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Attachments: CNM protest post-hearing brief FINAL.doc



CNM protest
post-hearing brief...

Electronic Filing

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b. Docket No. 060198-EI

c. Document is being filed on behalf of Florida Power & Light Company.

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e. The document attached for electronic filing is Florida Power & Light Company's Post-Hearing Brief and Statement of Issues and Positions

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 060198-EI
FILED: March 5, 2007

FLORIDA POWER & LIGHT COMPANY'S POST-HEARING BRIEF
AND STATEMENT OF ISSUES AND POSITIONS

Florida Power & Light Company ("FPL"), pursuant to Order No. PSC-07-0065-PHO-EI,
issued January 25, 2007 in the above-referenced docket, hereby submits its Post-Hearing Brief
and Statement of Issues and Positions.

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

FPL: No. FPL's 3-year /6-year proposal provides the best balance of costs, benefits and
feasibility for FPL and its customers. It will result in substantially increased
trimming, both within the City and system-wide. The City has identified nothing
that would make FPL's proposal inappropriate for the City.

ISSUE 2: Should the docket be closed?

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

Brief in Support of FPL's Post-Hearing Positions on Issues

Introduction

In Order No. PSC-06-0351-PAA-EI, issued on April 25, 2006, the Commission directed all Florida investor-owned utilities (“IOUs”) to implement a 3-year feeder/3-year lateral¹ trim cycle (the “3-year/3-year trim cycle”) unless an IOU showed that an alternative lateral trim cycle would be “equivalent or better in terms of cost and reliability for purposes of preparing for future storms.” Order No. PSC-06-0351-PAA-EI, at page 4. As shown below, FPL’s 3-year feeder /6-year lateral average trim cycle (“3-year/6-year”) proposal is much more cost-effective for FPL’s general body of customers than the Commission’s 3-year/3-year trim cycle, leading the Commission to approve it as proposed agency action in Order No. PSC-06-0781-PAA-EI, issued on September 19, 2006.

The City timely protested the application of FPL’s 3-year/6-year proposal within the City. That is the sole substantive issue properly before the Commission in this proceeding, because pursuant to section 120.80(13)(b), Florida Statutes, the remainder of the agency action proposed in Order No. PSC-06-0781-PAA-EI has become final. The City has failed to offer any meaningful support for its protest. It performed no alternative economic comparison of the 3-year/3-year and 3-year/6-year trim cycles, and it presented no evidence effectively disputing FPL’s economic analysis. The City’s case consisted largely of allegations about improper tree trimming practices. Those allegations are irrelevant to determining the proper trim cycle for the City, but in any event they were completely refuted by the testimony of FPL’s witnesses and the admissions on cross-examination of the City’s own witnesses. In fact, the City’s witnesses

¹ “Feeders” are the main, or “backbone” electric distribution lines. “Laterals” are fused circuits that branch off from the feeders. Because there are many laterals branching off a feeder, feeders generally serve many more customers than do individual laterals. Tr. 176-77 (Miranda).

acknowledged that FPL coordinates its trimming effectively with the City and is responsive when the City has concerns about how the trimming is being implemented.

Perhaps most importantly, the City's protest was premised upon a fundamental misunderstanding about the FPL's tree trimming activity within the City: its witnesses thought that FPL's 3-year/6-year proposal will result in a *decrease* in trimming activity within the City when in fact it will result in a significant *increase*. The City's Director for Parks and Recreation acknowledged that an increase in trimming activity would address his concerns. And there are very good reasons why the City should be satisfied with FPL's tree trimming. FPL presented uncontradicted evidence that trees are trimmed more frequently within the City than they are system-wide, and that they will be trimmed even more frequently under the 3-year/6-year proposal. FPL also showed, again without contradiction, that both overall and vegetation-related reliability statistics within the City are better than FPL's system-wide averages, which are themselves significantly better than national averages.

