State of Florida

Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: December 21, 2004

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Slemkewicz, Willis, Kummer, Wheeler, Maurey)
Office of the General Counsel (C. Keating)

RE: Docket No. 041291-EI – 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.

AGENDA: 01/04/05 – Regular Agenda: Issues 1, 2 – Decision Prior to Hearing – Motions to Dismiss/Strike – Oral argument not requested, but may be heard at the Commission's discretion; Issues 3, 4, 5 – Decision Prior to Hearing – Parties May Participate

CRITICAL DATES: 01/19/04 (60-Day Suspension Date) – Issue 4

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCL\GCO\WP\041291.RCM.DOC

Case Background

On November 4, 2004, Florida Power & Light Company (FPL) filed a petition seeking authority to recover prudently incurred restoration costs, in excess of its storm reserve balance, related to the hurricanes that struck its service territory in 2004 (Storm Cost Recovery Petition). In its petition, FPL asserts that as a result of Hurricanes Charley, Frances, and Jeanne, FPL incurred extraordinary storm-related costs of approximately $710 million, net of insurance proceeds, which will result in a negative balance of approximately $354 million in its storm reserve fund at the end of December 2004. By its petition, FPL proposes to initiate recovery of this estimated deficit through a monthly surcharge to apply to customer bills based on a 24 month recovery period commencing January 1, 2005.

On November 17, 2004, the Office of Public Counsel (OPC) and the Florida Industrial Power Users Group (FIPUG) (collectively, Joint Movants) filed a joint motion to dismiss FPL's Storm Cost Recovery Petition.[1] FPL filed a response to the joint motion on November 24, 2004.

By Order No. PSC-04-1150-PCO-EI, issued November 18, 2004, a hearing schedule and procedures were established to govern the proceeding on FPL's Storm Cost Recovery Petition. By that Order, a formal administrative hearing was set for April 20-22, 2005.

On November 19, 2004, FPL filed a petition in this docket seeking authority to implement its proposed monthly surcharge effective January 1, 2005, or as soon as practicable, subject to refund (Preliminary Surcharge Petition). On December 1, 2004, OPC and FIPUG filed a joint response to FPL's Preliminary Surcharge Petition, asking that it be "denied and/or dismissed." Because this joint response sought affirmative relief by asking the Commission to deny or dismiss the Preliminary Surcharge Petition, FPL filed a response to the joint response on December 3, 2004. FPL treats the joint response as a motion to strike and asks that the Commission deny Joint Movants' request to strike its Preliminary Surcharge Petition, or, alternatively, to accept its Preliminary Surcharge Petition as an amendment to the Storm Cost Recovery Petition.

Issue 1 of this recommendation addresses Joint Movants' motion to dismiss FPL's Storm Cost Recovery Petition. Issue 2 addresses Joint Movants' request to strike or dismiss FPL's Preliminary Surcharge Petition. Issues 3 through 5 address FPL's Preliminary Surcharge Petition.

The Commission has jurisdiction over this matter pursuant to Chapters 120 and 366, Florida Statutes.

[1] OPC's intervention in this docket was acknowledged in Order No. PSC-04-1171-PCO-EI, issued November 24, 2004. FIPUG was granted intervenor status in this docket by Order No. PSC-04-1207-PCO-EI, issued December 7, 2004.

Discussion of Issues

Issue 1: Should the Commission grant OPC and FIPUG's joint motion to dismiss FPL's Storm Cost Recovery Petition?

Recommendation: No. The motion to dismiss should be denied. FPL's petition states a cause of action upon which relief may be granted. (C. Keating)

Staff Analysis:

Standard of Review

A motion to dismiss raises as a question of law the sufficiency of the facts alleged in a petition to state a cause of action. See Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The standard to be applied in disposing of a motion to dismiss is whether, with all factual allegations in the petition taken as true and construed in the light most favorable to the petitioner, the petition states a cause of action upon which relief may be granted. See id. at 350. In determining the sufficiency of the petition, the Commission should confine its consideration to the petition and documents incorporated therein and the grounds asserted in the motion to dismiss. See Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958); Rule 1.130, Florida Rules of Civil Procedure.

OPC and FIPUG's Joint Motion to Dismiss

In their motion, Joint Movants contend that FPL's Storm Cost Recovery Petition should be dismissed because it fails to state a claim upon which relief may be granted. Joint Movants state that FPL has failed to plead or offer to prove that its storm-related expenses in excess of its storm reserve fund have caused it to earn less than a fair rate of return or its approved earnings.

Joint Movants note that the Commission established a storm reserve fund for FPL through Order No. PSC-93-0918-FOF-EI, issued June 17, 1993, in Docket No. 930405-EI.[2] Joint Movants state that in that order, the Commission acknowledged that hurricane-related expenses were included in base rates and declined to create a 100% pass-through mechanism for recovery of such expenses. Joint Movants further state that the Commission noted that a 100% pass-through mechanism would effectively transfer all risk associated with storm loss directly to ratepayers and would insulate the utility from that risk. Joint Movants assert that the Commission also noted that FPL's proposal at that time did not take into account the utility's earnings or achieved rate of return. Joint Movants contend that FPL, by the surcharge proposed in its Storm Cost Recovery Petition, is essentially asking the Commission to create the same type of pass-through mechanism that the Commission rejected in Order No. PSC-93-0918-FOF-EI.

Joint Movants cite the provisions of Rule 25-6.0143, Florida Administrative Code, which address the treatment of actual expenses from storm damage that exceed the storm reserve fund. In particular, Joint Movants note that the rule states that the balance in the storm reserve fund shall be evaluated at the time of a rate proceeding and adjusted as necessary, but permits a utility

[2] Order No. PSC-93-0918-FOF-EI is attached to this recommendation as Attachment A.

to petition the Commission for a change in the provision level and accrual rate outside a rate proceeding. Joint Movants argue that because storm damage expenses are part of FPL's base rates, FPL's earnings must be taken into account when evaluating the appropriate amount of storm-related costs, if any, to pass on to customers.

Joint Movants note that in Order No. PSC-93-0918-FOF-EI, the Commission stated that it would address storm-related costs in excess of the storm reserve fund based on a petition filed by FPL. Until that time, the Commission permitted FPL to defer storm damage loss over the amount in the reserve. Joint Movants assert that due to the magnitude of FPL's estimated 2004 storm-related costs, the costs should be thoroughly analyzed. Joint Movants contend that this would best be done in conjunction with FPL's next rate proceeding, allowing for a full picture of FPL's financial situation.

FPL's Response

In its response, FPL contends that Joint Movants' motion to dismiss should be denied because it is inconsistent with the Stipulation and Settlement approved by the Commission in Order No. PSC-02-0501-AS-EI, issued April 11, 2002, in Docket No. 01148-EI, In re: Review of the retail rates of Florida Power & Light Company,[3] and because it is based on an incorrect premise that the Commission can grant recovery of storm losses only upon a showing that the utility will not achieve its authorized rate of return. FPL asserts that, when taking all facts contained in its Storm Cost Recovery Petition as true, the joint motion to dismiss does not meet the standard for a motion to dismiss.

FPL notes that both OPC and FIPUG are signatories to the Stipulation and Settlement approved in Order No. PSC-02-0501-AS-EI to resolve the Commission's review of FPL's retail rates in Docket No. 001148-EI. Citing the terms of the Stipulation and Settlement, FPL asserts that in exchange for its agreement to reduce base rates by $250 million annually and share revenues over a certain threshold (¶¶ 2, 6-7 of the Stipulation), OPC, FIPUG, and the other signatories agreed that FPL would no longer have an authorized return on equity (ROE) range for the purpose of addressing earnings levels (¶ 3 of the Stipulation). FPL notes that paragraph 3 of the Stipulation states in part: "[T]he revenue mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels." Further, FPL notes that the parties agreed to the following language in paragraph 13 of the Stipulation and Settlement, which expressly addresses the storm reserve fund:

> In the event there are insufficient funds in the Storm Damage Reserve and through insurance, FPL may petition the FPSC for recovery of prudently incurred costs not recovered from those sources. The fact that insufficient funds have been accumulated in the Storm Damage Reserve to cover costs associated with a storm event or events shall not be evidence of imprudence or the basis of a disallowance. Parties to this Stipulation and Settlement are not precluded from participating in such a proceeding.

