

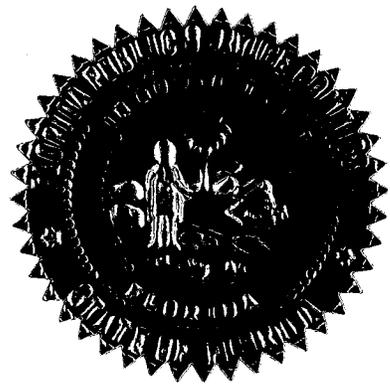
BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060198-EI

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In the Matter of:

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



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PROCEEDINGS:           PREHEARING CONFERENCE

BEFORE:                 CHAIRMAN LISA POLAK EDGAR  
                          Prehearing Officer

DATE:                   Monday, January 22, 2007

TIME:                   Commenced at 1:30 p.m.  
                          Concluded at 2:10 p.m.

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

REPORTED BY:           JANE FAUROT, RPR  
                          Chief, Hearing Reporter Services Section  
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## 1 APPEARANCES:

2 JOHN T. BUTLER, ESQUIRE, Florida Power & Light  
3 Company, 700 Universe Boulevard, Juno Beach, Florida  
4 33408-0420, appearing on behalf of Florida Power & Light  
5 Company.

6 BRIAN P. ARMSTRONG, ESQUIRE, Nabors Law Firm,  
7 1500 Mahan Drive, Suite 200, Tallahassee, Florida 32308, and  
8 MARIA E. ANTONATOS, ESQUIRE, Office of the City Attorney, City  
9 of North Miami, 776 N.E. 125th Street, North Miami, Florida  
10 33161, appearing on behalf of the City of North Miami.

11 ROSANNE GERVASI, ESQUIRE, appearing on behalf of  
12 the Florida Public Service Commission Staff.

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## P R O C E E D I N G S

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CHAIRMAN EDGAR: Call the prehearing to order. Good afternoon. Let's start by asking staff to read the notice.

MS. GERVASI: Thank you. Pursuant to notice, this time and place have been set for a prehearing in Docket Number 060198-EI, in re: Requirement for investor-owned electric utilities to file ongoing storm preparedness plans and implementation cost estimates.

CHAIRMAN EDGAR: Thank you. And we'll take appearances.

MR. BUTLER: Thank you, Madam Chairman. John Butler appearing on behalf of Florida Power and Light Company.

CHAIRMAN EDGAR: Thank you.

MR. ARMSTRONG: Madam Chair, Brian Armstrong, Nabors, Giblin, and Nickerson on behalf of the City of North Miami; and with me is Maria Antonatos from the City of North Miami.

MS. ANTONATOS: Good afternoon. Maria Antonatos with an S on the end, for the City of North Miami.

CHAIRMAN EDGAR: Thank you.

MS. GERVASI: And Rosanne Gervasi on behalf of the Commission and Commission staff.

CHAIRMAN EDGAR: Ms. Gervasi, any preliminary matters?

MR. ARMSTRONG: I don't believe we have any preliminary matters, Madam Hearing Officer.

1 CHAIRMAN EDGAR: Okay. Then let's start going  
2 through the draft prehearing order. I understand we may have a  
3 few changes to discuss. So, let's begin.

4 Section I. Section II. Section III. Section IV.  
5 Section V. Section VI.

6 MR. BUTLER: In Section VI, Madam Chairman, we would  
7 ask that Mr. Miranda be moved from his current place as the  
8 first FPL witness to be, instead, the last FPL witness after  
9 Mr. Harris.

10 CHAIRMAN EDGAR: Okay. So it would be Witness Lytle,  
11 Witness Miller, then Witness Slaymaker, then Witness Harris,  
12 and then Witness Miranda?

13 MR. BUTLER: That's right.

14 MS. GERVASI: Also with respect to this section, the  
15 staff has consulted with the City and they have indicated that  
16 they do not have any witnesses that they wish to present both  
17 direct and rebuttal testimony together for, in which case I  
18 would suggest that we just eliminate or delete the first  
19 sentence under the Roman numeral VI heading, "Each witness  
20 whose name is preceded by a (+)," can be deleted.

21 CHAIRMAN EDGAR: Okay. So for Section VI we will  
22 from this draft delete that first sentence, as Ms. Gervasi has  
23 described, change the order of the witnesses as I described a  
24 few minutes ago. Any other changes to this section requested  
25 or proposed?