In short, the record reflects absolutely no justification or support for the City's protest, and it should be denied. FPL's 3-year/6-year proposal should be approved immediately for implementation within the City as it is elsewhere in FPL's system.

Economic analysis of FPL's 3-year/6-year proposal

As noted above, Order No. PSC-06-0351-PAA-EI directed all Florida IOUs to implement a 3-year/3-year trim cycle unless an IOU showed that an alternative lateral trim cycle would be "equivalent or better in terms of cost and reliability for purposes of preparing for future storms." Order No. PSC-06-0351-PAA-EI, at page 4. On June 1, 2006, FPL filed its *Storm Preparedness Initiatives* in response. Tr. 181 (Miranda). FPL advised the Commission that it already was

trimming feeders on a 3-year average cycle and would continue to do so, but that it proposed to trim laterals on a 6-year average cycle instead of a 3-year cycle because FPL concluded that doing so would provide the best balance among costs, benefits and feasibility. *Id.* FPL's conclusion was based on an economic analysis that considered the costs and benefits associated with different trim cycles, implementation feasibility, and potential savings associated with a reduction in customer interruptions. Tr. 182 (Miranda).

The results of FPL's economic analysis were summarized in two tables that are incorporated as Exhibits MBM-1 and MBM-2 to FPL witness Manuel Miranda's testimony and identified as Hearing Exhibits 11 and 12, respectively. Tr. 173, 182 (Miranda).

Exhibit 11 compares both the 3-year/3-year and 3-year/6-year trim cycle alternatives to FPL's current vegetation management program and evaluates the added costs and the estimated reduction in storm-related customer interruptions ("CIs") during storm events for each alternative. It shows that implementing the 3-year/6-year trim cycle would cost approximately \$12.9 million per year more than FPL's current program and would result in approximately 100,000 avoided CIs per year. Therefore, avoiding each additional CI would cost FPL, and ultimately its customers, approximately \$129 on average. During the 2004 and 2005 storm seasons, FPL incurred an average restoration cost of \$135 per CI, so avoiding CIs by implementing a 3-year/6-year average trim cycle would cost slightly less on average than it would have cost to restore service following the CIs (about \$6 less per CI). In other words, the 3-year/6-year average trim cycle would be cost-effective.

In contrast, Exhibit 11 shows that a 3-year/3-year trim cycle clearly would not be cost-effective for FPL and its general body of customers. The 3-year/3-year trim cycle would cost about \$43.5 million per year more than FPL's current program, in order to avoid 155,000 CIs.

This equates to a cost of \$280 per CI, which is more than twice the cost per avoided CI of a 3-year/6-year trim cycle and \$145 per CI more than it would cost to restore service. Mr. Miranda explained that this substantial difference in the cost-effectiveness of the two alternatives is due to the much larger work force and associated workforce premiums that would be required to implement a 3-year/3-year trim cycle. Tr. 183.

While Exhibit 11 focuses on the cost-effectiveness of tree trim alternatives from the perspective of avoiding storm-related CIs, Exhibit 12 takes a broader view. It compares the total present value cost of FPL's existing vegetation management program, the 3-year/3-year alternative and the 3-year/6-year alternative, for *all* components of trimming costs, storm restoration costs and normal (non-storm) restoration costs over a ten-year period. Exhibit 12 shows that the total present value cost for FPL's current plan and the 3-year/6-year alternative are close to the same, at a little more than \$800 million. In contrast, the total present value cost for the 3-year/3-year alternative would be well over \$900 million, a difference of more than \$100 million that FPL and its customers would have to pay if that alternative were selected. *See* Tr. 183 (Miranda). As with Exhibit 11, this shows that a 3-year/6-year trim cycle is a cost-effective alternative to FPL's current program, but that the 3-year/3-year trim cycle is not.