[3] Order No. PSC-02-0501-AS-EI, which includes the Stipulation and Settlement, is attached to this recommendation as Attachment B.

FPL asserts that its Storm Cost Recovery Petition is expressly permitted by paragraph 13 of the Stipulation and Settlement. Further, FPL asserts that Joint Movants' argument that the Storm Cost Recovery Petition should be dismissed on grounds that FPL did not allege how its storm reserve fund deficit would impact its earnings or achieved rate of return ignores that FPL does not have an authorized rate of return during the term of the Stipulation and Settlement and thus does not have an achieved rate of return. FPL states that even if its earnings were relevant, the estimated $354 million in storm-related costs amounts to approximately one half of FPL's annual net income.

FPL argues that it is a fallacy for Joint Movants to contend that the Commission cannot grant relief without taking earnings into consideration. FPL contends that the only circumstance in which the Commission has ever said that it should review earnings in the context of storm restoration costs was in Order No. PSC-93-0918-FOF-EI,[4] when FPL asked the Commission to establish a cost recovery clause mechanism to operate in perpetuity addressing all future storm costs. FPL claims that if the Commission were to approve recovery of extraordinary storm restoration costs only upon a showing that a utility was not achieving its authorized rate of return, it would create a perverse incentive for utilities facing massive storm restoration efforts and would be inconsistent with the public policy of safe and rapid service restoration.

FPL notes that in Order No. PSC-93-0918-FOF-EI, at page 5, the Commission declined to implement a cost recovery clause mechanism for storm loss recovery "at this time." Instead, the Commission approved a self-insurance mechanism consisting of an annual accrual amount in base rates coupled with the ability to request a specific recovery mechanism in the event of a shortfall. FPL cites Commission orders issued subsequent to Order No. PSC-93-0918-FOF-EI which also indicate that FPL may petition the Commission for relief in cases of catastrophic storm losses.[5]

Finally, FPL challenges Joint Movants' claim that FPL, through its Storm Cost Recovery Petition, seeks to be held risk-free. FPL states that it was not held harmless by the storms because, pursuant to the Stipulation and Settlement, it bears the risk of lost revenues as a result of the hurricanes, which amount to $38 million. FPL further states that it does not have access to commercial insurance for repair and restoration of physical damage or access to Federal Emergency Management Agency assistance, unlike most other proprietors.

Analysis and Conclusions

Staff recommends that Joint Movants' motion to dismiss be denied, because FPL's petition states a cause of action upon which relief may be granted.

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[4] See Attachment A.

[5] Order No. PSC-95-1588-FOF-EI, issued December 27, 1995, in Docket No. 951167-EI, In re: Petition for authorization to increase the annual storm fund accrual commencing January 1, 1995 to $20.3 million; to add approximately $51.3 million of recoveries for damage due to Hurricane Andrew and the March 1993 storm; and to re-establish the storm reserve for the costs of Hurricane Erin by increasing the storm reserve and charging to expense approximately $5.3 million, by Florida Power & Light Company; Order No. PSC-98-0953-FOF-EI, issued July 14, 1998, in Docket No. 971237, In re: Petition for authority to increase annual storm fund accrual commencing January 1, 1997 to $35 million by Florida Power & Light Company.

The Commission has jurisdiction to regulate and supervise each public utility, such as FPL, with respect to its rates and service[6] and has the power to prescribe fair and reasonable rates and charges to be applied by each public utility.[7] The Commission has considerable discretion and latitude in the ratemaking process.[8]

Under this authority and broad discretion, the Commission approved, in April 2002, a Stipulation and Settlement between FPL, OPC, FIPUG, and several other parties to resolve the Commission's then-pending review of FPL's retail rates.[9] Pursuant to paragraph 3 of the Stipulation, FPL would not have an authorized return on equity range during the term of the Stipulation.[10] Instead, as shown in paragraphs 2, 6, and 7 of the Stipulation, the parties agreed that FPL would reduce its base rates by $250 million and share with its customers any revenues over a specified threshold.

Pursuant to paragraphs 5 and 8 of the Stipulation, the parties agreed that during the term of the Stipulation, FPL would not petition for an increase in its base rates and charges unless its retail base rate earnings fell below a 10% ROE as reported on a Commission adjusted or pro-forma basis on an FPL monthly earnings surveillance report during the term of the Stipulation. However, paragraph 13 of the Stipulation specifically provided that FPL may petition the Commission for recovery of prudently incurred storm-related costs in excess of the funds available in its storm reserve fund and through insurance.

Given the terms of the Stipulation and Settlement, staff does not believe that FPL has failed to state a cause of action by failing to plead that its storm-related expenses in excess of its storm reserve fund have caused it to earn less than a fair rate of return. The Stipulation clearly establishes that FPL will not have an authorized ROE range for the term of the Stipulation and expressly allows for FPL to file a petition for recovery of prudently incurred storm-related costs in excess of its storm reserve fund and insurance coverage.

Further, the language in Order No. PSC-93-0918-FOF-EI, whereby the Commission established a storm reserve fund for FPL but declined to adopt a pass-through mechanism for recovery of storm losses, indicates that the Commission has not foreclosed consideration of a pass-through mechanism similar to the surcharge presently proposed by FPL:

> Our vote today does not foreclose or prevent further consideration of some type of a cost recovery mechanism, either identical or similar to what has been proposed in this petition. The Commission could implement a cost recovery mechanism, or

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[6] Section 366.04(1), Florida Statutes.
[7] Section 366.05(1), Florida Statutes.
[8] See, e.g., Gulf Power Company v. Bevis, 296 So. 2d 482, 487 (Fla. 1974) ("As pointed out by the Commission, it has considerable discretion and latitude in the rate-fixing process."); and City of Miami v. FPSC, 208 So. 2d 249 (Fla. 1968) (stating that the Public Service Commission has considerable discretion in the ratemaking process).
[9] See Attachment B.
[10] Under traditional rate-of-return regulation, the Commission would establish an authorized return on equity range in setting rates for a public utility.

> defer the costs, or begin amortization, or such other treatment as is appropriate, depending on what the circumstances are at that time.[11]

Exercising the discretion and latitude afforded the Commission in the process of ratemaking, the Commission has established pass-through mechanisms for certain costs in the form of the continuing fuel and capacity cost recovery clauses and the purchased gas adjustment true-up. It is likewise within the Commission's discretion to consider FPL's proposed surcharge as a means of cost recovery. While the Commission may find that the effects of FPL's storm-related costs on its earnings are relevant to the disposition of FPL's Storm Cost Recovery Petition, FPL does not fail to state a cause of action by failing to address such effects in its petition.

For the reasons set forth above, staff recommends that Joint Movants' motion to dismiss FPL's Storm Cost Recovery Petition should be denied.

[11] See Attachment A.

Issue 2: Should the Commission grant OPC and FIPUG's joint request to strike or dismiss FPL's Preliminary Surcharge Petition?

