR: Mr. Armstrong.

24 MR. ARMSTRONG: Madam Chair, I request that the
25 testimony be entered into the record as though read.

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CHAIRMAN EDGAR: The prefiled direct testimony of
this witness will be entered into the record as though read.

1 Thereupon:

2

KEITH MILLER

3 was called as a witness and, after having been first duly sworn, was examined and testified on
4 his oath as follows:

5

DIRECT EXAMINATION

6

BY MS. WHITFIELD:

7

Q Could you tell us your name, please?

8

A Keith Miller.

9

Q And what is your professional address?

10

A 12181 Northeast 13th Avenue, North Miami, Florida

11

33161.

12

Q How are you employed?

13

A How? In what capacity?

14

Q Yes.

15

A Park Superintendent.

16

Q For who?

17

A City of North Miami.

18

Q How long have you been working in that capacity?

19

A Over 19 years. Well, with the City.

20

Q Okay. Did you work for Parks or --

21

A Always with Parks .

22

Q Who did you work with before?

23

A Miami-Dade County.

1 Q And could you tell me what is your educational
2 background?

3 A I have about 25 years in the field of horticulture,
4 University of Florida studies, all the way up.

5 Q Okay. Do you have a college degree in it?

6 A I don't have a bachelor's. I have an associates in
7 science and -- just shy of a bachelor's in science.

8 Q Where did you obtain your associate's?

9 A From Miami-Dade.

10 Q All right. As the Parks superintendent for the City,
11 could you tell me, briefly, what some of your duties would
12 include as it relates to trees?

13 A Well, we have about 15,000 trees in the City, give or
14 take a few thousand, and we planted those, along with, you know,
15 their maintenance requirements that follows. So, we have a
16 couple of bucket trucks that, on a regular basis, trim the trees.

17 We fertilize the trees. We do structural pruning. We
18 do removals and replacements, based on vehicular accidents or disease or just attrition.

19 Q What is structural pruning?

20 A Structural pruning is looking at the tree to see the
21 basic formation of the tree.

22 And structural pruning, in a sense, is making sure
23 that you maintain the integrity of the tree when you do pruning.

24 Q And what type of things do you take into consideration
25 when you, say, maintain the integrity of the tree?

1 A Well, let's say, in comparison to a home, if you
2 wanted to add or remove a room, you wouldn't remove the bearing
3 wall.

4 Q Okay.

5 A So, with a tree, you don't remove major portions of a
6 tree, because you can effectively destroy it. And the ISA --

7 Q What's the ISA?

8 A International Society of Arborists has set certain
9 standards for trimming. And one of those standards is no more
10 than 30 percent of the canopy can be removed at one time, without effectively destroying the
11 tree.

12 Q Now, you say we have how man thousands of trees in the
13 City?

14 A About 15 plus.

15 Q Okay. And what type of trees are those?

16 A There's a variety of trees, black olive, live oak,
17 mahogany. Then we have various smaller trees.

18 Q Okay. Of the trees you mentioned, the black oak,
19 the mahogany -- black olive, the oak and the mahogany, are those considered fast-growing
20 trees?

21 A Fast? I would say moderate. Moderate growth is your
22 black olive and mahogany.

23 Q And how do you define moderate? What would be the
24 growth rate?

25 A Maybe three to four feet a year.

1 Q Okay. And the City of Miami, does it have any
2 special designation as it relates to trees? Is it a Tree City
3 USA or anything of that nature?

4 A Yes, about 15 years in a row, we have been awarded
5 Tree City USA.

6 Q Who awards that, if you know?

7 A It's a National Association for Urban Forestry
8 Counsels.

9 Q Do you know why the City of North Miami has been
10 awarded that for the last 15 years?

11 A It's, you know, a recognition of our ability to plant
12 and maintain urban forestry and canopy within the City.

13 Q Now, you're familiar with whether or not there are
14 trees that grow under power lines in the City?

15 A Yes.

16 Q Do you know how those trees came into existence, the
17 majority of them?

18 A Well, the founding fathers, in their infinite wisdom,
19 had set up a lottery system would designate where the trees would be planted from one side of
20 town to the other, and that at
21 that period of time did not include taking into consideration
22 whether or not any trees are going under power lines or not.