1 MR. BUTLER: No.

2 CHAIRMAN EDGAR: No. Okay.

3 We are on Section VII.

4 MR. BUTLER: FPL would like to modify the statement  
5 of basic position for FPL as shown in the draft of the  
6 prehearing order that I have distributed to everyone  
7 previously, but I will read into the record, the change. It  
8 would add a sentence one sentence before the end of the  
9 prehearing, or the statement of position after the sentence  
10 that ends, "Best balance of cost, benefits, and feasibility for  
11 FPL and its customers." The new sentence would read, "The  
12 three-year/six-year proposal will result in both an increase in  
13 vegetation management activity and a reduction in the average  
14 lateral trim cycle within the City, compared to FPL's current  
15 vegetation management program."

16 CHAIRMAN EDGAR: Ms. Gervasi.

17 MS. GERVASI: Staff also has a change to make to its  
18 basic position, which I will also read into the record. And  
19 this is to agree, at least in part, with what FPL's change is.  
20 And staff's change reads as follows, "Staff agrees with FPL  
21 that the three-year/six-year proposal will result in both an  
22 increase in vegetation management activity and a reduction in  
23 the average lateral trim cycle within the City compared to  
24 FPL's current vegetation management program. Staff's final  
25 positions will be based upon all the evidence in the record."

1 CHAIRMAN EDGAR: Mr. Armstrong, any comments or  
2 changes?

3 MR. ARMSTRONG: No, I don't have any objection.

4 CHAIRMAN EDGAR: Okay. Then the language in the  
5 draft on basic positions will be changed to reflect the changes  
6 requested by Mr. Butler and Ms. Gervasi.

7 And that brings us to Section VIII. Mr. Armstrong.

8 MR. ARMSTRONG: The City has passed out a proposal,  
9 Madam Chair, to break down this issue into -- actually, what is  
10 two issues now will be three issues. Our proposal is based  
11 primarily on a review of the notice of proposed agency action  
12 order that was issued in this docket where the Commission laid  
13 forth the criteria for deviating from a three-year all-around  
14 trim management program. And we believe our two issues best  
15 identify and place in issue the matters that this Commission  
16 has put forth as being the burden of the utility to deviate  
17 from that three-year program.

18 CHAIRMAN EDGAR: Mr. Butler.

19 MR. BUTLER: Yes. We would object to splitting the  
20 issues this way for several reasons. One, just the very  
21 lateness of notice on this. Ms. Gervasi circulated the  
22 proposed issues for this docket about two or three weeks ago,  
23 asked if anybody had any changes to them, and no one had  
24 indicated that there were any changes until we got handed this  
25 splitting of the issues today.

1           But more fundamentally, you know, the City's petition  
2 requesting a Section 120.569 hearing that was filed on  
3 September 19, 2006, the paragraph requesting relief prays for  
4 relief from this honorable agency in the form of an amended  
5 order requiring three-year tree trimming cycles by FPL in North  
6 Miami. And this proceeding from the beginning took the City at  
7 its word. For example, the order establishing procedure in the  
8 first paragraph under case background describes the City's  
9 petition as protesting the portion of the order PSC  
10 060781-PAA-EI, "That proposes to accept Florida Power and Light  
11 Company's six-year average tree trimming cycle for its  
12 distribution laterals within the City's boundaries," and then  
13 there is a footnote to that that says, "The remainder of Order  
14 PSC-060781-PAA-EI was consummated by Order PSC-060859-CO-EI,  
15 issued October 13, 2006, in this docket."

16           The long and short of it is that this proceeding has  
17 been about the subject of applying the three-year/six-year tree  
18 trimming cycle in the City of North Miami from day one. And  
19 the issues as worded that Mr. Armstrong handed out don't appear  
20 to reflect that limitation. The final thing I would say is  
21 that the City's testimony doesn't go to these issues. It is  
22 focused on the City of North Miami and appropriately.  
23 Therefore, FPL's responsive testimony is focused on the City of  
24 North Miami.

25           CHAIRMAN EDGAR: Mr. Armstrong.

1 MR. ARMSTRONG: Madam Chair, a few things. First,  
2 the prehearing order specifically provides for issue  
3 identification through this hearing, and it is standard  
4 practice to have issue identification through this hearing.  
5 Second, I don't understand the reference and what significance  
6 the reference to the petition has, because certainly the  
7 petition does clearly state that what the City is seeking is a  
8 three-year all-around tree management cycle for both laterals  
9 and feeders. So I don't understand what the substantive  
10 difference is there.