Recommendation: No. The Commission should deny OPC and FIPUG's joint request to strike or dismiss FPL's Preliminary Surcharge Petition. (C. Keating)

Staff Analysis: As noted in the Case Background, Joint Movants filed a response to FPL's Preliminary Surcharge Petition, asking that it be "denied and/or dismissed." In effect, Joint Movants' response asks the Commission to strike the petition as an unauthorized pleading or, alternatively, to dismiss the petition on the grounds stated in the Joint Movants' motion to dismiss FPL's Storm Cost Recovery Petition. For the same reasons stated in Issue 1, staff recommends denial of Joint Movants' request to dismiss the Preliminary Surcharge Petition. The remainder of staff's analysis addresses Joint Movants' request to strike the Preliminary Surcharge Petition.

Joint Movants argue that FPL's Preliminary Surcharge Petition should be stricken because, in essence, it is an attempt to amend its Storm Cost Recovery Petition without the necessary approval of the Presiding Officer. Joint Movants contend that the petition is also substantively defective because it prejudges the issues of whether any cost recovery mechanism is necessary and what amount will flow through that mechanism.

FPL contends that its Preliminary Surcharge Petition was not an amended petition but a separate petition seeking approval to implement its surcharge subject to refund. FPL notes that its Storm Cost Recovery Petition sought implementation of its proposed surcharge effective January 1, 2005. FPL states that when the Commission set that petition for hearing in April 2005, FPL realized that it would need to ask the Commission to approve implementation of the surcharge commencing January 1, 2005, subject to refund because the 2005 hurricane season would be upon the company by the time the hearing phase of this docket ends. FPL asserts that its Preliminary Surcharge Petition does not interfere with the schedule for reviewing the prudence and reasonableness of the deficit in FPL's storm reserve fund that is the subject of its Storm Cost Recovery Petition. FPL contends that Joint Movants' argument that the Preliminary Surcharge Petition is an unauthorized pleading is one of form over substance. In the event the Commission determines that the Preliminary Surcharge Petition was effectively an amendment to the Storm Cost Recovery Petition, FPL requests that the Commission accept the Preliminary Surcharge Petition as an amendment.

FPL also contends that its Preliminary Surcharge Petition does not seek to prejudge any issue in this case. Rather, FPL states, the petition seeks to implement the proposed surcharge subject to refund, thus preserving the issues to be addressed at hearing.

Regardless of whether FPL's Preliminary Surcharge Petition is viewed as an amendment to its Storm Cost Recovery Petition or as a separate petition, staff recommends that the Commission deny Joint Movants' request to strike the Preliminary Surcharge Petition.

First, staff does not believe that the Preliminary Surcharge Petition, whether viewed as an amendment or a separate petition, prejudges the issues to be addressed in the April 2005 hearing

concerning FPL's Storm Cost Recovery Petition. As noted in Issue 1, the Commission has considerable discretion and latitude in the ratemaking process. The Commission has approved rate increases subject to refund on numerous occasions while it conducted a thorough review to analyze requested rate increases and establish more permanent rates. This has occurred in base rate proceedings where utilities have requested interim rate increases pending the results of the Commission's determination of permanent rates. In such proceedings, any overearnings that result from the interim rate increases are refunded to customers with interest. This has also effectively occurred in cost recovery clause proceedings where rates are based in part on projections and ultimately "trued-up," with interest, on an annual basis. In cost recovery clause proceedings, any over-recovery of costs is credited to the utility's cost recovery clause balance with interest. The purpose of requiring the utility to hold revenues from such rate increases subject to refund is to ensure that ratepayers are protected in the event that the Commission ultimately decides that a smaller rate increase, or no rate increase at all, is appropriate.

Second, staff does not view FPL's Preliminary Surcharge Petition as an amendment to its Storm Cost Recovery Petition. In the context of base rate proceedings, a utility almost always files a "petition" for interim rate relief separately from its petition for permanent rate relief. Such pleadings have never been treated as procedurally infirm attempts by the utility to amend its petition for permanent rate relief. While staff recognizes that FPL's Storm Cost Recovery Petition seeks relief distinct from the relief sought through a petition to initiate a full base rate proceeding, staff agrees with FPL that Joint Movants' request to strike the Preliminary Surcharge Petition as an unauthorized pleading emphasizes form over substance.

In the event that the Commission determines that FPL's Preliminary Surcharge Petition is effectively an amendment to its Storm Cost Recovery Petition, FPL asks the Commission to grant it leave to make that amendment. The law is clear that leave to amend pleadings should be freely granted in order to allow disputes to be resolved on their merits. At this early point in this proceeding, staff believes that no parties will be prejudiced if FPL is granted leave to amend its Storm Cost Recovery Petition as requested. Thus, if the Commission believes that the petition is an amendment, staff recommends that the Commission grant FPL's request for leave to make the amendment.

For the reasons set forth above, staff recommends that Joint Movants' request to strike or dismiss FPL's Preliminary Surcharge Petition be denied.

Issue 3: Should the Commission authorize FPL to implement a preliminary storm surcharge subject to refund?

Recommendation: Yes. If the motions to dismiss/strike are denied, FPL should be authorized to implement a preliminary surcharge, subject to refund. This approval would be preliminary in nature and would not prejudge the merits of any issues that may be raised in the evidentiary hearing in this docket, such as the implementation of any surcharge, any amounts to be recovered, or the duration of any surcharge. (Slemkewicz, Willis)

Staff Analysis: FPL has requested that it be authorized to implement its proposed surcharge as soon as practicable, subject to refund, rather than sometime after the post-hearing agenda conference currently scheduled for July 5, 2005. In its petition, FPL states that an earlier implementation of the storm surcharge would better match the recovery of the 2004 storm recovery costs with the customers who benefited from those restoration efforts. FPL also notes that its storm damage reserve has been fully depleted, and that it has spent an additional unrecovered amount of $354 million in excess of the amount that was in the reserve. Unless otherwise authorized by the Commission, FPL can recover this amount and attempt to replenish the storm damage reserve only through its currently authorized storm damage annual accrual of $20.3 million. FPL further states that prompt implementation of the surcharge would reduce the amount of interest to be recovered, if such recovery is ultimately allowed. Lastly, FPL points out that the later implementation date would occur after the start of the 2005 hurricane season, without FPL having recovered any of its 2004 storm damage costs in excess of its reserve.

Without rendering any opinion on the merits of implementing a surcharge or the reasonableness and prudence of any of the costs to be included, staff believes that FPL has presented reasonable arguments for implementing a surcharge on a preliminary basis. Because FPL's proposed surcharge would be subject to refund with interest, its ratepayers will be fully protected if the Commission, at the conclusion of the evidentiary hearing in this docket, takes final action to deny implementation of a surcharge or to modify the amount of costs to be recovered. Therefore, staff recommends that FPL's petition to implement a preliminary storm surcharge subject to refund should be granted.

Issue 4: Should the Commission approve FPL's proposed Original Tariff Sheet No. 8.033?

Recommendation: If the Commission approves staff's recommendation in Issue 3, the tariff as filed should be approved and remain in effect until the final order is issued in this docket. The appropriate allocation of the costs to rate classes and the resulting rate factors should be an issue in the hearing scheduled for April. Consistent with the application of interim rates, the tariff should become effective for meter readings on or after February 3, 2005. If the Commission denies FPL's request to implement the storm damage surcharge subject to refund prior to the hearing, the proposed tariff sheet should be suspended, pending the results of the scheduled hearing. (Kummer, Wheeler)

Staff Analysis: In Appendix B to its petition, FPL developed proposed per kilowatt hour (kWh) storm surcharge recovery factors by rate class. FPL is requesting to implement the charges for meter readings on or after January 1, 2005, or as soon as practicable thereafter. The factors are contained in FPL's proposed Original Tariff Sheet No. 8.033. FPL is requesting that these factors remain in effect for two years or the time necessary to fully recover the applicable revenue requirements, whichever is less. Implementation of FPL's proposed factors will result in an increase in the monthly residential bill for 1,000 kWh of $2.09.

