

Matilda Sanders

ORIGINAL

From: Antonatos, Maria [mantonatos@northmiamifl.gov]
Sent: Tuesday, January 16, 2007 2:15 PM
To: Filings@psc.state.fl.us
Cc: Rosanne Gervasi
Subject: Docket No. 060198-EI. City's filing of rebuttal testimony and exhibits.
Attachments: NOF T. LYTLE response to REBUTTAL TESTIMONY 1.16.2007.doc; Rebuttal Testimony of Terry Lytle.doc;
 NOF K. MILLER response to REBUTTAL TESTIMONY 1.16.2007.doc; Rebuttal Testimony of Keith Miller.doc;
 KM Exhibit 1.pdf

<<NOF T. LYTLE response to REBUTTAL TESTIMONY 1.16.2007.doc>> <<Rebuttal Testimony of Terry Lytle.doc>>

January 16, 2007 <<NOF K. MILLER response to REBUTTAL TESTIMONY 1.16.2007.doc>> <<Rebuttal Testimony of Keith Miller.doc>> <<KM Exhibit 1.pdf>>

Dear Director, Division of the Commission Clerk,

Re: Filings attached for Docket No. 060198-EI.

The Notices of Filing and testimony of two (2) City witnesses, Terry Lytle and Keith Miller, is attached hereto along with the exhibit to Keith Miller's testimony for filing in the above referenced PSC docket number. The PSC Staff Attorney assigned to this matter is Rosanne Gervasi, Esq.

These items are filed on behalf of the City of North Miami by Maria E. Antonatos, Esq.

Thank you,

Maria E. Antonatos
Assistant City Attorney

CITY OF NORTH MIAMI
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City of North Miami is a public entity subject to Chapter 119 of the Florida Statutes concerning public records. E-mail messages are covered under such laws and thus subject to disclosure. All E-mail sent and received is captured by our servers and kept as a public record.

NOTICE + TESTIMONY
DOCUMENT NUMBER-DATE

00446 JAN 16 5

FPSC-COMMISSION CLERK

NOTICE + TESTIMONY
DOCUMENT NUMBER-DATE

00447 JAN 16 5

FPSC-COMMISSION CLERK

ORIGINAL

BEFORE THE PUBLIC SERVICE COMMISSION

The City of North Miami, a municipal corporation, Petitioner.

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

DOCKET NO. 060198-EI
FLORIDA BAR NO. 0173071
FILED: January 16, 2007

**CITY OF NORTH MIAMI'S NOTICE OF FILING
TERRY LYTLE RESPONSE TO FPL REBUTTAL TESTIMONY**

Petitioner, the City of North Miami ("the City"), a Florida municipal corporation, by and through its undersigned counsel, files this Notice of Filing Prefiled Testimony the City intends to sponsor.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. Mail and electronic mail on this 16th day of January, 2007 to: John T. Butler, Esq., FPL, 700 Universe Blvd., Juno Beach, Florida 33408-0420 and to Rosanne Gervasi, Esq., Office of the General Counsel, Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850.

V. LYNN WHITFIELD
CITY ATTORNEY
OFFICE OF THE CITY ATTORNEY
CITY OF NORTH MIAMI
776 N.E. 125th Street
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By: s/ MARIA E. ANTONATOS
MARIA E. ANTONATOS
ASSISTANT CITY ATTORNEY
FLORIDA BAR NO.: 0173071

DOCUMENT NUMBER-DATE

00446 JAN 16 07

FPSC-COMMISSION CLERK

BEFORE THE PUBLIC SERVICE COMMISSION
DOCKET NUMBER: 060198-EI

ORIGINAL

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

OFFICE PARKS AND RECREATION
810 Northeast 125th Street
Miami, Florida 33161
Thursday, January 11, 2006
9:45 a.m.

SWORN STATEMENT OF: TERRY LYTLE

Taken before Linda Jackson Roundtree, Notary Public
for the State of Florida at Large, pursuant to Notice filed
in the above-styled cause.

DOCUMENT NUMBER-DATE

00446 JAN 16 8

LINDA JACKSON ROUNDTREE COURT REPORTING

5500 COMMISSION BLVD

APPEARANCES:

MARIA ANTONATOS, ESQ.
ASSISTANT CITY ATTORNEY
776 Northeast 125th Street
North Miami, FL 33161
On behalf of the City of North Miami.

I N D E X

<u>Witness</u>	<u>Page</u>
TERRY LYTLE	
Direct Examination by Ms. Antonatos	3

Thereupon:

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TERRY LYTLE

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

DIRECT EXAMINATION

BY MS. ANTONATOS:

Q What is your full name and position with the City of
North Miami?

