



ORIGINAL

Florida Power & Light Company, 215 S. Monroe St., Suite 810, Tallahassee, FL 32301

R. Wade Litchfield  
Senior Attorney  
Florida Authorized House Counsel  
Florida Power & Light Company  
700 Universe Boulevard  
Juno Beach, FL 33408-0420  
(561) 691-7101  
(561) 691-7135 (Facsimile)

RECEIVED-FPSC  
04 DEC -3 PM 4:12

COMMISSION  
CLERK

December 3, 2004

**VIA HAND DELIVERY**

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
Betty Easley Conference Center  
2540 Shumard Oak Boulevard, Room 110  
Tallahassee, FL 32399-0850

Re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company – Docket No. 041291-EI

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of Florida Power & Light Company's ("FPL") Response in Opposition to Joint Motion to Strike or, in the Alternative, Motion to Accept Petition to Implement Surcharge Subject to Refund. Also included herewith is a computer diskette containing FPL's Response in Word format.

Please contact me if you have questions regarding this filing.

Sincerely,

for R. Wade Litchfield

CMP \_\_\_\_\_  
COM S \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_RWL:ec  
OPC \_\_\_\_\_Enclosures  
MMS \_\_\_\_\_  
RCA \_\_\_\_\_  
SCR \_\_\_\_\_  
SEC I \_\_\_\_\_  
OTH kimp. \_\_\_\_\_

RECEIVED & FILED  
  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
12867 DEC-3 04  
FPSC-COMMISSION CLERK

# ORIGINAL

## BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for authority to recover )  
prudently incurred storm restoration costs )  
related to 2004 storm season that exceed )  
storm reserve balance, by Florida Power & )  
Light Company. )  
\_\_\_\_\_ )

Docket No: 041291-EI

Filed: December 3, 2004

### **FLORIDA POWER & LIGHT COMPANY'S RESPONSE IN OPPOSITION TO JOINT MOTION TO STRIKE OR, IN THE ALTERNATIVE, MOTION TO ACCEPT PETITION TO IMPLEMENT SURCHARGE SUBJECT TO REFUND**

NOW, BEFORE THIS COMMISSION, through undersigned counsel, comes Florida Power & Light Company ("FPL" or the "Company"), and pursuant to Rule 28-106.204(1) and 28-106.202, Florida Administrative Code, files this Response in Opposition to the Joint Motion to Strike of the Office of Public Counsel ("OPC") and the Florida Industrial Power Users Group ("FIPUG") (the "Joint Motion") or, in the alternative, Motion to Accept Petition to Implement Surcharge Subject to Refund,<sup>1</sup> and in support states:

1. On November 4, 2004, FPL petitioned the Florida Public Service Commission ("PSC" or the "Commission") for authority to recover the expected \$354 million (jurisdictional)<sup>2</sup>

<sup>1</sup> While the Joint Motion is labeled a "Joint Response," the label is a misnomer because the "Joint Response" seeks affirmative relief in that it asks the Commission to strike or dismiss FPL's Petition to Implement Surcharge Subject to Refund. See Joint Motion at ¶ 4, "Wherefore" clause. This title is contrary to Rule 28-106.204(1), which provides that "[a]ll requests for relief shall be by motion" so that "[w]hen time allows, the other parties may, within 7 days of service of a written motion, file a response in opposition." Therefore, FPL refers to the Joint Motion as the Joint Motion to Strike because of the type of relief sought by OPC and FIPUG and FPL hereby files its response.

<sup>2</sup> FPL expects a system-wide deficit of \$356 million, an expected \$354 million of which is PSC jurisdictional.

deficit in FPL's Storm Reserve (sometimes referred to as "Storm Damage Reserve"), which exists after an unprecedented 2004 storm season during which three hurricanes struck FPL's service territory over an approximately six-week span between mid-August and late September, resulting in power outages to millions of FPL customers. In undertaking the largest electric service restoration efforts in a single storm season in the history of the United States, and having safely and expeditiously restored power to millions of customers, FPL has incurred extraordinary storm-related costs of approximately \$710 million, net of insurance proceeds – or more than double the amount of its Storm Reserve.<sup>3</sup>

2. On November 19, 2004, FPL filed its Petition to Implement Storm Surcharge Subject to Refund (the "Surcharge Petition") in the interest of ensuring the timely implementation of an appropriate mechanism to recover prudently incurred storm costs without prejudice to the Commission's right to review the prudence of such costs in connection with the procedural schedule established in this docket. OPC and FIPUG ("Joint Movants") moved to strike FPL's Surcharge Petition on grounds that FPL amended its petition without seeking permission to do so from the Prehearing Officer.