23 They just planted them everywhere there was a planting
24 site. And that was, also, before FPL came out and realizing that some trees were a conflict, and
25 so they came up with a kind of a better system, you know, the right tree in the right

1 place type.

2 Q Okay. Do you know whether or not there are any
3 rapid growing -- moderate to rapid, fast-growing trees that are
4 under power lines in the City?

5 A Oh, yeah, yeah. We probably have a lot more than I
6 would estimate. We have Ficus trees, pine trees, holly trees, beschophia trees, these are all
7 what we consider invasive species trees, and they're typically deposited under power lines
8 because they proliferate so fast, and the seeds are consumed by
9 birds, who sit on a wire and they deposit the seed with a little
10 fertilizer with it.

11 And, before you know it, those species are popping up all underneath the power
12 lines.

13 Q What is the difference between the growth rate between
14 that and the black olive, which you said is a moderate-growing --

15 A Probably significant. I would say they could grow to
16 at least two and a half times the rate of growth.

17 Q And I believe you told us the black olive could be
18 three to four feet a year, so --

19 A Yeah, that's correct. And that's an estimate. And
20 that's overall, not just one limb, you know, but overall.

21 Q So, you're talking about, then, the fast-growing could
22 grow anywhere from six to eight feet in just one year?

23 A Easily, uh-huh.

24 Q Is that yes? You said, "Uh-huh."

25 A Easily. Oh, yes.

1 Q Now, you mentioned something about the ISA had a
2 standard that you should not trim any -- more than 30 percent of
3 the tree at the pruning time.

4 If you look at a fast-growing -- the rapid-growing
5 that you talked about, the holly and the pine and Ficus, if you
6 are on a six-year trimming schedule for those types of trees, in
7 your opinion, based on your many years of experience in this area, would you be required to
8 trim off more than 30 percent in
9 order to get it away from the power lines?

10 A Definitely.

11 Q And why does that -- Do you know why they say no more
12 than 30 percent should be removed?

13 A Well, the tree needs the leaves and the branches, too.
14 It's a resource for the tree to grow. You know, the leaves
15 take in sunshine. Sunlight turns into chlorophyll. Chlorophyll
16 powers the tree's growth.

17 Q That's the type of thing we learned in Science way
18 back when?

19 A Right, right. The leaves are the engine of the tree.

20 Q Now, if it's -- if the six-year trim is proposed,
21 would it stimulate more growth for a fast -- rapid-growing tree,
22 if you are on the six-year and you have to cut off more than 30
23 percent, is that going to make a tree grow faster or less, if
24 it's not dying at that time?

25 A You know, that blanket statement, it would be hard to,

1 you know -- It would be hard to say a blanket statement like that. What I can say is that in a
2 six-year cycle, the trees had
3 to be removed from the power lines in accordance to FPL's
4 clearance, that could mean that they were trimming off 15 feet of the tree, maybe even 20 feet
5 of the tree because they need to be 15 or 20 feet away from the power lines.

6 And, typically, from our experience, that they do not
7 do structural pruning. They just clear for that distance.

8 Q Okay. Let me just stop you there. So, what you are
9 telling me is FPL, basically, goes out. They say, "Oh, these
10 tree branches are too close to the power line. We're going to
11 cut those branches off and cut this back," and they don't take the time to look and say, "Okay.
12 For the life of this tree, we
13 need to cut off here and here," and places like that, they only
14 go to the cutoff, what they need to cut off to get their footage
15 from the line?

16 Is that what you are telling me?

17 A Okay. In a sense, yes.

18 Q Okay.

19 A They need production, so they're trimming as much as
20 they can, as quickly as they can. And they don't really have
21 the tree's benefit and the tree's welfare at hand. And so,
22 typically, what they do, you know, if there's a limb that could
23 remain that's maybe six inches or more, that's within that ten
24 feet, let's say, they'll just say ten feet, off it comes, where
25 that limb would never interfere with those wires because it's

1 structurally sound.

2 Q Okay. So, what you are telling me is based on your
3 experience, and you've been here 19 years at the City of North
4 Miami, FPL's concern is distance from power lines, period, not
5 integrity of the tree?

6 A Absolutely.

7 Q Okay. And that can be dangerous to the tree?

8 A It can, in many ways. If you remove more than 30
9 percent of the tree, it could effectively what they call destroy the tree and it may not come back.