A My name is Terry Lytle. I m the Parks and Recreation
Director for the City of North Miami.

Q Let the record reflect we re here for Public Service
Commission Docket Number 06018-EI.

Are you the same Terry Lytle who was previously --
who has previously given testimony before a court reporter on
November 7, 2006 in this matter?

A Yes, I am.

Q And what is the purpose of your rebuttal testimony
today?

A It s in response to FPL s rebuttal to our comments
regarding this case and their six-year trimming cycle.

Q Would that be comprised of testimony, rebuttal
testimony given by Miranda, Slaymaker and Harris?

A That s correct.

Q And have you read their testimony?

A Ye, I have.

Q What is your general opinion of FPL s proposed
alternative, which would apply a three-year/six-year lateral
average trim cycle?

A The six-year cycle that they would like to implement

1 in the state of Florida does not apply to South Florida. It
2 doesn't take into consideration that the weather conditions,
3 plant species and so on that grow in South Florida don't grow in
4 the rest of the state.

5 We're a unique growing area, and in such, the trees
6 grow faster, they grow longer and more direct trimming is
7 required in this area.

8 Q So, FPL is not taking into account the fact that South
9 Florida is a unique area? And is there something along those
10 lines called the hardy demarcation line?

11 A That's correct. That line, basically, defines the
12 plant hardiness zones within the state of Florida and where a
13 certain species of plant would grow the entire year, and in the
14 lesser part, the Northern part of the state of Florida, when the
15 weather turns cold, the trees stop actively growing.

16 And in South Florida, you have more of a tropical
17 season, a 10B hardiness zone where the trees grow pretty much
18 year round, and you have species of tree that grows a lot
19 faster, a lot larger and a lot quicker than in the northern part
20 of the state.

21 Q We just discussed what FPL is not taking into account.
22 But does the purpose behind FPL's proposal, again, the three-
23 year/six-year lateral average cycle, express concern over
24 overtime for employees, execution, flexibility, larger and
25 scarcer work force and contractor premium start-up costs?

26 A I don't understand that.

27 Q Well, let me direct your attention to page 13 of
28 Miranda's testimony. Page 13 of Miranda's testimony, he was

1 asked, Please summarize why you believe that FPL s three-year/
2 six-year proposed alternative provides the best balance between
3 costs and benefits at this time?

4 And his response was, It does provide the best
5 balance because lateral circuit miles make up a greater
6 percentage of the overall population of primary circuits,
7 overtime and contractor premium costs and avoidance of execution
8 risk.

9 And underneath that, there is a mention of execution
10 flexibility.

11 Could you please give me your opinion on those
12 factors?

13 A I m not absolutely sure, when he starts saying lateral
14 circuits and feeder lines and so on, exactly what he s applying
15 to. I don t know exactly how he applies this.

16 He s using terminology -- I m not exactly sure how
17 they apply that the lateral circuit miles make up a greater
18 percentage. He says about the increasing resources required to
19 carry out the work. I don t think that they trim on overtime,
20 now.

21 Again, he s stating this for FPL s records. I don t
22 see their crews out trimming on overtime. I see them out there
23 throughout the course of a day in a week. Of course, I m not
24 out in the streets. I haven t seen them out Saturday, but they
25 maybe working Saturdays, depending on their schedule, but there
26 are contractors down here that I have seen and dealt with pretty
27 much work five days a week and they work almost year round, with
28 the exception of a hurricane.

1 And then you have everybody coming down from up north,
2 and then everybody is trimming.

3 So, I don't really know exactly what he's leading to
4 with this.

5 Q Do those factors seem to be associated with costs?

6 A I would say so. It avoids an execution risk. I don't
7 know if this is an execution where we -- For example, we have a
8 contractor come out, he charges us to set up to do a job, which
9 is an additional job.

10 So, if you are going to do two jobs, it's better to
11 have him do both at the same time, and pay one setup fee.

12 Q Couldn't it be that where the state and the PSC is
13 faced with FPL moving to a new proposal, whether it be the
14 three-year/three-year proposal or the three-year/six-year
15 proposal, that Miranda there is describing what the risk
16 associated with the three-year/six-year proposal may be?

17 A Well, bottom line, his answer in here was he
18 believes that the three-year/six-year proposal provides the best
19 balance between cost and benefits. And that's got to be cost
20 and benefits to FPL, not necessarily to the residents that
21 they're providing service to.

22 Q Okay. So, would you venture to say that there are
23 some factors that need to be considered that are not being
24 considered in Miranda's cost benefit analysis?