Staff has concerns with the method that FPL used to develop the per kWh recovery factors for storm damage. To allocate the costs to the rate classes, FPL first divided its total jurisdictional plant-in-service costs into the following functional areas: production, transmission, distribution, intangible, and general plant. These functionalized plant items costs were then allocated to the rate classes using the same allocation methods used in FPL's most recent rate case filing. The total plant-in-service costs allocated to each class were used to develop percentages which were then applied to the storm recovery costs to derive the factors shown on the proposed tariff. These factors were calculated using actual 2003 calendar year kWh sales by rate class and load research data collected during calendar year 2003.

While staff agrees with the allocation methodology used to divide the plant investment among classes, staff does not believe that plant investment is an appropriate basis to be used to allocate storm related expenses. Use of FPL's method results in an allocation of storm costs to the rate classes in proportion to their cost responsibility for FPL's entire plant. The costs for which FPL seeks recovery, in contrast, were not incurred uniformly across all functional categories. Most of the costs are related to distribution and to a lesser extent transmission, with only a small proportion related to generation assets. FPL's methodology shifts cost recovery away from residential and small commercial customers who benefit from the distribution investment to larger industrial customers who may not even utilize the distribution facilities and who would not normally pay for distribution investment in their base rates. Staff believes it is more appropriate to use an allocation methodology which recognizes the actual costs attributable to each functional cost category.

Based on a preliminary analysis, staff does not believe the allocation factors used by FPL result in a major cost shift. Therefore, staff is recommending approval of the tariff as filed for this preliminary surcharge. However, FPL should be put on notice that the allocation

methodology will be at issue in the upcoming hearing and adjustments may be made on a going-forward basis.

In keeping with the traditional treatment of interim rates, the requested factors should become effective for meter readings 30 days after the Commission's vote. This will allow customers to be aware of the surcharge before it is applied to usage on their bill. If the Commission approves FPL's requested factors at its January 4, 2005 Agenda Conference, the factors should become effective for meter readings on or after February 3, 2005.

If the Commission denies staff's recommendation on Issue 3, the tariff should be suspended, pending the outcome of the hearing. The tariff was filed on November 19, 2004. If the tariff is not suspended, it will go into effect by operation of law 60 days after filing. Suspending the tariff allows the Commission eight months to take final action on the proposed tariff without the tariff going into effect by operation of law. Since the final recommendation after hearing is scheduled for Commission vote at the July 5, 2005 Agenda, a vote at that Agenda would be within this eight month statutory time frame.

Issue 5: What is the appropriate security to guarantee the amount collected subject to refund through the storm surcharge?

Recommendation: The appropriate security to guarantee the amount collected subject to refund through the storm surcharge is a corporate undertaking. (Maurey)

Staff Analysis: FPL has requested it be authorized to collect its proposed storm surcharge effective January 1, 2005, or as soon as practicable, subject to refund. For purposes of this analysis, staff assumed FPL would collect approximately $92.6 million between January 5, 2005, and the post-hearing agenda conference currently scheduled for July 5, 2005.

The criteria for use of a corporate undertaking include sufficient liquidity, ownership equity, profitability, and interest coverage to guarantee any potential refund. The 2001, 2002, and 2003 financial statements of FPL were used to determine its financial condition. Based on its analysis, staff believes FPL has the financial capability to support a corporate undertaking in the amount proposed.

Issue 6: Should this docket be closed?

Recommendation: No. This docket should remain open. (C. Keating)

Staff Analysis: This docket should remain open for the Commission to take final action on FPL's Storm Cost Recovery Petition.

ATTACHMENT A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition to implement a self-insurance mechanism for storm damage to transmission and distribution system and to resume and increase annual contribution to storm and property insurance reserve fund by Florida Power and Light Company.	DOCKET NO. 930405-EI ORDER NO. PSC-93-0918-FOF-EI ISSUED: June 17, 1993

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman
THOMAS M. BEARD
SUSAN F. CLARK
JULIA L. JOHNSON
LUIS J. LAUREDO

ORDER AUTHORIZING SELF-INSURANCE AND RE-ESTABLISHING ANNUAL FUNDING OF STORM DAMAGE RESERVE

On April 19, 1993, Florida Power and Light Company (FPL) filed its petition to implement a self-insurance mechanism for storm damage to its transmission and distribution (T&D) system and to resume and increase annual contribution to its storm and property insurance reserve fund. Because the expiration of FPL's current T&D insurance on May 31, 1993, FPL requested consideration of its request on an emergency basis. Pursuant to notice, a hearing on FPL's petition was held on May 17, 1993.

Prior to Hurricane Andrew, FPL had a T&D insurance limit of $350 million per occurrence with a 1992 premium of $3.5 million. The new T&D coverage that has been offered to FPL consists of a $100 million annual aggregate loss limit with a minimum premium of $23 million. In addition, FPL has been exploring other options for T&D coverage such as an industry-wide insurance program through Edison Electric Institute. However, the coverage available to FPL is expected to be only $35 million. Even if FPL opted to take advantage of this coverage, it would appear to be inadequate given the estimated $270 million of T&D damage caused by Hurricane Andrew.

None of the parties disagree with the premise that FPL needs to implement some type of self-insurance program for repairing and restoring its T&D system in the event of future hurricane or other storm damage. While there might be some controversy over the exact form of the self-insurance program, the record demonstrates the

need for self-insurance and the adverse effects that Hurricane Andrew has had on FPL's efforts to obtain reasonably priced T&D insurance at an adequate level of coverage.

We believe the concept of self-insurance for FPL's T&D facilities is a reasonable approach for FPL to follow at this time. Although some level of "traditional" insurance coverage might be currently available, it does not appear to be adequate to meet FPL's needs in either price or amount. In the future, a combination of self-insurance and traditional insurance may become a viable alternative that FPL should pursue.

Accordingly, we find that FPL shall implement a self-insurance approach for the costs of repairing and restoring its transmission and distribution system in the event of hurricane or storm damage.

In its petition, FPL also asks for Commission approval to establish $300 million of lines of credit dedicated to the payment of storm related T&D damages. FPL believes that in the event of a severe storm, $300 million of lines of credit will be necessary to provide assured and immediate cash flow above the liquidity in the Storm & Property Reserve to make the repairs required to the T&D system. FPL proposes to offset the carrying costs of these lines of credit against the annual contribution to the storm damage reserve.

Because FPL's liquidity, storm damage reserve and T&D inventory will continuously vary through time, it is difficult to establish a specific amount of lines of credit for storm damage needed by FPL. The needs will vary through time depending on FPL's circumstances.

FPL will have access to lines of credit, T&D inventory, temporary cash investments, and the cash portion of the Storm & Property Damage Reserve as sources of liquidity in the event of a storm, all of which will vary through time. Therefore, we do not decide that $300 million or any other amount is the appropriate line of credit amount. The company shall have the discretion to increase or decrease the amount of any line of credit established for storm damage liquidity. Because FPL's circumstances continuously change, we find that the amount of the lines of credit shall not be the subject of pre-approval by the Commission.

We find that FPL shall resume and increase its contribution to the Storm and Property Insurance Reserve Fund by $7.1 million, net-of-tax, effective June 1, 1993. The amounts contributed to the fund shall not be reduced by the commitment fees for any dedicated lines of credit.

Rule 25-6.0143, F.A.C., "Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4", states, in part, the following:

> (4)(a) The provision level and annual accrual rate ... shall be evaluated at the time of a rate proceeding and adjusted as necessary. However, a utility may petition the Commission for a change in the provision level and accrual outside a rate proceeding....
>
> (c) No utility shall fund any account ... unless the Commission approves such funding....