11 Third, we are talking about a hearing, and certainly  
12 there is evidence to come out of our witnesses. We have the  
13 opportunity to have evidence come out their witnesses through  
14 cross-examination and other techniques, and I don't see how the  
15 City can be -- basically, the City is saying, Commission, you  
16 set forth a PAA order that we challenged. In that order you  
17 said it should be a three-year tree management cycle for  
18 laterals -- I mean, for feeders, and a three-year for laterals,  
19 as well, unless a utility can come forward and say a couple of  
20 things. One, is it would be cost prohibitive to do a  
21 three-year program for laterals. So, that is at issue. Did  
22 they come forth and meet that burden.

23 Second, if you have an alternative available, then is  
24 it better or at least equal to a three-year cycle in terms of  
25 cost and reliability. That is clearly set forth in your PAA

1 order as to what the issues are in this docket. The City came  
2 forward and said we are petitioning the Commission for a  
3 hearing to see and test if Florida Power and Light met that  
4 burden, and these issues here now specifically and explicitly  
5 identify what the issues should be in this docket.

6 MR. BUTLER: Madam Chairman, with all due respect,  
7 the City did not come forth and clearly say we want to  
8 challenge the breadth of the PAA order. It asked for exactly  
9 what I read a moment ago. And I think everybody has understood  
10 from day one in this proceeding that that was the scope of what  
11 the City is challenging. And it would be inappropriate and  
12 extremely disruptive to the proceeding, I mean. I think it is  
13 disingenuous in the extreme to suggest that testimony can be  
14 not prefiled on a whole area of subject matter and then sprung  
15 at the last minute, and, you know, left to the development  
16 through cross-examination of witnesses who don't testify on the  
17 broader subject that now is being proposed as the subject of  
18 the hearing.

19 We think it is inappropriate. We don't think the  
20 City has timely and appropriately sought a hearing on this  
21 broader scope. If you were to broaden the proceeding to  
22 include it, I think we would probably need to go back and kind  
23 of start over, at least rethink and reschedule testimony  
24 filings in the proceeding. Because, frankly, you know, the  
25 testimony that you are going to have before you, the prefiled

1 testimony doesn't go to the breadth of the issues that are  
2 described.

3 MR. ARMSTRONG: Madam Chairman, if I could read from  
4 this order. I heard the disingenuous and I want to react to  
5 that comment. Let me read what it says in this order. "We  
6 believe that a three-year trim cycle is a reasonable minimum  
7 requirement for tree clearing along major distribution circuits  
8 known as primary feeders. Trimming along other circuits should  
9 also be on a three-year style, unless it is cost prohibitive.  
10 Nevertheless, each investor-owned electric utility shall  
11 provide a plan and estimated cost for a complete three-year  
12 trim cycle for all distribution circuits. Any additional  
13 alternatives proposed by a utility shall be compared to a  
14 three-year trim cycle and must be shown to be equivalent or  
15 better in terms of cost and reliability for purposes of  
16 preparing for future storms."

17 That is your order. That is the burden that FPL has.  
18 This Issue 2 identifies the fact that the City of the North  
19 Miami is of a type, it is not just a city. Unless FPL is  
20 suggesting that they can do something just for the City, and  
21 can deviate from their plan. If that's what they are  
22 suggesting and they are willing to concede to that, that they  
23 would deviate just for City of North Miami, well, that would be  
24 fine. We could stipulate to that, because we are interested in  
25 the City of North Miami.

1           But this Commission certainly is looking at -- we are  
2 an urban area, and we will thresh through the testimony as  
3 presented in this docket, Madam Chair, and it makes some very,  
4 very wrong assumptions for an area such as North Miami, and we  
5 would suggest other cities similarly situated in the same  
6 demographic characteristics as the City of North Miami down  
7 there in South Florida in addition to the trees that exist  
8 there. And that is in evidence, those facts are in evidence.

9           MR. BUTLER: I think it's interesting that Mr.  
10 Armstrong still hasn't referred once to his client's petition.  
11 He keeps referring to the order as if everything that is said  
12 in the order is put into play and put up for, you know, future  
13 resolution simply by filing a petition no matter what the  
14 petition states. And that is exactly the opposite of what the  
15 order establishing procedure for this hearing said, which is  
16 that, you know, the issue of the six-year average tree trimming  
17 cycle for distribution laterals within the City's boundaries  
18 was going to be heard. And then with a footnote that the  
19 remainder of the order was consummated by the subsequent  
20 consummating order.