25 A Yes, I would. I need -- I believe they need to look
26 at service to the customers, in anticipation that if they're
27 going to provide power under the circumstances within the state
28 of Florida, for guaranteeing power during storms or after storms

1 or during any type of power interruption that may be
2 preventable.

3 Q And do you think that the risk he mentions,
4 particularly with regard to avoidance of execution risk is
5 realistic?

6 A I don t know what he means by execution risk.

7 Q Well, on line 19, page 13 of Miranda s testimony, he
8 describes one of the factors being avoid the execution risk
9 associated with the three-year options, increased contractor
10 labor requirements.

11 Do you understand that to mean that there s a risk
12 associated with increased contractor labor requirements?

13 A A financial risk maybe.

14 Q Thank you.

15 What is your opinion, if any, of Miranda s conclusions
16 as stated on page 7 of his prepared statement, based on the
17 Edison Electric Institute Report?

18 A Which is which portion of this?

19 Q Begins on line 3. Let me ask you this: Have you seen
20 Edison s latest report?

21 A No.

22 Q Thank you.

23 Referring to page 7 of Miranda s testimony, it appears
24 that s concluding from the Edison Electric Institute Report that
25 FPL compares favorable to certain other industries, and he
26 mentions a percentage of total outages of 16 percent.

27 Would you venture to guess what is some of those other
28 industries, maybe?

1 A Unless he s talking about other utility industries,
2 you know, throughout the country. That s the only thing I would
3 expect.

4 Q Are cable companies considered a utility?

5 A Yes, they are, and telephone.

6 Q Are you aware on this docket, comments were filed by
7 an engineer on behalf of the Florida Telecommunications
8 Association by the name M. T. Mickey Harrelson?

9 A I am, now, yes.

10 Q And Exhibit B that Mickey Harrelson attached and filed
11 on this docket, what sort of things does it mention that could
12 pose a problem where there would be certain factors?

13 A He was talking about the tree limbs flying, debris
14 flying and so on, hitting the poles and the lines. In addition,
15 the rotting of poles and they also tie down poles -- they use a
16 guy wireman to do certain sections of the poles. He pointed out
17 they were either broken or ineffective.

18 The guy wireman is something that s anchored to the
19 top of the pole down to an angle maybe perpendicular to the
20 lines to keep those poles from swaying in wind. What s pointing
21 out, in many instances, found that they re not going to do the
22 best effect of maintaining the lines, and that where, again, the
23 things they re hitting these utility lines, being power,
24 telephone, cable, TV -- and I can t think of other utilities
25 that would be on there, but I m sure there are -- being struck
26 by falling trees whether -- for whatever reason, the tree limbs
27 breaking ut and falling and other debris.

28 Q If a power line is hit by falling tree or debris,

1 could that lead to power outages?

2 A Oh, definitely.

3 Q Is there something that the City of North Miami is
4 concerned with?

5 A We re concerned with anything that hits those lines.

6 Q In Miranda s Cost Benefit Analysis, is it clear that
7 these sort of factors are taken into account by FPL?

8 A Well, not by the groups that we deal with. The group
9 we deal with at FPL is predominantly maintaining of the trees.

10 Q The tree trimming --

11 A Asplundh crews. FPL does not maintain their utility
12 lines. They re maintained by a contractor. In most instances,
13 it s Asplundh or one of their subsidiaries, and they do the tree
14 trimming, under contract.

15 But their sole responsibility is not to inspect
16 poles or lines or guy wires. Just they have a guideline -- Say
17 this is a certain size line, trim everything back in this area
18 of the line, ten feet, twenty feet, whatever that standard
19 happens to be.

20 MS. ANTONATOS: Madam court reporter, could you read
21 back the question about Cost Benefit Analysis?

22 (Thereupon, the requested portion of the testimony
23 was read back by the court reporter.)

24 Q Apart from the groups that you observed working on
25 behalf of the FPL here in the City of North Miami to do tree
26 trimming contract work, I m asking whether any of the factors
27 you re now aware of by virtue of comments filed by engineer
28 Mickey Harrelson with the Cable Association, does it appear to

1 you that Miranda s Cost Benefit Analysis took a look at any of
2 those dangerous conditions?

3 A Regarding the other utilities, being the other
4 conditions like rotting poles? Is that what you mean?

5 Q Well, according to Mickey Harrelson s comments.

6 A No. I understand what you are saying. I don t
7 believe that FPL is concerned about any of the other things that
8 they re concerned with, strictly theirs.

9 Q Strictly their what?

10 A Their electric lines on the poles. That s all they re
11 concerned with, just trimming the FPL lines. Anything else on
12 the pole, they re not concerned with.