FPL requested and the Commission granted that FPL stop its accrual to its fund in 1991. The earnings from the fund were to continue accruing to the fund. FPL has requested that it again begin contributing amounts to its fund.

The amount of the contribution requested is $7.1 million, net-of-tax, less any commitment fees for dedicated lines of credit. The company requested that the contributions begin on June 1, 1993.

The amount of $7.1 million represents $3 million embedded in rates for the storm fund and an additional $4.1 million for the traditional T&D insurance that is embedded in rates. The $7.1 is not based upon a study that indicates the appropriate amount that should be accruing to the fund, but represents the amounts in base rates for the associated items. FPL witness Hoffman testified that the appropriate amount should be determined in a rate case in accordance with the rule.

The evidence suggests that the annual expected amount of storm damage expenses is approximately $19.5 million. However, witness Hoffman states that amount is not appropriate for the storm damage reserve since it does not take into account the amount of the reserve in place and the storm damage mechanism proposed by the Company. He further testified that a Monte Carlo simulation analysis, a probability model, needs to be performed.

We do not believe that $7.1 million, net-of-tax, is the appropriate amount to go to the fund, but the record in this expedited case does not support an amount that we believe is appropriate. We find that FPL shall submit a study indicating the appropriate amount that should be contributed to the fund annually. The study shall be filed three months from the date of the vote in this docket. Until the appropriate amount is determined, FPL should fund at the $7.1 million, net-of-tax, level beginning June 1, 1993. This is with the understanding that the amount beginning June 1, 1993 may be trued-up depending upon our findings based upon the submitted study.

From the record in this docket it is unclear what storm related expenses FPL intends draw from the reserve fund. For example it is unclear whether normal salaries would be charged to the fund if employees worked on storm related tasks. In addition, employees repairing storm damage would be required to spend time away from their everyday work tasks which would result in "catch up" expense. It is unclear from the record whether FPL intends to draw "catch up" expense from the reserve fund. The record reflects that such "catch up" expense is not recoverable under FPL's current insurance policy. In addition it is unclear whether the cost of damaged assets would be accounted for at replacement cost or net book value. For example, if there were $100 million of net book value of assets that were destroyed and it took $200 million to replace those, what accounting entries would be made?

FPL shall address these questions in the company study discussed above. The company shall also provide information concerning the treatment of all Hurricane Andrew related transmission and distribution damages under its existing policy. The company study shall include a listing of the type of storm related expenses FPL intends to draw from the reserve fund, and what type of accounting entries would be made for each item.

FPL also requested that the $7.1 million be reduced by the commitment fees associated lines of credit. FPL witness Hoffman testified that the costs for other lines of credit are run through base rates. We believe there is no reason to treat the cost of these lines of credit any differently. There are costs associated with FPL's access to the markets. Therefore we find that the commitment fees shall not be offset against the $7.1 million contributed to the storm damage reserve.

Accordingly, we find that FPL shall submit a study detailing what it believes the appropriate amount that should be annually accrued to the reserve. The company shall include in the study the costs it intends to charge to the reserve. The study shall be filed with the Commission no later than three months after the vote in this docket.

FPL seeks approval for a Storm Loss Recovery Mechanism that would guarantee 100% recovery of expense from ratepayers, over and above the base rates in effect at the time of implementation. This would effectively transfer all risk associated with storm damage directly to ratepayers, and would completely insulate the utility from risk. We decline to approve such a mechanism at this time.

FPL's cost recovery proposal goes beyond the substitution of self-insurance for its existing policy. The utility wants a guarantee that storm losses will have no effect on its earnings.

We believe it would be inappropriate to transfer all risk of storm loss directly to ratepayers. The Commission has never required ratepayers to indemnify utilities from storm damage. Even with traditional insurance, utilities are not free from this risk. This type of damage is a normal business risk in Florida.

FPL's proposal does not take into account the utility's earnings or achieved rate of return. If the company was already earning an adequate return on equity, its storm-related expenses could be amortized in whole or in part over five years. If the magnitude of the loss is great, the utility could draw on its line of credit and then petition the Commission to act quickly to allow expense recovery from ratepayers.

Storm repair expense is not the type of expenditure that the Commission has traditionally earmarked for recovery through an ongoing cost recovery clause. Conservation, oil backout, fuel and environmental costs are currently recoverable under Commission created cost recovery clauses. These expenses are different from storm repair expense in that they are ongoing rather than sporadic expenditures.

If FPL experiences significant storm-related damage, it can petition the Commission for appropriate regulatory action. In the past, the Commission has acted appropriately to allow recovery of prudent expenses and has allowed amortization of storm damage expense. Extraordinary events such as hurricanes have not caused utilities to earn less than a fair rate of return, and FPL has shown no reason to believe that the Commission will require a utility to book exorbitant storm losses without recourse.

Therefore, we decline to authorize the implementation of a Storm Loss Recovery Mechanism, in addition to the base rates in effect at the time, for the recovery, over a period of five years, of all prudently incurred costs in excess of the reserve to repair or restore T&D facilities damaged or destroyed by a storm.

If a hurricane strikes, FPL can petition at that time for appropriate regulatory action. In the past, we have acted appropriately to allow recovery of prudent expenses and allowed storm damage amortization. We do not believe that regulated utilities should be required to earn less than a fair rate of return because of extraordinary events such as hurricanes or storms.

If FPL suffers storm damage and finds it necessary to draw on its lines of credit, it will be able to request that some or all of the storm related costs be passed on to the customers. In such an emergency situation, this Commission will act quickly to protect the company and its customers. FPL shall be allowed to defer the

storm damage loss until the Commission acts on any petition filed by the company.

The Commission will expeditiously review any petition for deferral, amortization or recovery of prudently incurred costs in excess of the reserve. Our vote today does not foreclose or prevent further consideration at a future date of some type of a cost recovery mechanism, either identical or similar to what has been proposed in this petition. The Commission could implement a cost recovery mechanism, or defer the costs, or begin amortization, or such other treatment as is appropriate, depending on what the circumstances are at that time.

Given our decision not to authorize implementation of a Storm Loss Recovery Mechanism, we find that the issue of whether FPL should authorized to increase customer rates if its earned return on equity is within the allowed range is moot.

Given our decision not to authorize implementation of a Storm Loss Recovery Mechanism, we find that the issue of when the five year amortization period should begin is moot.

Given our decision not to authorize implementation of a Storm Loss Recovery Mechanism, we find that the issue of how the total cost eligible for recovery should be allocated to the various rate classes is moot.

We find that it is not necessary to approve the reasonableness of FPL's estimate of future hurricane activity and related damages to reach our decision on FPL's petition.

We find that FPL shall not be required to increase its Storm and Property Insurance Reserve to recognize the annual accruals which have been included in customer rates but were suspended at the company's request beginning January 1, 1991, by Order No. 24728, entered in Docket No. 910257-EI on July 1, 1991.

Order No. 24728 issued July 1, 1991, permitted FPL to discontinue its annual charge to the Reserve Fund, effective January 1, 1991. However, the Commission required the fund's earnings to be reinvested in the fund. Office of Public Counsel witness Larkin argues that the Company should be required to increase the reserve fund level "to reflect the amounts that would have accrued to the storm and property insurance reserve fund from January 1, 1991 though the present, since ratepayers have continued to provide the amounts through rates." He states that customer rates were not decreased in any way to reflect the change and the ratepayers still continue to pay the $3 million annual amount through rates. Exhibit 9 indicates that the fund would be increased by $7,912,650 and the reserve would be increased by

$8,312,450 to restate the fund and reserve as though the charges had not been discontinued.