21           CHAIRMAN EDGAR: Okay. A few thoughts. First, going  
22 back to the first concern that was raised regarding the timing  
23 of the proposed draft revised issue statements. I agree, Mr.  
24 Butler and Mr. Armstrong, with both of you in that when issue  
25 statements can be submitted and circulated in advance that is

1 helpful to all parties. However, part of the purpose of this  
2 providing is to look at those issue statements.

3 So moving on then, to the issue at hand, I do agree  
4 that testimony is to be prefiled. That issue is fundamental to  
5 a case as identified in a petition should not be left to  
6 development at cross. I do have a concern, Mr. Armstrong, that  
7 the issue statements that you have given to us this afternoon  
8 do go beyond the petition, and so I am going to look to Ms.  
9 Gervasi.

10 MS. GERVASI: Thank you, Madam Chairman.

11 I would just add to Mr. Butler's argument that  
12 Chapter 120.8013(b) requires that a hearing on an objection to  
13 a proposed action of the Florida Public Service Commission may  
14 only address the issues in dispute. Issues in the proposed  
15 action which are not in dispute are deemed stipulated, such  
16 that it is required of a party to state with particularity in  
17 their protest what it is about the proposed order that they  
18 object to and want to go to hearing on.

19 In this case, the City specifically requested to go  
20 to hearing on the utility's proposed six-year cycle for  
21 laterals within the City of North Miami. Therefore, the  
22 utility's proposed plan with respect to the rest of its service  
23 territory has already been consummated and is now a final  
24 order, a final decision, so that to try to expand the scope of  
25 the protest at this point in time is untimely in accordance

1 with the law.

2 CHAIRMAN EDGAR: Mr. Armstrong, I agree with Ms.  
3 Gervasi. Do you have additional thoughts?

4 MR. ARMSTRONG: Just one thing. All I'm trying to do  
5 is avoid my client from being -- there's a Catch-22 here. My  
6 client can present the evidence and has, and this petition has  
7 been abbreviate quite a bit, but the petition does talk about  
8 the type of trees, it does talk about the other things that I  
9 have mentioned.

10 I just don't want my client to be put in the position  
11 where they are presenting facts and evidence on behalf of the  
12 City of North Miami. Certainly it has relevance to other  
13 places. But there is case law out there that says, well, the  
14 PSC can't just make separate rates for a separate system and  
15 separate this for a separate city, and separate this for a  
16 separate homeowners association.

17 I want to make sure we are not going to be caught in  
18 that Catch-22 by FPL coming in and saying, well, you can't  
19 deviate just for the City of North Miami. If we can stipulate  
20 to that, then, I mean, I don't see any difference between what  
21 we are suggesting on the issues in this docket. But I want to  
22 make sure that we are not going to face an issue where any kind  
23 of legal argument is made that because this is the City of  
24 North Miami only FPL doesn't have to deviate because it's only  
25 that small of a city, when we have a big service area.

1 CHAIRMAN EDGAR: Mr. Butler.

2 MR. BUTLER: That hasn't been our argument and I  
3 don't think it will be our argument. I don't know legally  
4 where that shakes out, but, I mean, darn it, the City had every  
5 opportunity to structure its petition however it wanted to. It  
6 did what it did. The time has long since passed to be changing  
7 what it is that the City is intending to protest. And I think  
8 that, you know, the Commission's established procedures and the  
9 statute are pretty darn clear that what this properly goes to  
10 hearing on is what the City asked that it go to hearing on, and  
11 that is the application of the six-year lateral trim cycle  
12 within the City of North Miami.

13 MR. ARMSTRONG: Madam Chair, if I might, I'm just  
14 looking -- I'm looking quickly through the petition requesting  
15 a Section 120 hearing, and I see plenty of references to South  
16 Florida, South Florida. I mean, I see plenty of references to  
17 trees being different in South Florida, and foliage in South  
18 Florida is markedly different than other areas in the service  
19 area of Florida Power.

20 MR. BUTLER: You might want to look at the paragraph  
21 where you asked for relief. It starts with wherefore.

22 MR. ARMSTRONG: The order requiring three-year trim  
23 cycles by FPL in North Miami, is that what you are talking  
24 about?