In addition to not being cost-effective, there are also significant concerns over whether the 3-year/3-year alternative is feasible or practical for FPL. It would require FPL to acquire the equivalent of 700 additional, full-time tree trimming personnel for the first three years of its implementation, which would affect the supply-demand equilibrium and result in increased competition for scarce tree trimming resources. In turn, this would result in significant premium costs and create a high overall execution risk. Tr. 184 (Miranda). Moreover, FPL anticipates that it would encounter significant additional community and customer barriers, such as customer

refusals and local ordinances, if it were to try to implement the 3-year/3-year alternative. *Id.*

Finally, there is strong intuitive support for the conclusion that a longer trim cycle is appropriate for laterals than for feeders (which would be the case in FPL's 3-year/6-year proposal). On average, a feeder serves about 1,500 customers while an average lateral serves only about 35 customers. Tr. 177 (Miranda); *see also* Tr. 219-220 (Miranda)(average lateral serves about 33 customers within the City). Thus, avoiding a feeder outage results in 40 times more "bang for the buck" than avoiding a lateral outage, in terms of CIs. Tr. 220 (Miranda). This large difference in the *benefits* of avoiding feeder and lateral outages is compounded by the fact that it is significantly more expensive per mile to trim laterals than feeders. *Id.* When these differences in both costs and benefits are taken into account, it clearly makes sense to concentrate more resources on avoiding feeder outages.

For all of these reasons, economics strongly favor implementing a 3-year/6-year trim cycle rather than a 3-year/3-year cycle in FPL's service territory. The Commission agreed, proposing agency action in Order No. PSC-06-0781-PAA-EI to approve FPL's 3-year/6-year alternative. The City presented no alternative economic analysis of vegetation management alternatives, and none of its evidence meaningfully disputes FPL's analysis. In fact, neither of its witnesses has *ever* performed an economic analysis of alternative vegetation management strategies, and both had only a vague, passing familiarity with FPL's testimony and exhibits that relate to the economic analysis. Tr. 37, 286-287 (Lytle); Tr. 77 (Miller).

The City argued only two points concerning FPL's economic analysis, neither of which is a valid criticism of the analysis or FPL's conclusion that a 3-year/6-year trim cycle is the preferred alternative.

First, the City pointed out that some of the other Florida IOUs intend to implement lateral

trim cycles that are shorter than six years. But FPL has never claimed that the 3-year/6-year alternative is better for all IOUs; its analysis and conclusions apply strictly and specifically to FPL's system, based on FPL's data. Moreover, Mr. Miranda pointed out that FPL's system bore the brunt of the hurricanes that hit Florida during 2004 and 2005, with the result that FPL was able to collect some very useful data on vegetation-related storm outages that other utilities simply do not have. Tr. 198. FPL intends to continue collecting additional and more-sophisticated data on vegetation-related storm outages through the forensics initiative that it will implement commencing with the 2007 storm season and will adjust its vegetation management program in the future if warranted by that data. Tr. 187, 237 (Miranda).

Second, the City tried to argue that FPL's estimates of the cost for implementing the trim cycle alternatives may too high, because FPL did not consider using its own personnel in lieu of contractors to perform the trimming. But this argument proved to be directly contrary to the facts. Mr. Miranda explained that, over the years, FPL has compared various alternatives of using in-house personnel and outside contractors to perform trimming and has always found that outsourcing is the most cost-effective approach. Tr. 193. Moreover, FPL witness William Slaymaker testified that FPL has the ability to direct the tree-trimming performance of Asplundh (its principal contractor) at whatever level of detail is required. Tr. 121-22. There is no contrary testimony on either point.

In short, FPL effectively demonstrated that its 3-year/6-year proposal is cost-effective and should be approved.

FPL's tree trimming practices within the City

Much of the City's direct case was devoted to allegations that FPL and its contractors

routinely engage in improper tree trimming practices within the City. Even if these allegations were true, it is hard to see how they could be relevant to the appropriate lateral trim cycle for the City, which is the only substantive issue properly before the Commission in this proceeding. In any event, however, the City's allegations are unfounded.