While it is true that customer rates were not reduced, FPL received Commission approval through an order to discontinue charging the reserve. In the order, the Commission stated that the "Reserve Fund is sufficient at its present level to cover possible losses." The decision to discontinue the accrual was based on the best information available. Since that time, it is obvious that facts and circumstances have changed. FPL shall not be required to retroactively fund the reserve.

We find that FPL shall file, at least annually, beginning with the year ended December 31, 1993 a report reflecting the company's efforts in obtaining reasonably priced T&D insurance coverage or other alternatives to replace the self-insurance approach approved in this docket.

FPL's witness Hoffman recognized that market conditions could quickly change and that reasonably priced insurance might become available: "our not taking this insurance may signal to the market that it's just not reasonable. And we may see some price movement in the not too distant future. We don't expect it during this hurricane season, but it might happen fairly quickly". Thus, the company should, on an ongoing basis, continue its efforts to obtain reasonably priced insurance from the traditional market.

Mr. Hoffman indicated that FPL is evaluating the possibility of participating in the industry wide program which may become available. The evidence suggests, that if there is any coverage available, it would begin in August of this year. It appears that the maximum amount that would be available to FPL would be about $35 million.

However, exhibit 5 shows that in the event of Category III or less storm landing only in FPL's service territory, the current reserve and $35 million in insurance would cover most of the expected damage. If this coverage proves cost-effective and available, it would diminish the risk to FPL's ratepayers. Thus, the company should continue to evaluate this option.

It is axiomatic that insurance is not an exact science. To be successful, an insurance company must, over the long term, collect premiums and earn investment income that exceed the claims paid and operating expenses incurred. The ability to do that depends on an accurate assessment of the risks assumed. FPL's analysis suggest that in the event of a Category V storm in its service area the "estimated damage" to the T&D system is approximately 422 million dollars. If this estimate is wrong or if circumstances change, the current combination of reserves and

available liquidity might not be adequate. Further, the cost-effectiveness of alternatives would be evaluated against an incorrect standard. Thus, the company should continue to evaluate and update its best estimate of the likelihood and degree of damage to its T&D system from this peril.

Mr. Hoffman recognized that the other Florida investor-owned electric utilities would face similar difficulties in obtaining reasonably priced T&D insurance when their policies expire later this year. He conceded that there could be some benefit to a cooperative risk sharing plan among the investor-owned utilities. Approaching the market for traditional insurance as a group could make an underwriter more receptive to assuming the risk. Assuming that traditional insurance continues to be unavailable or unreasonably priced, there could be considerable benefits derived from a pooled reserve and shared lines of credit approach. It could prove cost-effective over time, for all the ratepayers to fund one reserve and/or combine to obtain excess levels of coverage over the amount of the reserve. We believe this option must be fully evaluated.

Accordingly, the company shall, on an ongoing basis, evaluate alternative plans to provide protection against the risks associated with storm damage to its transmission and distribution system. The company shall file with the Commission, an annual report, beginning on January 1, 1994 addressing: 1) its efforts to obtain traditional insurance for this risk; 2) the status of the proposed industry-wide program and any decision made to participate or not to participate in that program; 3) an update of its evaluation of the company's exposure and the adequacy of the reserve; and 4) its assessment of the feasibility and cost-effectiveness of a risk sharing plan among the investor-owned electric utilities in Florida.

In consideration of the foregoing, it is

ORDERED by the Florida Public Service Commission that FPL shall be permitted to implement a self insurance approach for the costs of repairing and restoring its transmission and distribution system in the event of hurricane, storm damage or other natural disaster. It is further

ORDERED that this Commission will neither approve nor disapprove $300 million as an appropriate line of credit amount dedicated to providing liquidity for storm-related transmission and distribution system repairs. It is further

ORDERED that FPL shall resume and increase its contribution to the Storm and Property Insurance Reserve Fund by $7.1 million, net-of-tax, effective June 1, 1993. The amounts contributed to the fund shall not be reduced by the commitment fees for any dedicated lines of credit. It is further

ORDERED that FPL shall submit a study indicating the appropriate amount that should be contributed to the Storm and Property Insurance Reserve Fund annually. The company shall include in the study the types of costs it intends to charge to the reserve and information concerning the treatment of all Hurricane Andrew related transmission and distribution damages under its existing policy. The study shall be filed three months from the date of the vote in this docket. It is further

ORDERED that we decline to authorize the implementation of a Storm Loss Recovery Mechanism, in addition to the base rates in effect at the time, for the recovery, over a period of five years, of all prudently incurred costs in excess of the reserve to repair or restore T&D facilities damaged or destroyed by a storm. It is further

ORDERED that FPL shall not be required to increase its Storm and Property Insurance Reserve to recognize the annual accruals which have been included in customer rates but were suspended at the company's request beginning January 1, 1991, by Order No. 24728, entered in Docket No. 910257-EI on July 1, 1991. It is further

ORDERED that FPL shall file, at least annually, beginning January 1, 1994, a report reflecting the company's efforts in obtaining reasonably priced T&D insurance coverage or other alternatives to replace the self-insurance approach approved in this docket.

By ORDER of the Florida Public Service Commission this 17th day of June, 1993.

STEVE TRIBBLE, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of the retail rates of Florida Power & Light Company.	DOCKET NO. 001148-EI
In re: Fuel and purchased power cost recovery clause with generating performance incentive factor.	DOCKET NO. 020001-EI ORDER NO. PSC-02-0501-AS-EI ISSUED: April 11, 2002

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
MICHAEL A. PALECKI
RUDOLPH "RUDY" BRADLEY

ORDER APPROVING SETTLEMENT, AUTHORIZING MIDCOURSE CORRECTION, AND REQUIRING RATE REDUCTIONS

BY THE COMMISSION:

I. CASE BACKGROUND

Docket No. 001148-EI was opened on August 15, 2000, to review Florida Power & Light Company's (FPL) proposed merger with Entergy Corporation (Entergy), the formation of a transco, and their effects on FPL's rates and earnings. On April 2, 2001, FPL Group, Inc. announced that the proposed merger with Entergy had been terminated. By Order No. PSC-01-1346-PCO-EI, issued June 19, 2001, in Docket No. 001148-EI, FPL was directed to file Minimum Filing Requirements (MFRs) to provide the Commission and all other interested parties the data necessary to begin an evaluation of the level of its earnings. FPL filed its initial set of MFRs on September 17, 2001, with additional filings on October 1, 2001, October 15, 2001, and November 9, 2001. FPL filed testimony on January 18 and 28, 2002. Hearings were scheduled for April 10-12, and 15-16, 2002.

On March 14, 2002, the following documents were filed:

- Joint Motion For Approval Of Stipulation And Settlement
- Stipulation And Settlement
- Florida Power & Light Company's Agreed Motion To Suspend Schedule For Hearings And Prehearing Procedures And To Suspend Discovery (Agreed Motion)
- Petition Of Florida Power & Light Company For Adjustment to its Fuel Adjustment Factors

FPL's Agreed Motion was granted by Order No. PSC-02-0348-PCO-EI, issued March 14, 2002. By this Order, we approve the Stipulation and Settlement, and the Petition for Adjustment to FPL's Fuel Adjustment Factors. Jurisdiction over these matters is vested in the Commission by various provisions of Chapter 366, Florida Statutes, including Sections 336.04, 366.05, and 366.06, Florida Statutes.