10 If it does come back, what's going to most likely
11 occur, if they're not doing proper pruning, is it's going to
12 sprout out and those sprouts are not going to be coming from a proper trim, and that's going to
13 cause it to generate more sprouts than it normally would.

14 And because the plant is trying to survive from that
15 extreme type trimming, it's going to put out as many sprouts as
16 it feels like it's dying.

17 And those sprouts are going to bunch up around one
18 little cut, and they're not going to be attached to the main
19 trunk very -- they're going to be weakly attached. And that
20 creates even a more problem because the slightest little
21 wind comes along, needless to say, a tropical storm or hurricane, and those limbs could come
22 flying off, become projectiles and also take down and interfere with the wires even more.

23 Q Okay. If they're coming in and they're doing this --
24 Let's say you have a city street in North Miami that has, basically, a beautiful canopy of trees,
25 and FPL is just coming in there whacking the trees away, let's say the lines -- FPL

1 power lines are toward the streets, so, the cutting is going to be on the sides, where the lines
2 are; right?

3 A Right.

4 Q They're not going to go around and trim the whole
5 tree. They're not worried about what's facing the house; correct?

6 A Correct.

7 Q That would affect the canopy; correct?

8 A Yes, and it would make the tree unavailable.

9 Q Because you're only cutting from one side?

10 A Yes. What's happened is now, the tree is lopsided.

11 And again, a tropical storm or hurricane, and off that tree goes in the direction of the resident's
12 home or on top of their home or car.

13 Q And the longer you go without trimming a fast-growing
14 tree, the more you have to trim it to get the distance you need,
15 because it's growing so fast; is that a correct statement?

16 A Yes, yes.

17 Q Okay. Now, can you tell me do you know whether or not
18 there's a difference as it relates to trees and the growth rate in South Florida and the growth rate
19 in North Florida?

20 A Absolutely. South Florida is very unique to any other
21 part of Florida because it's so sub-tropical down here that the
22 variety of trees are different, and the rapid-growth is, also,
23 a consideration.

24 We don't have cooler climate. We have pretty much year round growth here.
25 And so any kind of, you know, when they

1 do, like, a survey and they say, you know, "Based on our survey,
2 you know, We've determined X, Y, Z," well, that survey maybe
3 taking place in three quarters of Florida, and they consider it,
4 but it's not considering the bottom portion of Florida, which is
5 West palm Beach down . It's very different down here.

6 Q So, where a six-year trimming cycle might work in
7 northern Florida, it wouldn't work in South Florida because of
8 our climate?

9 A And the different types of tree species that grow here
10 and don't grow in North Florida.

11 Q Like which ones?

12 A Ficus trees, Australian pine trees, holly,
13 berschophia. A lot of tropical --

14 Q And a lot of our rapid growth trees that don't grow up
15 there?

16 A Typically, you don't have the same species. You may
17 have rapid growth trees up there, but I'm not familiar with them. I am familiar with a large
18 quantity of rapid-growing
19 trees down here.

20 Q Okay. So, it would be better if you looked at
21 trimming cycles based on the region that you are in and the type of trees that they have and
22 customize a trimming cycle for that
23 area, as opposed to one blanket for the state?

24 A Absolutely, yeah, this region in particular.

25 Q Okay. What about a three-year trimming cycle? Is

1 that recommended for the lateral lines and the main lines, that keep those clear?

2 A Yeah. A three-year cycle is preferred because what,
3 effectively, you are doing is training the tree to grow around
4 wires. And when you trim on a three-year lateral cycle and a
5 five-year main line cycle, you have the capability of training
6 the tree, and it would be structurally sound, and then you wouldn't have all of these weak
7 attached limbs and people calling and saying, "they hatracked my tree. The destroyed my
8 treatment. The tree is lopsided. It doesn't have, you know, any kind of decent shape to it," and
9 it becomes more of a hazard.

10 Q Have you had those type of calls?

11 A Yes.

12 Q What do you mean by hatrack?

13 A When they arbitrarily cut off the top of the tree at
14 any level, no structural pruning, no consideration for the tree.

15 Q Okay. And I think you said they could end up with
16 lopsided trees?

17 A Right. We talked about that, because now, the tree is
18 unbalanced, and that tree could go over in a high wind event and
19 fall on somebody's car or in the street, could kill somebody.