FPL follows -- and requires its contractors to follow -- all industry standards and local codes that apply to tree trimming for utility line clearing purposes. It employs a staff of nineteen arborists to help ensure that line clearing is performed in accordance with those standards and codes. Tr. 176 (Miranda). Mr. Slaymaker is one of those arborists. He confirmed that it is FPL's policy to follow the applicable standards and codes and that FPL inspects 100% of its contractor's planned tree trimming to ensure compliance. Tr. 98-100, 122. He also confirmed that FPL has received no notices of violation from the City related to improper tree trimming. Tr. 100. FPL also engaged an outside tree-trimming expert, John Harris, to provide independent confirmation that FPL's vegetation management program complies with the applicable standards and codes. Mr. Harris interviewed key FPL personnel, reviewed documentation of FPL's program, researched the industry standards and codes, and conducted field inspections of a representative sample of FPL's tree trimming work on electric circuits that serve the City. Based on this due diligence, Mr. Harris concluded that FPL is aware of and complies with all applicable standards and codes with respect to its tree trimming in the City. Tr. 136-41, 145-47. Moreover, Mr. Harris' inspection revealed no instances in which FPL trimming violated any standard or code. Tr. 140-41.

FPL's vegetation management program does more than merely comply with the applicable standards and codes. It is a proactive program that constantly seeks better ways to achieve the dual goals of dependable electric service and healthy trees. FPL has been recognized

for its success in this regard, having been selected annually as a Tree Line USA utility since 2003 by the National Arbor Day Foundation. Tr. 102-03 (Slaymaker). One illustration of FPL's proactive approach to vegetation management is its Right Tree Right Place program, which educates customers about the importance of only planting trees near power lines when the specie and location will allow healthy tree growth without creating conflicts that require frequent and aggressive trimming. Tr. 104 (Slaymaker).

The City's complaints about FPL's tree trimming practices are simply unsubstantiated. Mr. Lytle, who as the City's Director of Parks and Recreation and a certified arborist certainly should be aware of any substantiating information, provided none:

- One of the City's central complaints about FPL's tree trimming is that FPL sometimes trims more than 30% of a tree's canopy when necessary to provide adequate line clearance. However, Mr. Lytle acknowledged that this is permitted under the City's code and that the City does the same thing with respect to its own road clearance trimming when necessary for public safety reasons. Tr. 39.
- The City complained that FPL's trimming sometimes alters the natural shape of a tree, but Mr. Lytle acknowledged that the City's own road-clearance trimming has the same effect. *Id.*
- The City complained about FPL's use of a common trimming approach, called "drop-crotch cutting," but Mr. Lytle acknowledged that this is an appropriate form of tree trimming for utility line clearance. Tr. 44.
- The City asserted that FPL's tree trimming results in an undesirable re-growth condition referred to as a "witches broom," but Mr. Lytle acknowledged that he could recall only one instance, about seven or eight years ago, when that had occurred. Tr. 41.

- The City alleged illegal trimming, but Mr. Lytle said that the last time he could recall any instance was a couple of years ago and that an FPL arborist resolved the problem at the time. Tr. 43.
- The City complained about FPL's removing one side of trees, making them more vulnerable to toppling over in wind storms, but Mr. Lytle acknowledged that he was aware of only one tree (a Ficus) with one-sided trimming which had toppled over, that this occurred during Hurricane Wilma, and that numerous other trees which were *not* trimmed on one side had also toppled during that hurricane. Tr. 44-45.

Not only did Mr. Lytle fail to substantiate the City's complaints about FPL's tree trimming practices, both he and the City's other witness, Mr. Miller, conceded that FPL has a good track record regarding vegetation management practices in the City. Mr. Lytle characterized the responsiveness of FPL's arborists to the City's tree trimming needs as being "quite good." Tr. 44. Mr. Miller went further, commenting about the positive evolution of the relationship between FPL and the City with respect to tree trimming as follows:

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

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

Tr. 85-86 (emphasis added).