II. STIPULATION AND SETTLEMENT

The Stipulation and Settlement (Stipulation) which is included in this Order as ATTACHMENT 1, and is incorporated herein by reference, is being proffered as a full and complete resolution of all matters pending in Docket No. 001148-EI. The Stipulation was signed by all of the parties except for the South Florida Hospital and Healthcare Association. The major elements contained in the Stipulation are as follows:

- $250 million permanent base rate reduction effective April 15, 2002 (7.03% base rate reduction) (Paragraph 2)
- Continuation of a revenue cap and a revenue sharing plan for 2002 through 2005 (Paragraph 7)
- Discretionary ability to reduce depreciation expense by up to $125 million annually (Paragraph 10)

- Withdrawal of FPL's request to increase the annual Storm Damage Reserve accrual (Paragraph 13)

As part of the Stipulation, FPL has requested a $200 million mid-course correction to reduce its fuel cost recovery factors for the remainder of 2002, effective April 15, 2002. That petition is addressed in Section III of this Order.

The Stipulation recites 16 items of agreement among the signatories. Most of the provisions are self-explanatory, but several of the items merit comment or clarification. These are as follows:

PARAGRAPH 2: The $250 million annual base rate reduction is an additional reduction over and above the previously implemented $350 million annual rate reduction authorized in Order No. PSC-99-0519-AS-EI, issued March 17, 1999, in Docket No. 990067-EI.

The proposed Stipulation provides for a reduction in base rates of 7.03% for all rate classes except outdoor lighting and street lighting. The Stipulation also provides for a similar reduction in all service charges. It is appropriate to exclude the lighting classes because these classes are already significantly below parity. This allocation methodology differs from FPL's previous rate stipulations that allocated the reduction on a kwh basis. The percentage reduction in base rates is a better method of allocating a decrease because all classes receive the same percentage reduction in base rates. Under an energy allocation, a larger percentage of the total reduction goes to larger commercial and industrial customers relative to residential and small commercial customers.

In Order No. PSC-01-1346-PCO-EI, we stated that one of the reasons for requiring MFRs was to examine the rate relationships among classes. FPL's rate structure has not been formally reviewed since its last rate case in 1983. Since then, new classes have been added and customers have shifted among rate classes seeking more advantageous rates. Based on FPL's cost of service study, there are disparities among the rates of return by class. In a rate case, one of the goals of rate design is to set rates that reflect the costs to serve that class or, stated differently, to

set the rate of return for each class equal to the system rate of return. We recognize, however, that a Stipulation is a negotiated document, with all participants making some concessions. While the proposed across-the-board percentage reduction does not move FPL's rate structure towards parity, it does not worsen it. Accordingly, we find that the across-the-board reduction is reasonable.

The Stipulation will result in a decrease of $5.41 in the total monthly bill of a residential customer who uses 1,000 kilowatt hours, as shown on ATTACHMENT 2, Page 1 of 2. This decrease reflects both the base rate reduction and the fuel adjustment clause mid-course correction approved in Section III of this Order. The rate reductions will become effective for meters read on and after April 15, 2002.

PARAGRAPH 3: Per the terms of this provision, "FPL will no longer have an authorized Return on Equity (ROE) range for the purpose of addressing earnings levels." However, FPL will still have a currently authorized ROE range of 10.00% to 12.00%, with an 11.00% midpoint, for all other purposes, such as cost recovery clauses and Allowance for Funds Used During Construction.

PARAGRAPH 7: Although it is not explicitly stated in the Stipulation, 100% of the retail base rate revenues exceeding the retail base rate revenue cap will be refunded to retail customers on an annual basis.

PARAGRAPH 10: This provision is clarified to indicate that the up to $125 million annual credit to depreciation expense is to be on a calendar year basis.

PARAGRAPH 13: FPL is withdrawing its request to increase its Storm Damage Reserve accrual by $30 million annually.

PARAGRAPH 15: This provision states that all matters in Docket No. 001148-EI are resolved by the Stipulation and Settlement. While the ratemaking aspects of the docket are resolved, there are still issues that may need to be addressed in other forums, such as those related to GridFlorida and to FPL Energy Services.

We have reviewed the terms of the Stipulation, and it appears to be a reasonable resolution of the issues regarding FPL's level of earnings and base rates. The proposed $250 million base rate reduction affords FPL's ratepayers significant and immediate relief. The Stipulation also extends the revenue cap and revenue sharing plan through 2005. Since the inception of the existing revenue sharing plan in 1999, FPL has refunded $128 million to date and expects to refund an additional $84 million for the year ended April 14, 2002. We find that the Stipulation and Settlement is in the best interests of FPL's ratepayers, the parties, and FPL, and is therefore approved.

III. FPL'S PETITION FOR AN ADJUSTMENT TO ITS FUEL COST RECOVERY FACTORS

Consistent with the Stipulation, FPL filed a petition in Docket No. 020001-EI seeking to reduce its levelized fuel cost recovery factor to 2.630 cents per kwh, effective April 15, 2002. This will have the effect of reducing the amount collected through the fuel adjustment clause by $200 million during the last eight and one half months of 2002.

Absent this $200 million reduction, FPL would experience an end-of-period (December 2002) net over-recovery amount of approximately $211.2 million based on current projections. This amount represents 8.6% of FPL's total fuel and net power transactions costs as forecasted in its projection testimony in Docket No. 010001-EI. Since FPL filed its projection testimony in Docket No. 010001-EI, its forecasted 2002 fuel cost of system net generation has decreased by $193.4 million. This reduction appears to be related primarily to a 12.2% drop in projected natural gas costs and secondarily to a 3.3% drop in retail energy sales.

In the interest of matching fuel revenues with fuel costs, FPL's proposal to refund part of its anticipated over-recovery balance to its ratepayers sooner rather than later is appropriate. Therefore, FPL's Petition for Adjustment to its Fuel Adjustment Factors is granted. The fuel cost recovery factors set forth in Attachement 2, page 2 of 2, which is incorporated herein by reference, shall become effective April 15, 2002. However, we have

not yet analyzed the prudence of FPL's actual or projected 2002 fuel costs. The prudence of FPL's 2002 fuel costs will be addressed at the evidentiary hearing scheduled in Docket No. 020001-EI, commencing November 20, 2002.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Settlement and Stipulation filed on March 14, 2002, which is included in this Order as ATTACHMENT 1 and is incorporated by reference herein, is approved. It is further

ORDERED that FPL's Petition for Adjustment to its Fuel Adjustment Factors is granted. It is further

ORDERED that Docket No. 001148-EI shall be closed. It is further

ORDERED that Docket No. 020001-EI shall remain open.

By ORDER of the Florida Public Service Commission this 11th day of April, 2002.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: _____
Kay Flynn, Chief
Bureau of Records and Hearing
Services

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW
APPLICABLE TO SECTION II OF THIS ORDER

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW
APPLICABLE TO SECTION III OF THIS ORDER

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by Section III of this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. **A motion** for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

ATTACHMENT 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Review of the Retail Rates of Florida Power & Light Company	)	DOCKET NO. 001148-EI

STIPULATION AND SETTLEMENT

WHEREAS, the Florida Public Service Commission (FPSC) has initiated a review of retail rates for Florida Power & Light Company (FPL);

WHEREAS, the Office of Public Counsel (OPC), The Florida Industrial Power Users Group (FIPUG), Publix Super Markets, Inc. (Publix), Thomas P. and Genevieve Twomey, Dynegy Midstream Services LP, Florida Retail Federation and Lee County have intervened, and have signed this Stipulation and Settlement;

WHEREAS, FPL has provided the minimum filing requirements (MFRs) as required by the FPSC and such MFRs have been thoroughly reviewed by the FPSC Staff and the Parties to this proceeding;

WHEREAS, FPL has filed comprehensive testimony in support of and detailing its MFRs;

WHEREAS, the parties in this proceeding have conducted extensive discovery on the MFRs and FPL's testimony;

WHEREAS, the Parties to this Stipulation and Settlement have undertaken to resolve the issues raised in this review so as to effect a prompt reduction in base rates charged to customers, to maintain a degree of stability to FPL's base rates and charges, and to provide incentives to FPL to continue to promote efficiency through the term of this Stipulation and Settlement;

WHEREAS, FPL is currently operating under a stipulation and settlement agreement (Current Agreement) agreed to by OPC and other parties, and approved by the FPSC by Order PSC 99-0519-AS-EI;

WHEREAS, the Current Agreement provided for a $350 million permanent annual rate reduction for retail customers commencing April 15, 1999 and a revenue sharing plan under which $128 million in refunds have been provided to retail customers to date, with $84 million in additional refunds projected for the twelve-month period ending April 14, 2002; and

WHEREAS, an extension of revenue sharing through 2005, and an additional permanent rate reduction will further be beneficial to retail customers;

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the Parties hereby stipulate and agree:

1. Upon approval and final order of the FPSC, this Stipulation and Settlement will become effective on April 15, 2002 (the "Implementation Date"), and continue through December 31, 2005.