20 One of the other thing, too, with hatracking is you'll
21 have to continue, if once you defectively cut off the top of the tree, you have to come back and
22 continue to cut the new branches coming up. And if you would wait, as the suggested six
23 years, those limbs would be in the wire.

24 Q Okay. So, you need to come back to make sure you're
25 keeping them down below the level that you want them?

1 MR. ARMSTRONG: Thank you. Mr. Miller is available
2 for cross.

3 CHAIRMAN EDGAR: Thank you. Mr. Butler.

4 MR. BUTLER: Thank you, Madam Chairman.

5 CROSS EXAMINATION

6 BY MR. BUTLER:

7 Q Good morning, Mr. Miller.

8 A Good morning, Mr. Butler.

9 Q Do you have a copy of your deposition transcript with
10 you at the stand?

11 A Yes.

12 Q As with Mr. Lytle --

13 A Is that dated January 4th?

14 Q January 4. I don't think so, no. Your deposition
15 transcript should be --

16 MS. ANTONATOS: January 18th.

17 MR. BUTLER: I'm sorry, you're right, it does say
18 January 4. It was taken January 18th, but I had not noticed
19 that before. They have got the wrong date on there. You are
20 correct. Okay.

21 BY MR. BUTLER:

22 Q Mr. Miller, you don't have a Bachelor's degree,
23 correct?

24 A I'm sorry?

25 Q You do not have a Bachelor's degree, correct?

1 A That is correct.

2 Q And you are not a certified arborist, is that
3 correct?

4 A No, but I have been taking university courses for 25
5 years.

6 Q Isn't it correct that you have never performed any
7 economic analyses where you would compare the costs and
8 benefits of one vegetation management strategy to another?

9 A That's correct. My opinion is simply anatomy versus
10 physics, though.

11 Q At the time of your deposition, isn't it true that
12 you had not read all of Mr. Miranda's testimony, you said you
13 had just skipped through it?

14 A That's correct.

15 Q And at the time of your deposition you would have
16 already prepared both your direct and your rebuttal
17 testimonies, correct?

18 A I'm sorry, say again.

19 Q At the time of your deposition you would have already
20 prepared your direct and rebuttal testimonies, correct?

21 A That's correct.

22 Q At Page 6 and 7 of your testimony you talk about the
23 infinite wisdom of your City's founding fathers and the lottery
24 system that they set up. And would you agree that your
25 testimony is that trees were planted without consideration of

1 whether they were going to be under power lines or not?

2 A That is correct.

3 Q Has the City made any effort subsequently to remove
4 trees that were planted under FPL power lines?

5 A We remove trees when they are in conflict with any
6 kind of driveway, power lines, we work with FPL to remove the
7 trees. We employ the "Right Tree-Right Place" program.

8 Q All right. I will ask you to turn to your
9 deposition, Mr. Miller, Page 42. Look at Line 15. I asked
10 you, "Has the City made any effort to remove or replace trees
11 that were planted years ago under the FPL power lines." Your
12 answer then was just no, wasn't it?

13 A Were you referring to trees under laterals on private
14 property or city property?

15 Q The question is as the question reads. And you may
16 recall, don't you, Mr. Miller, I can point you to it if you
17 would like, at the beginning of the deposition where you were
18 asked to seek clarification of any question that you didn't
19 understand.

20 But the question is simply, as put to you, has the
21 City made any effort to remove or replace the trees that were
22 planted years ago under the FPL power lines. A broad question.
23 And your answer was no, wasn't it?

24 A Well, if you are talking about all other trees in the
25 City of North Miami that are under power lines, the answer

1 would be no. But if you are talking about individual trees,
2 yes.

3 Q The question asked you has the City made any effort
4 to remove or replace the trees that were planted years ago
5 under the FPL power lines. That's pretty general, isn't it?

6 A That's correct.

7 Q And after you answered no, I asked you why the City
8 wasn't doing that, and your answer was we are not in the
9 business of removing trees, correct?