25 MR. BUTLER: That's right.

1 MR. ARMSTRONG: That is certainly the last -- an item  
2 that anybody would put in there. To hold that accountable and  
3 say you can't introduce evidence as to the -- are we here to  
4 decide just North Miami or are we here to decide that there is  
5 a real issue with going to a six-year cycle in terms of the  
6 dangers that it poses on the customers of North Miami, the  
7 customer interruptions that are out there that have occurred?  
8 The testimony presented by FPL isn't limited to just North  
9 Miami. In fact, I wish it should. But maybe if they want to  
10 stipulate their testimony out, because they certainly didn't  
11 make any attempt to show North Miami, Madam Chair. They  
12 certainly made broad assumptions of 35 customers per lateral,  
13 Madam Chair, that don't apply to the City of North Miami.

14 Where do you draw the line? I think it is -- now  
15 that I think about it, I think it is absurd to suggest that  
16 just because they said we want a three-year program in the City  
17 of North Miami that they are somehow limited to suggesting that  
18 all they can put in is the City of North Miami, when FPL hasn't  
19 met any burden whatsoever to show the City of North Miami facts  
20 and data and information.

21 CHAIRMAN EDGAR: Okay. We're going to avoid being  
22 both absurd and disingenuous, and this is where we are going to  
23 draw the line. I find the issue statements that -- the draft  
24 issue statements that were given to us for consideration this  
25 afternoon to be out of order per the discussion and the

1 comments from Ms. Gervasi, and we can go back to and consider  
2 the issue statements that were in the draft prehearing order on  
3 Page 6 in Section VIII, if you would like to proceed with  
4 those. Okay?

5 MR. ARMSTRONG: Sure. Thank you.

6 CHAIRMAN EDGAR: Thank you.

7 MR. ARMSTRONG: We don't have any comments on that.

8 CHAIRMAN EDGAR: Then we will move to Section IX.

9 MR. BUTLER: No changes.

10 MR. ARMSTRONG: We do have one demonstrative exhibit.  
11 Looking at the prehearing order, one of our witnesses has a few  
12 demonstrative exhibits. I don't know if it's a couple, but  
13 they are in the form of tree branches.

14 MS. ANTONATOS: There are two of them.

15 MR. ARMSTRONG: And they show different cutting  
16 techniques, the application of different cutting techniques.  
17 And he did ask recently if we could allow him to bring those as  
18 demonstrative --

19 CHAIRMAN EDGAR: So the exhibits will be the tree  
20 limbs, is that what you said?

21 MR. ARMSTRONG: Yes.

22 CHAIRMAN EDGAR: I just wanted to make sure I heard  
23 right.

24 MR. ARMSTRONG: We couldn't bring 15 copies or file  
25 them.

1 CHAIRMAN EDGAR: Mr. Butler.

2 MR. BUTLER: I would object to those. I don't think  
3 that -- I mean, certainly bringing copies of the tree limbs  
4 wouldn't be feasible, but making pictures of them and including  
5 the pictures with the filed testimony wouldn't have been hard  
6 at all. And the tree limbs in question were not -- you know,  
7 there were no pictures of them included with the prefiled  
8 testimony. We took the deposition of the witness who refers to  
9 them on Thursday of last week. One of the things that the  
10 deposition notice called for was for people to bring or the  
11 deponent to bring to the deposition any materials on which they  
12 relied in their deposition. He didn't have the tree limbs or  
13 pictures of the tree limbs there at the deposition, and I just  
14 thing that the Commission's process for prefiling evidence  
15 would be fundamentally circumvented if the City were allowed to  
16 use this information as substantive evidence after not having  
17 followed the rules for prefiling it.

18 CHAIRMAN EDGAR: Ms. Gervasi.

19 MS. GERVASI: Madam Chairman, on Page 6 of the order  
20 establishing procedure it sets forth what needs to be done in  
21 terms of presenting a demonstrative exhibit at hearing. It's  
22 one sentence long, and it says that if a party wishes to use a  
23 demonstrative exhibit or other demonstrative tools at hearing,  
24 such materials must be identified by the time of the prehearing  
25 conference, which is what I believe the City is doing today.

1 I would just for my own personal edification like to  
2 know a little bit more about what it is we're going to be  
3 seeing at the hearing, just so that we will know whether we  
4 need to set up any particular device, like an easel or  
5 something. Is it a map, is it --

6 CHAIRMAN EDGAR: Okay. Mr. Armstrong, I actually  
7 tend to like visual aids and demonstrative exhibits when,  
8 indeed, they are illuminating. And in light of the sentence  
9 that Ms. Gervasi has read, I will allow -- and if you have  
10 additional information that you can share at this time.