13 Q Okay. Obviously, FPL is not concerned with trimming
14 poles associated with other industries.

15 But do you think that FPL should be concerned with
16 some of the comments made by Mickey Harrelson as it relates to
17 FPL s poles and the Cost Benefit Analysis Miranda mentioned?

18 A I guess I don t have a real opinion on what FPL should
19 do about that. I would think that they probably have an
20 agreement to utilize FPL s poles, but I don t know what that
21 would be as far as maintenance. I don t have any knowledge of
22 that.

23 Q Did you have the opportunity to review Exhibits One
24 and Two attached to Miranda s testimony?

25 A I have seen this. I don t understand it.

26 Q What, if you know, does SAIFI represent?

27 A I don t know.

28 Q Do you believe that FPL has the same concerns that you

1 do?

2 A No.

3 Q And what are your concerns?

4 A Maintaining power to the residents to the City of
5 North Miami on a minimal power interruptions.

6 Q Minimal as to duration as well as frequency?

7 A Definitely the frequencies. Momentary outages can be
8 just as aggravating and problematic as long-term outages.

9 I think that FPL s responsibility is to provide power
10 24 hours a day, 7 days a week, with minimal, if any,
11 interruptions in service.

12 Q Does the City and yourself have any environmental
13 concerns?

14 A Our concerns are environmental concerns, is that the
15 trees that they do have a maintenance relationship with are
16 trimmed in a correct manner and in a frequent manner enough to
17 maintain their health.

18 Q Is it your opinion that some trees grow faster than
19 others?

20 A Yes, definitely.

21 Q And being that we re in South Florida, is that
22 particularly true here?

23 A It s definitely true here.

24 Q Are you familiar with any invasive tree species in
25 North Miami?

26 A Yes, we have. There s Hollys growing in -- call it
27 typical tropical Holly. Pepper is invasive. The Australian
28 Pines grow here, Melaleuca. Some of these trees grow extremely

1 quickly, get extremely bushy. And frequently they re in
2 proximity to a utility line.

3 Q You were involved in answering Interrogatories on
4 behalf of the City of North Miami, as propounded by FPL; were
5 you not?

6 A Uh-huh. Yes.

7 Q And with regard to Interrogatory 20, propounded by
8 FPL, which was a multi-part Interrogatory, it asked, Does the
9 City compile data on tree failures within the City?

10 And it further asked the City to identify all trees
11 that the City contends failed as a result of FPL s trimming
12 practices; and describe, in detail, for each tree, the basis for
13 such contention.

14 Were any trees identified in subpart C to
15 Interrogatory 20?

16 A No, we did not identify the trees.

17 Q And why is that?

18 A The trees that the City really maintains records on
19 were ones that are tied in with our database, which is on City
20 property, being rights-of-way and City properties which we
21 haven t had any.

22 The trees that we have seen fail are on private
23 property and we typically do not maintain any records on that.
24 We may respond to homeowner request or in certain instances
25 where they ve had a failure to a tree that may have been trimmed
26 a year or two years -- it s failed, and you go back and look at
27 it a year or two years later and find out that there s that very
28 distinct possibility that it failed because it was trimmed the

1 way it was a few years before.

2 Q Are you saying that where the City responded with the
3 answer, None, to Interrogatory sub-part 20C, that it was
4 because no tree failure records were in the ACRT database?

5 A Yes, that s correct.

6 Q But do you know of a situation where a tree has fallen
7 in the City of North Miami?

8 A Definitely there was a large tree that was growing in
9 proximity to utility lines. Half of that tree -- half of the
10 tree s canopy was removed.

11 Q Was half the tree s canopy removed by FPL?

12 A By Asplundh crews. Now, it didn t come to our
13 attention at that point in time, so, a definite date, and so on
14 when this was done -- I have no idea, but it s not something
15 that the homeowner did, and the City definitely didn t trim it.

16 Q When this was done, you re referring to when half of
17 the tree was taken out of --

18 A That s correct. That s correct. And that would have
19 been done, more than likely, a year or two years before that.
20 Then, when we got the right conditions during hurricane Wilma,
21 and with the tree in that condition, it fell in the direction
22 of the remaining canopy.

23 Q Is it fair to say that the improper tree trimming,
24 with trimming half of the tree, came to your attention after
25 hurricane Wilma?

