

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 26, 2009

**FLORIDA POWER & LIGHT COMPANY’S AGREED AMENDED 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 29, 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 filed rebuttal testimony on May 15 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 was provided informally by MUUC's counsel, delivery of late-filed Exhibit 2 was further delayed, such that FPL could not address the exhibit in its principal rebuttal testimony that was filed on May 15. Accordingly, FPL filed on May 15, 2009 an agreed motion for leave to file supplemental rebuttal testimony by May 22, 2009, addressing only late-filed Exhibit 2 and its impact on the studies of the overhead-underground operational cost differential sponsored by MUUC witness Rant.

5. During the Prehearing Conference conducted May 18, 2009, the parties and Staff discussed and acknowledged the pendency of said agreed motion for leave to file supplemental rebuttal testimony¹. As part of the discussion relative to that motion, counsel for FPL advised that the anticipated late-filed Exhibit 2 had not yet been received. Counsel for FPL further advised that depending upon the date the late-filed Exhibit was ultimately provided to FPL, and

¹ As of the date of this amended motion, it does not appear from the Commission's website that an order on FPL's initial motion for leave to file supplemental testimony has been issued.

depending upon the content of the late-filed Exhibit, FPL might be required to file an additional motion requesting a further extension of time to prepare and file the supplemental rebuttal testimony addressing the anticipated late-filed Exhibit.

6. Late-filed Exhibit 2 was further delayed and, in fact, was not delivered to FPL until Friday, May 22, 2009 at approximately 3:30 PM. This made it impossible for FPL to file its supplemental rebuttal testimony that day, as envisioned. Moreover, because Monday, May 25, is Memorial Day, FPL effectively did not have late-filed Exhibit 2 available to evaluate during normal business hours until Tuesday, May 26. Compounding this schedule congestion is the fact that FPL's witness who will be evaluating late-filed Exhibit 2 and rebutting it (Thomas Koch) must prepare for and participate in a MUUC-scheduled deposition on May 27. Accordingly, FPL anticipates that it will need until Friday, May 29, 2009 to evaluate late-filed Exhibit 2 and then prepare and file rebuttal testimony addressing it.

7. Counsel for all parties to this proceeding as well as the Commission Staff have stated that they have no objection to FPL's filing its supplemental rebuttal testimony no later than Friday, May 29, 2009.

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 29, 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 26th day of May 2009.

Respectfully submitted,

John T. Butler
Managing Attorney
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, FL 33408
Telephone: (561) 304-5639
Facsimile: (561) 691-7135

By: /s/ John T. Butler
John T. Butler
Fla. Bar No. 283479