11 MR. BUTLER: Madam Chairman.

12 CHAIRMAN EDGAR: Mr. Butler.

13 MR. BUTLER: I have to take exception to the  
14 characterization of these as demonstrative exhibits. And if  
15 truly they are demonstrative exhibits, which I understand to be  
16 evidence that is already in the record otherwise being  
17 presented in some way that summarizes it, or makes it visually  
18 easier to understand so that people can see or grasp what is  
19 being described, that is fair enough. But there is nothing  
20 about these tree limbs in the prefiled record other than some  
21 references in the sworn statements of the witness in question  
22 that says he's looking at tree limbs. It doesn't describe what  
23 they show, it just says he is looking at something as the  
24 examiner, Ms. Antonatos, was asking him questions about them.

25 So, it doesn't seem to me that they are being offered

1 solely as demonstrative exhibits. They are not demonstrative  
2 of something that is already in evidence, in my mind. And so  
3 if they are, indeed, going to be demonstrative only, then I  
4 guess I would not have an objection and certainly would agree  
5 with Ms. Gervasi's reading of the prehearing order. But I'm  
6 suspecting they are being offered for more than that.

7 CHAIRMAN EDGAR: Mr. Armstrong.

8 MR. ARMSTRONG: A couple of things, Madam Chair. The  
9 City retained us in the very recent past to represent them in  
10 this docket. The City obviously doesn't practice before this  
11 Commission like FPL does. I mean, I really think. To use  
12 common vernacular, cutting them some slack is certainly  
13 appropriate here in terms of presenting demonstrative exhibits  
14 in the form of a couple of cuts to show for this Commission and  
15 the hearing officers, to show for you the types of cuts.

16 Now, he does refer, the witnesses do refer to the  
17 type of cuts that he used and that is what these things would  
18 demonstrate. What I have been told is that is what they will  
19 demonstrate is the types of cuts that can be used. And, you  
20 know, it's demonstrative. It is certainly available for  
21 cross-examination of the witnesses who present them, and FPL  
22 has done this for a long time.

23 MR. BUTLER: Well, I think that -- let me suggest a  
24 compromise and see if this would be possible. I think that if  
25 we were provided with access to the tree limb pieces in

1 question, or good photographs of them, say, by the end of this  
2 week, that it would be -- I wouldn't have an objection to  
3 reference being made to them. But I think that just showing up  
4 at the hearing being the first time we get to see them is there  
5 would really be unfair given the state of the record.

6 Because the references in the prefiled testimony, you  
7 know, they don't really describe the tree limbs. It is simply  
8 the questioner and the witness are looking at something that  
9 someone reading the transcript isn't seeing and then talking  
10 about it from their personal knowledge of it. We did ask if  
11 the witness had them at his deposition. He didn't, so our  
12 opportunity to ask him about them at the deposition has passed.  
13 I think at least it would be fair to us to have something in  
14 the way of notice of what these are going to be more than just  
15 having them show up at the hearing with them.

16 CHAIRMAN EDGAR: Mr. Armstrong, can you accommodate  
17 the request of opposing counsel?

18 MR. ARMSTRONG: Is the beginning of next week okay,  
19 Counsel, for the pictures to be presented?

20 MR. BUTLER: I'm sorry?

21 MR. ARMSTRONG: Is the beginning of next week okay?

22 MR. BUTLER: I would like to get them by the end of  
23 this week. I mean, this is just Monday, and I can't imagine  
24 the pictures would be very difficult to take.

25 MR. ARMSTRONG: We will make every extra effort to

1 have the pictures taken and provided to you by the end of the  
2 week then, counsel.

3 CHAIRMAN EDGAR: Good. Thank you.

4 MS. GERVASI: And just to be clear, for the purpose  
5 of writing the prehearing order, would it be accurate to have  
6 the order reflect that the City will utilize two demonstrative  
7 exhibits to show the types of cuts that can be used to trim  
8 trees? Does that sound accurate?

9 MR. ARMSTRONG: If I could have one second, please.

10 CHAIRMAN EDGAR: While you are looking on IX, we will  
11 keep moving and we will come back to that to make sure that the  
12 phrasing that Ms. Gervasi has read to us is appropriate.