26 A That correct. When I arrived on site, I was called
27 because when the tree came over, it ripped out a lot of
28 underground utilities. And here is this tree out there with the

1 flat side on the --

2 Q Is that in violation of Best Management Practices?

3 A In my opinion, it is, yes.

4 Q Did you, also, have the opportunity to review John
5 Harris testimony?

6 A Yes, I did.

7 Q And are you familiar with the photographs that he
8 attached to his testimony --

9 A Yes.

10 Q -- known as JAH1?

11 A Yes.

12 Q Are those photographs of trees in the City of North
13 Miami?

14 A Four of the five are not within the City limits. We
15 do not maintain them.

16 Q Of the six photos, which one do you contend is within
17 the City limits?

18 A Okay. You re -- The photos in the City limits are --
19 is photo Four. And, if I could state here, his comments in his
20 response is, The tree that is under the utility lines is
21 alright.

22 Okay. The larger Black Olives -- and that is a quote.
23 The larger Black Olives to the left was V-cut for a V for line
24 clearance by FPL.

25 The trimming of the larger Black Olives, for line
26 clearance, appears to have been done without compliance to
27 applicable codes, with regrowth of the canopy following the
28 directional pruning expectations.

1 That is fine. The Oak tree, though, is something
2 that s on private property, and probably done with -- I don t
3 think that anybody would have trimmed it. We well not trim
4 around a utility line.

5 Q Let s slow down here a little bit. You just quoted
6 the caption that appears underneath the fourth photograph out of
7 the six photographs; correct?

8 A Uh-huh.

9 Q And this is the one located withing the city limits;
10 correct?

11 A Right.

12 Q And there are three different trees discussed under-
13 neath this photo; is that correct?

14 A That s correct.

15 Q If I m looking at this photo and I m reading what s
16 underneath the photo, how many of the three trees discussed
17 actually sits in city property?

18 A One.

19 Q Would that be the Black Olive tree?

20 A That s correct.

21 Q And the Black Olive tree is an example of correct tree
22 trimming practices; correct?

23 A That is a tree that had FPL would have trimmed -- You
24 can see in the photograph that they trimmed around utility lines
25 there.

26 Q And from looking at the photograph, the utility lines
27 are on top of the Black Olive tree, but not in conflict;
28 correct?

1 A That s correct.

2 Q And the tree to the right, it appears to be a dead
3 tree; is that correct?

4 A Yes.

5 Q Would you describe that dead tree as a Live Oak?

6 A No. I m not sure exactly what it is. It s possibly a
7 Black Olive, but it appears to be dead.

8 Yeah, in this photograph, and he states here that the
9 dead Black Olive in the center of the photo is not within
10 clearance and distance of lines.

11 So, he s stating it is dead. I have not, personally,
12 seen it, but it s not on city property. It s something that s
13 on private property.

14 Q Thank you.

15 Let s look at another photograph. Could you, please,
16 look at photograph one of six and tell me what that depicts?

17 A Well, first of all, it s not our tree. It s not
18 within the city limits.

19 What he is saying here is it is correctly pruned for
20 utility clearance, but, in contrast, the trimming for the road
21 clearance did not follow applicable standards because it left
22 large stub cuts.

23 In other words, it left stubs on the side of the tree.
24 Again, that s not a city tree. It s not within North Miami.

25 Q Okay. So, if he s trying to show that the City of
26 North Miami made a mistake in trimming something on this
27 particular tree, again, it was not a tree that North Miami
28 performed any tree trimming on; correct?

1 A That s correct.

2 Q Thank you. From your review of Harris testimony,
3 does he discuss any exceptions to standard tree trimming
4 practices?

5 A He did describe a couple of exceptions. I believe he
6 was talking about the drop-crotch cutting.

7 Q Before we get to that, look at page 5 of Harris
8 testimony.

9 A Okay. In this exception, what he s talking about is
10 that there are exceptions within the Miami Dade County Code that
11 allow an exception contrary to best management practices to
12 allow more than one third of the canopy trimmed, if the tree is
13 considered a hazard, if it s hazard reduction or clearance
14 pruning. Okay.

15 Q And the example that you gave where you had first-hand
16 knowledge of Asplundh trimming half the tree, is that considered
17 trimming more than one third of the canopy?

18 A Definitely.

19 Q All right. So, if the County or Miami-Dade County s
20 ordinance has an exception to the limit on only trimming one
21 third of the canopy, they does it seem okay to you that Asplundh
22 took off half of the tree?

23 A It s in the way that it was taken off, that they just
24 cut off the side of it. It s like cutting an orange in half.
25 Instead of cutting the limbs in the appropriate locations, half
26 of the tree was gone.

27 Q Aren t there exceptions for certain situations such as
28 hazard?

1 A That s what I would look for is hazard. What they
2 were looking for is to get the most cut for their buck. Take it
3 off now so we don t have to come back two years from now and do
4 it again.

5 Q Referring to Exhibit Three of Harris testimony, which
6 is section 18A-11 of the County Landscape Maintenance Ordinance,
7 and following down to Number C3, the exception is there. Could
8 you refer to that portion of the exhibit?