3. The Joint Motion should be denied because the Surcharge Petition was not merely an amended petition, but rather was a separate petition seeking approval to implement the surcharge subject to refund. FPL's November 4, 2004, Petition for Authority to Recover Prudently Incurred Storm Restoration Costs that Exceed the Storm Reserve Balance (the

---

<sup>3</sup> FPL proposes to initiate recovery of the estimated deficit through a monthly surcharge to apply to customer bills based on a recovery period of twenty-four months (or such shorter time as may be needed to recover the applicable revenue requirements) commencing January 1, 2005. The impact to the average residential customer bill (1,000 kWh per month) is expected to be \$2.09 per month over the recovery period.

“Petition for Cost Recovery”) sought implementation of the surcharge commencing January 1, 2005, to apply for a 24-month period. See Petition at ¶ 15. When the Commission issued its case scheduling report which set the hearing in this matter for late April, it became clear FPL would need to ask the Commission to approve implementation of the surcharge commencing January 1, 2005, subject to refund because, by the time the hearing-phase of this Docket ends, the 2005 hurricane season will be upon us.<sup>4</sup> Without implementation of the surcharge, FPL will remain in the untenable position of having spent hundreds of millions in excess of its Storm Reserve without having recovered the first dollar, and facing yet another potentially destructive storm season, -- a prospect that is in neither the Company’s nor its customers’ interests, and which would result in poor public policy. The Surcharge Petition in no way interferes with the schedule for reviewing the prudence and reasonableness of the deficit in FPL’s storm reserve that is the subject of FPL’s November 4, 2004, Petition. Neither did FPL’s petition or the current schedule in this docket preclude Joint Movants from filing responsive pleadings, which in fact they have done through their Joint Motion, also incorporating by reference their Joint Motion to Dismiss the Petition for Cost Recovery, filed November 17, 2004. Essentially, Joint Movants’ argument that FPL’s Surcharge Petition is an unauthorized amended pleading, is one of form over substance.

4. In any event, if it is determined that the Surcharge Petition was effectively an amendment to the Petition for Cost Recovery without an order from the Prehearing Officer, FPL requests that the Prehearing Officer exercise his broad discretion to accept FPL’s Surcharge

---

<sup>4</sup> Joint Movants half-hearted contention in footnote 4 of the Joint Motion that FPL’s Surcharge Petition is effectively a motion for reconsideration of the Order Establishing Procedure is incorrect. The Order Establishing Procedure, Order No. PSC-041150-PCO-EI, issued November 18, 2004, in Docket No. 041291-EI, does not need to be altered to accommodate FPL’s Surcharge Petition.

Petition, which is attached as Appendix A to this Response.<sup>5</sup> As the Joint Movants note, Rule 28-106.202, Florida Administrative Code, permits a party to amend its petition upon order of the presiding officer. It is well-established that the Commission has broad discretion to allow amendment of pleadings and it is Commission policy to allow pleadings to be freely amended, if the privilege to amend has not been abused, in order that disputes may be resolved on their merits. See, e.g., Adams v. Knabb Turpentine Co., 435 So. 2d 944, 946 (Fla. 1<sup>st</sup> DCA 1983); In re: Petition by AT&T Communications of the Southern States, Inc., TCG South Florida, and MediaOne Florida Telecommunications, Inc. for structural separation of BellSouth Telecommunications, Inc. into two distinct wholesale and retail corporate subsidiaries, Order No. PSC-01-1615-PCO-TP, at 3-4, Docket No. 010345-TP (issued Aug. 8, 2001); In re: Petition by Florida Digital Network, Inc. for arbitration of certain terms and conditions of proposed interconnection and resale agreement with BellSouth Telecommunications, Inc. under the Telecommunications Act of 1996, Order No. PSC-01-1168-PSO-TP, at 6-7, Docket No. 010098-TP (issued May 22, 2001); In re: Petition by Telenet of South Florida, Inc., for relief under Section 252(i) of the Telecommunications Act of 1996 with respect to rates, terms and conditions for interconnection and related arrangement with BellSouth Telecommunications, Inc., Order No. PSC-98-0332-PCO-TP, at 6-7, Docket No. 970730-TP (issued Feb. 26, 1998).