Simply put, the record offers no substantiation of the City's complaints about FPL's tree trimming practices within the City.

Implementation of FPL's 3-year/6-year proposal within the City

One of the real surprises to FPL in this proceeding was learning when it deposed the City's witnesses that they believed FPL's 3-year/6-year proposal would result in *less rather than more* tree trimming. See Tr. 48 (Lytle). This is clearly not the case, for FPL's system as a whole or for the City in particular. System-wide, FPL will spend 70% more per year on tree trimming during the first six years of the 3-year/6-year proposal than it did in the last six years of its current vegetation management program. Tr. 178, 185, 190 (Miranda). Specifically with respect to laterals, FPL will trim about 2,800 miles per year on average for the first six years of the 3-year/6-year proposal, a 40% increase over the average of 2,000 miles per year for the last six years of the current program. *Id.* Within the City, FPL plans to trim 2.5 times more miles of laterals during the first three years of the 3-year/6-year proposal than it did during the last three years of the current program.² As a result of this additional trimming work, the average time since a lateral was last trimmed in the City is projected to decrease from about 7.6 years currently to 6.3 years by 2009. Tr. 242-43 (Miranda); Ex. 2. Thus, by several different measures, FPL will be doing more trimming under the 3-year/6-year proposal than under its current program, both system-wide and within the City.

² Tr. 242-43 (Miranda); Ex. 2. The City pointed out in Exhibits 9 and 10 that FPL will not initially be trimming enough miles in the City under the 3-year/6-year proposal to equate to a six year trim cycle. This is because FPL will concentrate first on trimming the laterals within the City that have not been trimmed for the longest. FPL expects this trimming to be especially time consuming, due to the extensive vegetation growth on those laterals. While that vegetation is not currently causing reliability problems for those laterals, it is likely to be quite thick and hence time consuming to trim. Thereafter, FPL expects the average annual miles of laterals trimmed

The fact that the 3-year/6-year proposal will result in significant additional trimming addresses any reasonable concerns that the City might have had about the proposal. Laterals within the City are already being trimmed more frequently than for FPL's system as a whole; overall reliability is already better for the City than for FPL's system as a whole (which, in turn, is much better than the industry average); and the vegetation-related component of overall reliability is lower for the City than for FPL's system as a whole (which is much lower than the industry average). Tr. 233-35 (Miranda); Ex. 18. Moreover, in the event that isolated laterals require more attention because they are close to especially fast-growing trees, the 3-year/6-year proposal has the flexibility to address them because it is an *average* trim cycle under which particular laterals may be trimmed on a shorter cycle as necessary.³ Finally, FPL has committed to expand its already strong communications and coordination with the City as part of the 3-year/6-year proposal. Implementing the proposal will be a partnership with the City, a venture in which FPL is more than happy to embark. Tr. 128 (Slaymaker).

In summary, the reliability of FPL's electric service within the City is currently excellent. The 3-year/6-year proposal will result in substantially more trimming activity within the City, and FPL has committed to implement the proposal flexibly and in cooperation with the City. The City's Parks and Recreation Director has stated that he is not looking for any particular trim duration, but just feels that "it needs to be more frequently than what they are doing now." Tr. 56 (Lytle). FPL will clearly meet that expectation, and there is absolutely no basis to require FPL to do more.

within the City to increase substantially. Tr. 246-47 (Miranda).

³ Tr. 113 (Slaymaker). FPL also intends to cooperate with the City in using the Right Tree Right Place program wherever possible to remove problem trees rather than having to aggressively trim them at extraordinary costs and likely to the dissatisfaction of the property owner. Tr. 128 (Slaymaker).

Conclusion

For all the foregoing reasons, the Commission should deny the City's protest and approve FPL's 3-year/6-year trim cycle proposal for implementation within the City immediately.

Respectfully submitted this 5th day of March, 2007.

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CERTIFICATE OF SERVICE
Docket No. 060198-EI

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically this 5th day of March, 2007 to the following:

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