10 A That's correct. We have a policy that we don't just
11 remove trees for various reasons.

12 Q Turn to Page 9 of your testimony, please.

13 A What page?

14 Q Page 9. You have a statement there that regarding
15 FPL's tree trimming practices, starting on Line 19, they need
16 production, so they are trimming as much as they can as quickly
17 as they can. They really don't have the tree's benefit and the
18 tree's welfare at hand. Do you see that?

19 A Are you on Page 9?

20 Q Page 9 of your testimony, yes. Line 19.

21 A I don't see the question. What was the question
22 again?

23 Q Literally the question is, "Okay." I think you have
24 to go back up a little bit further to get the sense of the
25 question, but this is on Page 9 of your sworn statement dated

1 November 7, 2006, which is your direct testimony in this
2 proceeding. And at least on my copy -- and, again, let me ask
3 the Chairman to be sure that I'm not the one who is off kilter
4 here.

5 MR. ARMSTRONG: (Inaudible).

6 CHAIRMAN EDGAR: Okay. Mr. Armstrong, let's -- and
7 while we are taking just a moment to, again, make sure that the
8 witness has the correct information in front of him and that we
9 are looking at the same place, Mr. Butler, you were referring
10 to the question that begins on Line 8?

11 MR. BUTLER: I'm sorry?

12 CHAIRMAN EDGAR: It begins on Line 8?

13 MR. BUTLER: Yes, that's right. That is really the
14 question that is a true question that it goes to.

15 (Pause.)

16 CHAIRMAN EDGAR: So let me ask to the witness, are
17 you comfortable with what we are looking at? Let me rephrase.

18 THE WITNESS: I'm not comfortable, no.

19 CHAIRMAN EDGAR: Like I said, let me rephrase. Are
20 you ready?

21 THE WITNESS: I believe I have the right document.

22 CHAIRMAN EDGAR: Mr. Butler, start us again so we are
23 all looking at the same place.

24 MR. BUTLER: Thank you.

25

1 BY MR. BUTLER:

2 Q Mr. Miller, does what you have before you now, as
3 your direct testimony, have a question that starts on Line 8 of
4 Page 9, "Okay, let me just stop you there. So what you are
5 telling me is FPL basically goes out," et cetera?

6 A What line are you starting on?

7 Q That would be Line 8.

8 A Eight? May even be 20 feet of the tree because it
9 needs to be 15 or 20 feet away from the power lines?

10 Q That's what you have on Line 8?

11 A Uh-huh.

12 Q We still have a problem. That is on Lines 4 and 5.

13 CHAIRMAN EDGAR: Okay. I am not understanding what
14 the difficulty is here.

15 MR. ARMSTRONG: I'm not either.

16 MR. BUTLER: I can tell you what the difficulty is
17 here, and maybe the best thing is we can just get a copy made
18 and provide it to Mr. Miller. I thought that opposing counsel
19 would be doing that. It came up at the deposition. The filed
20 version of the sworn statement was generated off of a different
21 word processing program than the copies that the City's
22 witnesses have been using for their internal purposes and the
23 pagination is different. It's not way off, but it is enough
24 off that things don't line up page and line the same.

25 CHAIRMAN EDGAR: Okay. And I do want to make sure

1 that for the benefit of the record, the transcript, and, quite
2 frankly, so we can all follow along that we are all looking, to
3 the best of your ability, at the same place.

4 Ms. Gervasi, do you have some suggestions that may be
5 helpful?

6 MS. GERVASI: I believe the staff gave the witness a
7 copy of the testimony that staff has which does correlate to
8 the correct pagination. If he works off of that copy, that
9 ought to solve it, I would think.

10 CHAIRMAN EDGAR: Thank you, Ms. Gervasi. Okay.

11 Again, for the benefit of the transcript, we are
12 going to go off the record for just a minute or two while we
13 get all the papers in front of us. Please nobody leave because
14 we are going to keep moving along.

15 (Pause.)

16 CHAIRMAN EDGAR: We will go back on the record. And,
17 Mr. Breman, thank you for your assistance.

18 Mr. Miller?

19 THE WITNESS: Yes, ma'am.

20 CHAIRMAN EDGAR: Are you ready?

21 THE WITNESS: I am.

22 CHAIRMAN EDGAR: Okay. Mr. Butler.

23 MR. BUTLER: Thank you.

24 BY MR. BUTLER:

25 Q Mr. Miller, you do have now before you a version of

1 your prepared testimony where on Line 8 a question starts,
2 "Okay, let me just stop you there," correct?