9 A Okay. It says cutting of lateral branches that
10 results in the removal of more than one third of all branches on
11 one side of a tree shall be allowed, if required, for hazard
12 reduction or clearance pruning.

13 Q So, is that a very limited exception in your mind?

14 A I think this could be vaguely interpreted to remove --
15 possibly remove half a tree, if that s what they wanted. But,
16 again, it s the way that the trimming is done, in my opinion.
17 It s not a hedge. You don t go out and just cut off of the side
18 of a tree. There s a certain way to remove those.

19 Again, if you are going to remove half a tree, there
20 is a way you would come back to the trunk and remove those. You
21 wouldn t just come back and cut it.

22 Q Is a drop-crotch cut or a V-cut an accepted practice
23 under the best management practices.

24 A Yes, it is.

25 Q And what is that typically used for?

26 A Usually height reduction in a tree. You used a
27 drop-crotch cut or you would use it in an instance where you
28 wanted to reduce the height underneath the utility lines and

1 give that direction from upward growth to outward growth.

2 Q Let me direct your attention, now, to page 7 of
3 Harris testimony, starting on line 5, page 7 or Harris
4 testimony. Does he mention -- does he make a statement about
5 all trimming?

6 A His statement here is, All trimming and pruning
7 changes the natural shape of a tree.

8 No, I don't agree with that. If a tree is trimmed
9 correctly and you went out there, you may not even notice that
10 it was trimmed.

11 Q Is there such a thing as directional tree trimming or
12 directional pruning?

13 A You can, over a period of time, which is more the
14 accepted practice, you want to remove as little as required, but
15 you want to remove it over a period of years. So, the accepted
16 practice has been if you are going to prune a tree, do not
17 remove more than 30 percent of the tree at tree trimming.

18 If you need to remove more than that, then take two
19 years to do it and remove a little bit over a two-year period
20 in, say, two pruning cycles.

21 Or in some instances, you try to rehabilitate a tree.
22 You want to correct its direction of pruning. That takes a
23 period of years to do. It's not something that you are going to
24 do with one trimming cycle.

25 Q Can improper trimming lead to a weakened tree?

26 A Yes. If you remove too much now, a tree -- of course,
27 a tree's response is -- A tree manufactures its own food. It
28 doesn't go to the store and buy it the way we do. So, if you

1 remove too much foliage, the tree s response is to go full into
2 reproduction.

3 If it s a tree that seeds -- If you remove too much,
4 the tree may seed. It s going to grow more leaves. The tree
5 manufactures its food through photosynthesis. And if you remove
6 too much of that foliage, a tree s response is, I need more to
7 make up for it.

8 Plus, if you, also, remove too much of a tree and
9 depending on the size of the cuts, you also open the possibility
10 for introduction of decay into the tree.

11 Q Do you have a stump or a tree branch in your office?

12 A Yes, I have a couple of them.

13 Q Could you show me one of them?

14 A Uh-huh.

15 Q Is this an example of a properly cut tree?

16 A What that shows you is the relationship between a
17 branch and the trunk of a tree?

18 Q Are these the proper proportions?

19 A For a branch, it is, yes.

20 Q What s proper about the branch proportion?

21 A The branch has been in there forever. You can see the
22 branch collar, which is the portion where the trunk is growing
23 up and this tissue wraps around the branch, which gives it
24 support.

25 And this limb, the way this piece is cut, you can see
26 where the limb has been with this tree for years because of the
27 direction of this tissue that wraps around it right here.

28 Q With the strong support of this branch collar, would

1 this tree fare well in a hurricane?

2 A Yes, it should.

3 Q Thank you.

4 Do you, also, have another stump or branch that did
5 not fare well in a hurricane?

6 A This is a limb that was -- I believe when I got this,
7 this had gone off of a limb that had been hat-racked, and it is
8 sprouted back, and it is approximately, as you recall, about 10
9 or 11 feet long.

10 This probably weighs only about a pound and a half,
11 and this is only 8 inches long. This shows when you trim a tree
12 incorrectly, where it would break.

13 Q From looking at that branch, is that a branch or a
14 trunk?

15 A This is a branch.

16 Q How are you able to tell it was incorrectly trimmed?

17 A You can see on the base of it that -- Let me correct
18 this. This was not a branch that was incorrectly trimmed.

19 This is the result from a branch that was incorrectly
20 trimmed. This is the result of trimming a branch in the
21 incorrect manner, and the sprout that comes back as a result of
22 the trimming that was done incorrectly.