5. Joint Movants will not be prejudiced if the Commission proceeds to rule on the Surcharge Petition. Joint Movants have made the same request that they made with respect to the Petition for Cost Recovery, and the arguments made in their Joint Motion to Dismiss the Petition for Cost Recovery were incorporated by reference in the Joint Motion. At this very early

---

<sup>5</sup> FPL incorporates by reference into Appendix A the original of the affidavit and tariff sheet that was filed in Docket 041291-EI on November 22, 2004 (Document No. 12486-04).

point in the proceedings, well before Joint Movants' direct testimony is even due, allowing FPL's Surcharge Petition to proceed on the merits in no way affects the ability of Joint Movants to fully litigate their case.


6. Moreover, ruling on the merits of FPL's Surcharge Petition is consistent with the relief requested by the Joint Movants, which is that the "matter should proceed to hearing as scheduled." See Joint Motion, "Wherefore" clause. Accepting the Surcharge Petition will not disrupt the case schedule or the Joint Movants participation as a party to that proceeding. The Commission should proceed to issue a ruling on the merits of the Surcharge Petition and deny the Joint Motion to Strike.

7. The Commission should reject Joint Movants' contention that the Surcharge Petition should be "denied" or "dismissed." FPL's Surcharge Petition does not seek to "prejudge the core issue of the case," as asserted by Joint Movants. See Joint Motion at ¶ 6. Rather, the Surcharge Petition seeks to implement, subject to refund, the surcharge that is the subject of the April hearings in this proceeding. Indeed, the precise point of making the surcharge "subject to refund" is to preserve, not prejudge, the core issue of the proceeding. As fully argued in FPL's November 24, 2004, Response in Opposition to the Joint Motion to Dismiss, the Commission has previously determined that the utility should petition the Commission for implementation of a recovery mechanism in the event that extraordinary expenditures create a deficit in the storm reserve. As to the lack of merit in Joint Movants' substantive claims, FPL relies upon and incorporates by reference the arguments in its November 24, 2004, Response in Opposition to the Joint Motion to Dismiss.

8. Based on the pleadings Joint Movants have already filed in response to the Petition for Cost Recovery and the Surcharge Petition, FPL believes, and therefore represents, that Joint Movants will oppose FPL's Response and Motion to Accept.

**WHEREFORE**, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission deny FIPUG and OPC's Joint Motion to Strike or, in the alternative, grant FPL's Motion to Accept Petition to Implement Surcharge Subject to Refund.

Respectfully submitted,

By *for*  \_\_\_\_\_  
R. Wade Litchfield  
Natalie F. Smith  
Attorneys for Florida Power & Light  
Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420

**CERTIFICATE OF SERVICE**

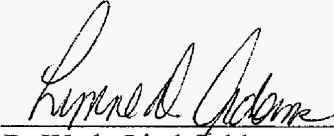
**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail and United States Mail this 3rd day of December, 2004, to the following:

Florida Public Service Commission  
Cochran Keating, Esquire  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Florida Industrial Power Users Group  
(McWhirter)  
c/o John W. McWhirter, Jr.  
McWhirter Reeves  
400 North Tampa Street, Suite 2450  
Tampa, FL 33601-3350

McWhirter Law Firm  
Vicki Kaufman/ Tim Perry  
117 S. Gadsden St.  
Tallahassee, FL 32301

Patricia A. Christensen  
Associate Public Counsel  
Office of Public Counsel  
c/o The Florida Legislature  
111 West Madison Street, Room 812  
Tallahassee, FL 32399-1400

By:   
R. Wade Litchfield  
Natalie F. Smith  
Attorneys for Florida Power & Light  
Company  
700 Universe Boulevard  
Juno Beach, Florida 33408-0420



# Attachment A

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for authority to recover )  
prudently incurred storm restoration costs )  
related to 2004 storm season that exceed )  
storm reserve balance, by Florida Power & )  
Light Company. )

---

**Docket No: 041291-EI**

Filed: November 19, 2004

**PETITION OF FLORIDA POWER & LIGHT COMPANY  
TO IMPLEMENT STORM SURCHARGE  
SUBJECT TO REFUND**

**NOW, BEFORE THIS COMMISSION**, through undersigned counsel, comes Florida Power & Light Company (“FPL” or the “Company”), and pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes, Rule 25-6.0143, Florida Administrative Code, and in furtherance of its Petition for Authority to Recover Prudently Incurred Storm Restoration Costs Related to the 2004 Storm Season that Exceed the Storm Reserve Balance filed November 4, 2004, in the above-entitled and numbered proceeding, hereby submits its Petition to Implement Storm Surcharge Subject to Refund (“Petition”). In support of the Petition, FPL states as follows:

1. On November 4, 2004, FPL filed its Petition for Authority to Recover Prudently Incurred Storm Restoration Costs Related to the 2004 Storm Season that Exceed the Storm Reserve Balance (“Petition for Cost Recovery”). Subsequently, the Commission has adopted a Case Assignment and Scheduling Record and issued an Order Establishing Procedure, calling for pre-filed testimony and setting this matter for hearing April 20-22, 2005. See Order No. PSC-04-1150-PCO-EI, at 11, Docket No. 041291 (issued Nov. 18, 2004). In a Joint Motion to Dismiss filed November 17, 2004 (“Joint Motion”), the Florida Industrial Power Users Group

and the Office of Public Counsel have expressed opposition to the Company's Petition for Cost Recovery. FPL will file a response contesting the Joint Motion, but submits this Petition in the interest of ensuring the timely implementation of an appropriate mechanism to recover prudently incurred storm costs without prejudice to the Joint Motion or to the Commission's right to review the prudence of such costs in connection with this docket.

2. FPL incorporates herein by reference paragraphs 1 through 24 of the Petition for Cost Recovery. In the Petition for Cost Recovery, FPL proposed the implementation of a storm surcharge to recover the prudently incurred restoration costs related to the 2004 Storm Season that exceed the Company's storm reserve balance. Given that the Commission has set this matter directly for hearing in 2005 and, therefore, the issues presented by the Company's Petition for Cost Recovery may not be fully resolved for some time, and considering the need for timely implementation of the collection mechanism as discussed in FPL's Petition for Cost Recovery, FPL respectfully requests that the Commission implement the proposed surcharge, subject to refund, effective January 1, 2005, or as soon as practicable.<sup>1</sup> A tariff sheet implementing the surcharge is attached hereto as Exhibit A. Also attached hereto and incorporated herein in support of FPL's request is Exhibit B, the affidavit of K. Michael Davis, FPL's Vice President, Controller and Chief Accounting Officer.

3. Jurisdiction to implement the surcharge, subject to refund, is vested in this Commission by virtue of its general powers over the rates and charges of the Company. See, e.g., Chapter 366, Florida Statutes, Sections 366.04, 366.05, and 366.06. Moreover, such an

---

<sup>1</sup> FPL proposes to implement the storm surcharge with one modification to the mechanism described in the Petition for Cost Recovery: the mechanism would remain in place for twenty-four months or the time to fully collect the applicable revenue requirements associated with the Storm Reserve Deficit, whichever period is shorter. The surcharge would be effective for meter readings on or after the implementation date.

approach is consistent with Commission precedent in such analogous circumstances as the mid-course correction process for fuel and purchased power cost recovery factors. See, e.g., Order No. PSC-03-0381-PCO-EI, Docket No. 030001-EI (issued March 19, 2003); Order No. PSC-98-0691-FOF-PU, Docket No. 980269-PU (issued May 19, 1998).

4. There is good reason to authorize FPL to collect the deficiency in its Storm Reserve through a monthly surcharge to apply, subject to refund, beginning January 1, 2005, or as soon as practicable. First, prompt recovery is consistent with the basic principle of ratemaking which seeks to match the timing of the incurrence of costs with the timing of their recovery. See, e.g., Order No. PSC-03-PCO-EI, at 3, Docket No. 030001-EI (issued March 19, 2003). If the Commission waits until after the April hearings to implement a surcharge, the surcharge likely would not be implemented until some time during the 2005 storm season. A timely implemented surcharge, subject to refund, will better match the timing of the surcharge with the timing of the 2004 storm restoration costs with reference to the customers who benefited from FPL's restoration efforts.

5. Should the Commission wait until after the April hearings to implement a surcharge, the 2005 hurricane season will be imminent and FPL would remain in the unfavorable position of having spent \$354 million in excess of its Storm Reserve without having recovered the first dollar, and facing yet another storm season, -- a prospect that is in neither the Company's nor its customers' interests. Further, customers will benefit from the prompt implementation of the surcharge because it will minimize the bill impact of the surcharge by reducing the amount of interest that would be recoverable if implementation is delayed.