3 A Correct.

4 Q And then the answer -- well, the question proceeds
5 for awhile, and then there is an answer down on Lines 19 to 21,
6 which is what I had read to you before. They, referring to
7 FPL, needs production so they are trimming as much as they can
8 as quickly as they can and they really don't have the tree's
9 benefit and the tree's welfare at hand. Do you see that?

10 A Yes, I do.

11 Q Now, in another page-turning exercise, I apologize, I
12 would ask you to turn to Page 96 in your deposition, nine six,
13 Line 25?

14 A What page?

15 Q 96.

16 A It starts with, "I appreciate it"?

17 Q That's right. Do you have that?

18 A I do.

19 Q Now, if you would go to the bottom of Page 96,
20 Line 25. Let me also say, do you see that?

21 A I do.

22 Q I would like you to read, please, aloud, Line 25,
23 Page 96 through Page 97, Line 20.

24 MR. ARMSTRONG: Madam Chair, I'm going to object.

25 CHAIRMAN EDGAR: Mr. Armstrong, on what basis?

1 MR. ARMSTRONG: Well, it is not an appropriate use of
2 his deposition testimony. I mean, we don't even know what
3 context this answer is given in. If Mr. Butler wants to
4 impeach the witness with his deposition testimony, I think, you
5 know, he can do that, but to sit there and ask him to just read
6 testimony from his deposition doesn't accomplish that.

7 MR. BUTLER: What I intend to do is ask him to read
8 the statement and ask him whether he agrees or disagrees with
9 it. The deposition is certainly taken for the purpose of
10 understanding what witnesses' testimony are on issues at hand
11 for the hearing, and that was, indeed, what we achieved through
12 the deposition. It certainly would speed it along. I can read
13 it myself and then ask him if he agrees with it, if you would
14 prefer.

15 CHAIRMAN EDGAR: Mr. Harris.

16 MR. HARRIS: Either way would get you there. If Mr.
17 Butler wants to read the deposition and ask the witness if he
18 agrees with it, I think that is one thing. It's equally
19 appropriate, I think, if Mr. Butler wants to ask the witness to
20 read it and ask him if he agrees with it. Both get you there.
21 And both, I think, are acceptable.

22 CHAIRMAN EDGAR: Okay. I'm going to allow the
23 question as initially asked. And, Mr. Butler, if you will
24 repeat so that Mr. Miller knows exactly which lines we are
25 referring to.

1 MR. BUTLER: Thank you.

2 BY MR. BUTLER:

3 Q Mr. Miller, I'm asking you to read your testimony and
4 deposition starting on Line 25 of Page 96 continuing through
5 Line 20 of Page 97.

6 A Let me also say that Florida Power and Light and the
7 City of North Miami --

8 CHAIRMAN EDGAR: I'm sorry, we're having a hard time
9 hearing you. I apologize for interrupting. If you could start
10 again and maybe just pull the microphone towards you a little
11 closer. And make sure that it is on, too, if you would. That
12 the green light is on.

13 THE WITNESS: If I lean forward my tie chokes me.

14 CHAIRMAN EDGAR: You can loosen your tie. That will
15 be acceptable, if need be.

16 THE WITNESS: Let me also say that Florida Power and
17 Light and the City of North Miami have had their go-around with
18 this, with tree trimming. They have been a really good partner
19 with us in trimming trees properly, frequently, and notifying
20 us. And what I'm saying there is when they come to the City of
21 North Miami, as a result of a prior incident they have to
22 notify us. In fact, we have an agreement based on an earlier
23 legal issue where we came into an agreement that Florida Power
24 and Light have to notify us before they begin trimming in the
25 City of North Miami, and they have been very good about

1 complying about that.

2 We have a working relationship with their
3 supervisors. They have begun to trim trees more appropriately.
4 Instead of just trimming for clearances, they have allowed
5 limbs that were, let's say needed ten feet and the limb was at
6 nine feet or eight feet, but the limb was four or five inches
7 in diameter, they didn't remove it where in the past they had.
8 They were strictly going for the ruler distance and, you know,
9 they no longer do that for the most part.