23 Q Comes back weak instead of strong; correct?

24 A That s correct. It s not securely anchored to the
25 tree that it was growing from. It sprouted back on an existing
26 stub. And that s where it broke. And I don t remember the
27 conditions of this, but it s a prime example of the reasons you
28 don t hat-rack, and it s important to trim a tree in the correct

1 manner.

2 Q What is hat-racking again?

3 A Cutting it off on any point of the limb other than the
4 natural juncture of limbs.

5 Q If an unnatural juncture of a tree is trimmed, does
6 that lead a tree to believe it s dying?

7 A Not necessarily dying. A tree s response would be to
8 try to callus out of or compartmentalize a cut or a wound.

9 If a person is cut, the wound heals off. If you cut
10 a branch that s too large off of a tree, the tree s response is
11 to try to compartmentalize or callus that over or scar tissue.
12 And if the cut is big enough, the tree has a hard time doing
13 that. In many instances, it cannot.

14 Q It cannot compartmentalize what?

15 A Callus or wounds off of the tree. It s like cutting
16 off your finger. We would try to stretch the skin over that
17 cut-off finger in order to keep infection out.

18 The tree can t do that.

19 Q Because trees compartmentalize?

20 A It s their attempt to keep out decay and preserve
21 their health.

22 Q Is callusing the same thing?

23 A Yes, callusing is what you would call it for the tree
24 trying to seal off a wound.

25 Q Did you have the opportunity to review Slaymaker s
26 testimony?

27 A Not in its entirety.

28 Q Let me direct your attention to Slaymaker s testimony

1 on page 4, where the County Code is cited. Do you see any
2 mention there about branch collar?

3 A Yes, I do. Says all cuts shall be clean, flush and
4 at junctions, laterals and/or crosses. All cuts shall be made
5 as close as possible to the trunk or parent limb without cutting
6 into the branch collar or leaving a protruding stub.

7 Q Because it would harm the tree, if somebody were to
8 cut into the branch collar?

9 A That s correct.

10 Q Now, where you ve seen or where there have been
11 allegations of a conflict between North Miami Code, perhaps, and
12 Miami Dade County Code, maybe in Harris testimony, which code
13 would you follow?

14 A The stricter of the codes.

15 Q The stricter of the two codes; correct?

16 A That s correct.

17 Q And have you been following in the City of North Miami
18 the DERM Code?

19 A Yes.

20 Q What is witches broom, as discussed on page 11 of
21 Slaymaker s testimony?

22 A Typically what happens is if you cut a branch off or a
23 trunk or any type of tree tissue, other than what he is talking
24 about in his first section outside the branch collar, the tree
25 loses its direction and it will sprout back all over the cut, in
26 fact make something like a witch s broom.

27 Q What line are you, when you say outside the branch
28 color is discussed?

1 A That was in his -- where we just removed, where it
2 says that all cuts shall be made just outside the branch collar
3 or outside the branch collar.

4 Q Are you on page 11?

5 A I don t have it. Right, right there.

6 Q So, in addition to hat-racking, is witch s broom
7 something that needs to be avoided?

8 A Yes. Witch s broom is a condition generated by
9 hat-racking or illegal cutting of a tree, outside of best
10 management practice.

11 Q Would removing the whole side of a tree create either
12 a witch s broom or hat-racking situation?

13 A Yes, it could.

14 Q If half of a tree has been removed, does that create
15 a dangerous situation?

16 A In my opinion, it does. It throws the whole tree off
17 balance. Something that you may be able to do over a period of
18 time, but you certainly don t do it all in one shot.

19 Q And if the tree is unbalanced and the hurricane-force
20 winds come over in this hurricane-prone weather, what happens?

21 A It could tip over.

22 Q Would it tip over in the direction where the remaining
23 canopy is?

24 A I have seen that happen during a hurricane, true, and
25 even though the wind was coming from another direction, the
26 imbalance of the tree in the high winds disturbed the roots, and
27 it still fell in the direction of the weight of the tree.

28 Q How are we doing on time? What time is it?

1 A It s 10:30.

2 Q Let me direct your attention, now, to page 9 of
3 Slaymaker s testimony. Are you there?

4 A Yes.

5 Q Are you familiar with RTRP?

6 A No, I m not.

7 Q Are you familiar with right tree right place?

8 A Okay. I am definitely familiar with that.

9 Q Are you a proponent of right tree right place?

10 A Yes, I am, so is the City.

11 Q Okay. And as far as you know, does FPL have a RTRP
12 initiative?

13 A Yes, they do.

14 Q And how is it working?

15 A For us sometimes it s hard, and I m sure it s hard
16 with FPL, the ability to enforce it. I think the thing is an
17 education. I think the Right Tree Right Place Program has
18 educated a lot of municipalities, including this one, and we
19 follow that, but sometimes it s hard to get that resident to do
20 that. They may not be aware of it.