13 So, Section X. Section XI. Section XII.  
14 Section XIII. And, Section XIV.

15 MS. GERVASI: Within Section XIV, Madam Chair, the  
16 opening statements, if any, shall not exceed ten minutes per  
17 party is suggested language for you.

18 CHAIRMAN EDGAR: That seems appropriate. So ruled.  
19 We will, of course, come back to Section IX in a moment.

20 Are there any other matters?

21 MS. GERVASI: No, ma'am, not that I am aware of.

22 CHAIRMAN EDGAR: Okay.

23 MR. ARMSTRONG: I do have a clarification, Madam  
24 Chair, though.

25 CHAIRMAN EDGAR: Mr. Armstrong.

1 MR. ARMSTRONG: Because I don't want this coming up  
2 again and not having raised it. But, Madam Chair, and I  
3 understand your ruling about the issue identification.  
4 However, I don't see -- I mean, Madam Chair, if you look at the  
5 way the issue is raised, it is a yes or no. I mean, what  
6 standard do you use? I mean, the PAA order sets forth the  
7 standards for the burden that has to be met to deviate from a  
8 three-year. And, frankly, I don't know what standard to apply  
9 here in brief writing. I think it's impossible to know what  
10 standard to apply in a brief writing now based upon this. Do  
11 you understand what I'm saying?

12 CHAIRMAN EDGAR: You know, I'm not sure I understand  
13 your question, Mr. Armstrong, so try again and we'll work  
14 through it.

15 MR. ARMSTRONG: Should Florida Power and Light  
16 establish a three-year cycle for its vegetation management  
17 program within the City of North Miami. Our testimony in our  
18 brief, I will expect, will say yes, and it will say FPL has  
19 failed to show that a three-year is cost prohibitive. It will  
20 show FPL has failed to show that their proposal is as reliable  
21 and as cost-effective as a three-year program. And I want to  
22 be able to make sure -- I want to just give everybody -- that  
23 is where we are going to go with this hearing, and that's what  
24 our post-hearing statement will say.

25 And like I say, based upon this just yes or no, I

1 don't know what standard otherwise the Commission would apply  
2 to determine yes or no, the yes or no answer to that question.

3 CHAIRMAN EDGAR: Mr. Butler, do you have a comment?

4 MR. BUTLER: Not much of one. I think he is probably  
5 right as to what he would be arguing as a reason for applying  
6 the three-year standard within the City.

7 CHAIRMAN EDGAR: Ms. Gervasi.

8 MS. GERVASI: The City has, by virtue of its protest,  
9 put this question at issue. The evidentiary standard in this  
10 case, because it is an administrative hearing and doesn't  
11 involve any pecuniary action, would be a preponderance of the  
12 evidence standard. It's a matter of who persuades the  
13 Commission by virtue of their evidence as to how the Commission  
14 will rule.

15 MR. ARMSTRONG: And I appreciate that counsel -- for  
16 FPL's concession. I just want to make sure it will be clear,  
17 and I didn't want to surprise anybody.

18 CHAIRMAN EDGAR: Okay. Actually, I do think we are  
19 all on the same page.

20 MR. ARMSTRONG: Okay. Thank you.

21 CHAIRMAN EDGAR: Okay. Then we are back to  
22 Section IX.

23 MR. ARMSTRONG: The testimony addresses the limb and  
24 the branch collar and the type of cut that has occurred to the  
25 limb, and then addresses how such a cut on such a limb would

1 fare in a hurricane. If that helps at all.

2 CHAIRMAN EDGAR: Ms. Gervasi.

3 MS. GERVASI: Okay. Thank you.

4 CHAIRMAN EDGAR: Okay. And I did ask if there were  
5 other matters, but I'm going to ask again. Are there other  
6 matters that we need to address while we are all gathered here  
7 together?

8 MR. BUTLER: I don't believe so.

9 CHAIRMAN EDGAR: None, Mr. Armstrong?

10 MR. ARMSTRONG: I have just been reminded there are  
11 two limbs. There are two limbs.

12 CHAIRMAN EDGAR: Two limbs, yes. Okay. I'm about to  
13 adjourn. Going, going. Okay. We're adjourned.

14 (The prehearing conference adjourned at 2:10 a.m.)  
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STATE OF FLORIDA )  
  
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COUNTY OF LEON )

CERTIFICATE OF REPORTER

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 24th day of January, 2007.



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