

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for Approval of Underground)
Conversion Tariff Revisions.)
_____)

Docket No. 080244-EI

In re: Petition for approval of 2007)
revisions to underground residential and)
commercial distribution tariff,)
by Florida Power & Light Company.)
_____)

Docket No. 070231-EI
Filed: May 15, 2009

**FLORIDA POWER & LIGHT COMPANY’S AGREED MOTION
FOR LEAVE TO FILE SUPPLEMENTAL REBUTTAL TESTIMONY**

Florida Power & Light Company (“FPL”) hereby respectfully moves the Florida Public Services Commission for an order granting FPL leave to file supplemental rebuttal testimony in this proceeding no later than on May 22, 2009 and, as grounds therefor, states the following.

1. On February 25, 2009, the Commission entered Order No. PSC-09-0114-PCO-EI entitled “Order Consolidating Dockets and Establishing Procedure” (hereinafter referred to as the “Order”). The entry of this Order consolidated Docket Nos. 070231-EI and 08244-EI and established the procedures and controlling dates. On March 10, 2009, the Commission entered Order No. PSC-09-0145-PCO-EI amending the filing date for rebuttal testimony and exhibits to May 13, 2009, and on April 16, 2009, the Commission entered Order No. PSC-09-0237-PCO-EI, which further amended the filing date to May 14, 2009.

2. On May 7, 2009, FPL took the deposition of Municipal Underground Utilities Consortium (“MUUC”) witness Peter Rant, in which Mr. Rant was not able to provide certain key information about his proposed calculation of the overhead – underground operational cost differentials because of potential confidentiality concerns. The parties agreed that Mr. Rant

would provide the requested information in the form of late-filed Exhibit 2, subject to a possible claim of confidentiality. However, disclosure of that information was delayed because of the need to address the confidentiality concerns.

3. On May 12, 2009, FPL filed a motion for extension of time to file its rebuttal testimony to May 15, 2009 because of the delay in receiving late-filed Exhibit 2. The Commission granted that motion by Order No. PSC-09-0333-PCO-EI, dated May 14, 2009. FPL is filing its rebuttal testimony today consistent with that order.

4. The requested extension was intended to provide FPL an adequate opportunity to address in its rebuttal testimony the information that is to be provided in late-filed Exhibit 2. At the time FPL filed its motion for extension of time, it anticipated receiving late-filed Exhibit 2 by the next day. However, while a portion of the requested information has been provided informally by MUUC's counsel, delivery of late-filed Exhibit 2 has been further delayed and, in fact, the exhibit has not been delivered as of the filing of this Motion.

5. In order to avoid further delay in filing its rebuttal testimony, FPL intends to file its principal rebuttal testimony today but is hereby seeking leave to file supplemental rebuttal testimony by no later than next Friday, May 22, 2009 that would address only late-filed Exhibit 2 and its impact on the studies of the overhead-underground operational cost differential sponsored by MUUC witness Rant.

6. Counsel for all parties to this proceeding as well as the Commission Staff have stated that they have no objection to FPL's filing supplemental rebuttal testimony.¹

¹ At the time FPL contacted counsel about this Motion, it anticipated receiving late-filed Exhibit 2 by no later than yesterday and thus being in a position to file supplemental rebuttal testimony by Wednesday, May 20. However, the continuing delay in delivery of late-filed Exhibit 2 has made it necessary for FPL to request a filing deadline of May

WHEREFORE, Florida Power & Light Company respectfully requests the Commission, through the Pre-hearing Officer assigned to this docket, to issue an order granting leave for FPL to file supplemental rebuttal testimony by no later than May 22, 2009 that would address late-filed Exhibit 2 and its impact on the studies of the overhead-underground operational cost differential sponsored by MUUC witness Rant.

DATED this 15th day of May 2009.

Respectfully submitted,

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22 rather than May 20. Counsel for MUUC has confirmed that he does not object to the May 22 filing deadline, but FPL has been unable to contact counsel for the City of South Daytona or Staff today to confirm whether they would object to the later filing deadline.