10 Q Do you have any reason to disagree with the statement
11 that you just read?

12 A Well, you know, taken solely as that, just reading
13 without the background you can't really understand the context
14 in which I stated that. Do you understand the reference to the
15 legal issue that caused this to come into compliance?

16 Q I'm sorry, you're not asking the questions.

17 CHAIRMAN EDGAR: Yes. I'm allowing some latitude.
18 We do not have professional witnesses, obviously. I recognize
19 that. But, yes, it is the job of the attorneys to ask the
20 questions and the responsibility of the witness to answer them.

21 So, Mr. Butler.

22 BY MR. BUTLER:

23 Q Let me ask you to turn, Mr. Miller, to Page 13 of
24 your testimony.

25 A Is that direct or --

1 Q Yes, the direct testimony. The November 7th, 2006,
2 testimony.

3 A What page?

4 Q Page 13.

5 A What does it start with?

6 Q That recommended for the lateral lines and the main
7 lines that keep those clear. It's on Line 1. This should be
8 in the document that Mr. Breman gave you a moment ago.

9 A This is dated January 4th.

10 Q No, I'm sorry, I think the January 4 is your
11 deposition transcript. This should say sworn statement of
12 Keith Miller, Tuesday, November 7th, 2006.

13 A Okay. Sorry about the confusion. It starts with
14 that recommended?

15 Q Yes. Now, you have reference in the answer starting
16 on Line 2 to people saying that or complaining that they, and I
17 think that they is supposed to refer to FPL there, hat-racked
18 my tree. Do you see that reference?

19 A Yes.

20 Q Isn't it true that as of the time of your deposition
21 the only instance you could recall of FPL crews hat-racking
22 trees occurred on North Bayshore Drive in San Souci about ten
23 years ago?

24 A At the time of my deposition, that is correct. But
25 let me say after the deposition I went out and drove around and

1 I was able to find a dozen sites, and I even have pictures of
2 them.

3 Q Do you know for any of those sites when they were
4 last trimmed?

5 A Based on the growth length of the sprouts, about a
6 year.

7 MR. BUTLER: Thank you. That's all the questions I
8 have.

9 CHAIRMAN EDGAR: Other questions from staff?

10 MS. GERVASI: We have no questions for the witness.

11 CHAIRMAN EDGAR: Thank you. Mr. Armstrong, redirect.

12 MR. ARMSTRONG: No redirect.

13 CHAIRMAN EDGAR: No redirect. Commissioner Carter.

14 COMMISSIONER CARTER: Just one brief question. I
15 noticed you mentioned invasive species. It would probably be a
16 good idea to have them cut those so they would die, don't you
17 think? Is that a major problem for the City?

18 THE WITNESS: It's not a major problem for us because
19 we only maintain trees in the right-of-way, and there is no
20 problem with invasive species in the right-of-way. The problem
21 with invasive species is that they are in the alleys and
22 easements and they are in conflict with the power lines, and
23 that's what causes the power outages.

24 COMMISSIONER CARTER: Is there a program by the City
25 to remove these invasive species or just leave them there,

1 or --

2 THE WITNESS: On private property?

3 COMMISSIONER CARTER: Did you not say they were in
4 the right-of-way?

5 THE WITNESS: No, I didn't. No, they are not in the
6 right-of-ways. They are in people's properties on alley ways
7 and easements, that is what the residents are responsible for
8 maintaining, and also Florida Power and Light is responsible
9 for maintaining those trees.

10 COMMISSIONER CARTER: Okay. Thank you, Madam Chair.

11 CHAIRMAN EDGAR: Okay. Mr. Miller, you are excused.
12 And we will give you a moment to collect your belongings. And
13 then, Mr. Butler, it will be your witness.

14 (Transcript continues in sequence with Volume 2.)

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STATE OF FLORIDA)

: CERTIFICATE OF REPORTER

COUNTY OF LEON)

I, JANE FAUROT, RPR, Chief, Hearing Reporter Services Section, FPSC Division of Commission Clerk and Administrative Services, do hereby certify that the foregoing proceeding was heard at the time and place herein stated.

IT IS FURTHER CERTIFIED that I stenographically reported the said proceedings; that the same has been transcribed under my direct supervision; and that this transcript constitutes a true transcription of my notes of said proceedings.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED THIS 16th day of February, 2007.



JANE FAUROT, RPR

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