21 If we have the opportunity to discuss it with them, we
22 do that.

23 Q Discuss it with the property owners, you mean?

24 A If they would come in off the street and say, Hey, I
25 want to plant a tree in the backyard.

26 Q Let me finish my question or line of thinking before
27 you respond, Mr. Lytle.

28 Also on page 9 of Slaymaker s testimony, there s

1 mention of avoiding future conflicts by using the RTRP
2 guidelines, do you read that to mean future conflict between
3 trees and wires?

4 A Yes.

5 Q Okay. And by his use of the word, Future, there
6 in
7 practice right now by FPL, is FPL RTRP or right tree right place
8 initiative geared towards the future, as you understand it?

9 A Yes.

10 Q Okay. Approximately how many miles of alleys would
11 you say the City of North Miami has here?

12 A Twenty-three point two, approximately.

13 Q And do you find that those alleyways, which are not on
14 City property, by the way, have certain types of trees in them?

15 A Yes.

16 Q What sort of trees do you find there, typically?

17 A Mostly invasive, fast-growing trees.

18 Q And is that a concern for the City?

19 A It s a concern for FPL.

20 Q Is that because FPL s wires go around those alleyways
21 and people s yards, not just along City streets?

22 A That s correct, yes.

23 Q If FPL s utility lines or utility wires present a
24 conflict with City trees located in the swales, what can be done
25 about that?

26 A FPL currently trims those, and the City works in what
27 I hope is considered a partnership in trimming them.

28 Q Okay. So, the City is often a liaison, is that what

1 you are saying, between property owners and FPL?

2 A Yeah, we deal with FPL for the trees in the streets
3 because those are trees maintained by the City. And we also
4 work as a liaison, many instances with homeowners and FPL
5 trimming trees.

6 Q Let s slow down and start with the trees, our City
7 trees. Are those sometimes called street trees?

8 A Yes.

9 Q Okay. And you find that the City and FPL co-operated
10 with regard to trimming those City trees?

11 A Yes.

12 Q Okay. But if the wires are running through people s
13 backyards and by the alleyways where those 23.2 miles of alleys
14 exist, the City doesn t have too much control over that;
15 correct?

16 A That s correct.

17 Q And as things currently are, there s no fixed or hard
18 trimming cycle being done by FPL right now; is there?

19 A I don t know.

20 Q Would you recommend one for the laterals?

21 A Yes.

22 Q And would you also recommend it for the alleyways?

23 A I definitely recommend it for the alleys.

24 Q Exhibit 5 to John Harris testimony discusses
25 cycle pruning. Can you elaborate on cycle pruning, especially
26 as it relates to the longer growing season in South Florida?

27 A This goes for the cycle pruning and maintenance
28 cycles, that the maintenance cycles should be generally shorter

1 in areas where longer growing seasons exist, being South Florida
2 and our growing area, with a higher percentage of fast-growing
3 trees, which is, again, in our area. And this is a
4 consideration to be taken in with cycle pruning.

5 Q So, in our area, which is a fast tree growing area,
6 where trees grow year round, would you recommend a six-year tree
7 trimming cycle? Is that short enough?

8 A I don t believe so.

9 Q Would you please summarize your testimony?

10 A My testimony would be with FPL wanting to initiate a
11 six-year trimming cycle, that the infrequent tree trimming can
12 lead to tree problems such as falling trees and premature tree
13 failure.

14 If FPL is proposing a six-year cycle on laterals, yet
15 many people experienced power outages even though FPL is
16 supposed to be performing line clearance more frequently than
17 every six years now.

18 And in addition to best providing service to customers
19 and preventing service interruptions, FPL should focus on
20 maintaining the integrity of the trees and on preventing
21 premature tree failure instead of focusing just on costs to FPL
22 to trim laterals as often as they need to be trimmed.

23 Q So, with the current tree trimming practice, you re
24 seeing problems?

25 A Yes.

26 Q Thank you.

27 Does that conclude your testimony?

28 A Yes, it does.

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

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TERRY LYTTLE

REPORTER'S DEPOSITION CERTIFICATE

STATE OF FLORIDA :

COUNTY OF DADE :

I, LINDA JACKSON ROUNDTREE, Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing sworn statement; and that the transcript is a true record of the testimony given by the witness.

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' attorneys or counsel connected with the action, nor am I financially interested in

the action.

Dated this _____ day of January 2007.

LINDA JACKSON ROUNDTREE
Shorthand Reporter