6. In response to the devastating impact of three major storms that made landfall in the FPL's service territory resulting in millions of customer power outages, FPL promptly

undertook the most massive restoration effort in the history of electric utility service in this country, deploying thousands of personnel and requiring enormous quantities of materials and supplies. Understanding that "time to restoration" was the crucial objective for its customers, FPL engaged contractors and imported utility crews from as far away as California and Canada. Despite the broad geographic scope and intensity of these storms, as well as the strains imposed on the process as a result of having to deal with three such major storms in rapid succession, by any reasonable measure FPL's performance in restoring power was stellar. Having restored service as safely and quickly as possible under the most extreme circumstances, and having spent hundreds of millions in doing so, FPL now requests timely implementation of its proposed surcharge mechanism, subject to refund based on the outcome of this proceeding.

7. Allowing the establishment of a reasonable mechanism enabling the Company to begin to recover the Storm Reserve Deficit, subject to refund, will benefit FPL's customers and will provide appropriate signals to the investment community while fully accommodating the Commission's right to review the prudence and reasonableness of such costs and protecting customers in the event of any disallowance.

**WHEREFORE**, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission grant this Petition and authorize the implementation of the storm surcharge effective January 1, 2005, or as soon as practicable, subject to refund.

Respectfully submitted,

By: 

R. Wade Litchfield

Natalie F. Smith

Attorneys for Florida Power & Light  
Company

700 Universe Boulevard

Juno Beach, Florida 33408-0420

## EXHIBIT A

## STORM RESTORATION SURCHARGE

The following charges are applied to the Monthly Rate of each rate schedule as indicated and are calculated in accordance with the formula specified by the Florida Public Service Commission. The Storm Restoration Surcharge shall be charged monthly for a period of twenty-four (24) months from the effective date of this tariff or for such shorter period as may be sufficient to fully recover the applicable revenue requirements.

<u>Rate Schedule</u>	<u>¢/kWh</u>
RS-1, RST-1	0.207
GS-1, GST-1, WBS-1	0.192
GSD-1, GSDT-1	0.161
GSLD-1, GSLDT-1	0.147
CS-1, CST-1	0.132
GSLD-2, GSLDT-2	0.140
CS-2, CST-2	0.141
GSLD-3, GSLDT-3, CS-3, CST-3	0.091
OS-2	0.405
MET	0.166
CILC-1(G)	0.133
CILC-1(D)	0.127
CILC-1(T)	0.083
SL-1, PL-1	0.764
OL-1	0.603
SL-2	0.119
SST-1(T), ISST-1(T)	0.100
SST-1(D1), SST-1(D2) SST-1(D3), ISST-1(D)	0.193

**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Petition for authority to recover )  
prudently incurred storm restoration costs )  
related to 2004 storm season that exceed )  
storm reserve balance, by Florida Power & )  
Light )  
\_\_\_\_\_ )

Docket No: 041291-EI

Filed: November 19, 2004

**EXHIBIT B**

STATE OF FLORIDA )  
 )  
COUNTY OF PALM BEACH )

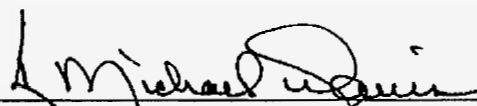
**AFFIDAVIT OF K. MICHAEL DAVIS**

**BEFORE ME**, the undersigned authority, personally appeared K. Michael Davis who, being first duly sworn, deposes and says:

1. My name is K. Michael Davis. I am employed by Florida Power & Light Company (FPL) as Vice President, Controller and Chief Accounting Officer. My business address is 9250 West Flagler Street, Miami, Florida. I have personal knowledge of the matters stated in this affidavit.

2. In my capacity as Vice President, Controller and Chief Accounting Officer, I believe to the best of my knowledge that FPL has incurred and appropriately recorded the costs of \$710 million (system) associated with Hurricanes Frances, Jeanne and Charley in account 228.1 Provision for Storm Damages, which is expected to result in a deficiency of \$356 million (system) and \$354 million (jurisdictional) as of December 31, 2004.

3. Affiant says nothing further.

  
\_\_\_\_\_  
K. Michael Davis

~~SWORN TO AND SUBSCRIBED~~ before me this 19th day of Nov. 2004, by K. Michael Davis, who is personally known to me or who has produced \_\_\_\_\_ (type of identification) ~~as identification and who did take an oath.~~

  
\_\_\_\_\_  
Notary Public, State of Florida

My Commission Expires:



Elizabeth Carrero  
My Commission DD002041  
Expires February 18, 2006