2. FPL will reduce its base rates by an additional permanent annual amount of $250 million. The base rate reduction will be reflected on FPL's customer bills by reducing all base charges for each rate schedule, excluding SL-1 and OL-1, by 7.03%. FPL will begin applying the lower base rate charges required by this Stipulation and Settlement to meter readings made on and after the Implementation Date.

3. Effective on the Implementation Date, FPL will no longer have an authorized Return on Equity (ROE) range for the purpose of addressing earnings levels, and the revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels.

4. For surveillance reporting requirements, FPL's achieved ROE will be calculated based upon an adjusted equity ratio as provided for in the Current Agreement.

5. No party to this Stipulation and Settlement will request, support, or seek to impose a change in the application of any provision hereof. OPC, FIPUG, Publix, Thomas P. and Genevieve Twomey, Dynegy Midstream Services LP, Florida Retail Federation and

Lee County will neither seek nor support any additional reduction in FPL's base rates and charges, including interim rate decreases, to take effect prior to the expiration of this Stipulation and Settlement unless such reduction is initiated by FPL. FPL will not petition for an increase in its base rates and charges, including interim rate increases, to take effect before the end of this Stipulation and Settlement, except as provided for in Section 8.

6. During the term of this Stipulation and Settlement, revenues which are above the levels stated herein will be shared between FPL and its retail electric utility customers -- it being expressly understood and agreed that the mechanism for earnings sharing herein established is not intended to be a vehicle for "rate case" type inquiry concerning expenses, investment, and financial results of operations.

7. Commencing on the Implementation Date and for the remainder of 2002 and for calendar years 2003, 2004 and 2005, FPL will be under a Revenue Sharing Incentive Plan as set forth below. For purposes of this Revenue Sharing Incentive Plan, the following retail base rate revenue threshold amounts are established:

I. Revenue Cap - Retail base rate revenues above the retail base rate revenue cap will be refunded to retail customers on an annual basis. The retail base rate revenue cap

for 2002 will be $3,740 million. For 2002 only, the refund to customers will be limited to 71.5% (April 15 through December 31) of the retail base rate revenues exceeding the cap. The retail base rate revenue caps for 2003, 2004 and 2005 will be $3,840 million, $3,940 million and $4,040 million, respectively. Section 9 explains how refunds will be paid to customers.

II. Sharing Threshold - Retail base rate revenues between the sharing threshold amount and the retail base rate revenue cap will be divided into two shares on a 1/3, 2/3 basis. FPL's shareholders shall receive the 1/3 share. The 2/3 share will be refunded to retail customers. The sharing threshold for 2002 will be $3,580 million in retail base rate revenues. For 2002 only, the refund to the customers will be limited to 71.5% (April 15 through December 31) of the 2/3 customer share. The retail base rate revenue sharing threshold amounts for calendar years 2003, 2004 and 2005 will be $3,680 million, $3,780 million and $3,880 million, respectively. Section 9 explains how refunds will be paid to customers.

8. If FPL's retail base rate earnings fall below a 10% ROE as reported on an FPSC adjusted or pro-forma basis on an FPL monthly earnings surveillance report during the term of this Stipulation and Settlement, FPL may petition the FPSC to amend its base rates

notwithstanding the provisions of Section 5. Parties to this Stipulation and Settlement are not precluded from participating in such a proceeding. This Stipulation and Settlement shall terminate upon the effective date of any Final Order issued in such proceeding that changes FPL's base rates.

9. All refunds will be paid with interest at the 30-day commercial paper rate as specified in Rule 25-6.109, Florida Administrative Code, to retail customers of record during the last three months of each applicable refund period based on their proportionate share of base rate revenues for the refund period. For purposes of calculating interest only, it will be assumed that revenues to be refunded were collected evenly throughout the preceding refund period at the rate of one-twelfth per month. All refunds with interest will be in the form of a credit on the customers' bills beginning with the first day of the first billing cycle of the second month after the end of the applicable refund period. Refunds to former customers will be completed as expeditiously as reasonably possible.

10. In Order No. PSC 99-0519-AS-EI, FPL was authorized to record an amortization amount of up to $100 million per year for each of the three years of the settlement agreement which was to be applied to reduce nuclear and/or fossil production plant in service. Under this

provision, FPL recorded $170,250,000. Starting with the effective date of this Stipulation and Settlement, FPL may, at its option, amortize up to $125,000,000 annually as a credit to depreciation expense and a debit to the bottom line depreciation reserve over the term of this Stipulation and Settlement. The amounts so recorded will first go to offset the $170,250,000 bottom line amortization amount that has previously been recorded, with any additional amounts recorded to a bottom line negative depreciation reserve during the term of this Stipulation and Settlement. Any such reserve amount will be applied first to reduce any reserve excesses by account, as determined in FPL's depreciation studies filed after the term of this Stipulation and Settlement, and thereafter will result in reserve deficiencies. Any such reserve deficiencies will be allocated to individual reserve balances based on the ratio of the net book value of each plant account to total net book value of all plant. The amounts allocated to the reserves will be included in the remaining life depreciation rate and recovered over the remaining lives of the various assets. Additionally, depreciation rates as addressed in Order Nos. PSC 99-0073-FOF-EI, PSC 00-2434-PAA-EI and PSC 01-1337-PAA-EI will not be changed for the term of this Stipulation and Settlement.

11. Employee dental expenses are considered to be a prudently incurred expense and will be treated as such, including for surveillance reporting, as of the Implementation Date.

12. Additional amortization expense which is being recorded as an offset to the ITC interest synchronization adjustment shall no longer be recorded after the Implementation Date of this Stipulation and Settlement.

13. FPL will withdraw its request for an increase in the annual accrual to the Company's Storm Damage Reserve. In the event that there are insufficient funds in the Storm Damage Reserve and through insurance, FPL may petition the FPSC for recovery of prudently incurred costs not recovered from those sources. The fact that insufficient funds have been accumulated in the Storm Damage Reserve to cover costs associated with a storm event or events shall not be evidence of imprudence or the basis of a disallowance. Parties to this Stipulation and Settlement are not precluded from participating in such a proceeding.

14. On April 15, 2002, FPL shall effect a mid-course correction of its Fuel Cost Recovery Clause to reduce the fuel clause factor based on projected over-recoveries, in the amount of $200 million, for the remainder of calendar year 2002. The fuel adjustment clause shall continue to operate as normal, including but not limited to,

any additional mid-course adjustments that may become necessary and the calculation of true-ups to actual fuel clause expenses. FPL will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates.

15. This Stipulation and Settlement is contingent on approval in its entirety by the FPSC. This Stipulation and Settlement will resolve all matters in this Docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (2001). This Docket will be closed effective on the date the FPSC Order approving this Stipulation and Settlement is final.

16. This Stipulation and Settlement dated as of March 12, 2002 may be executed in counterpart originals, and a facsimile of an original signature shall be deemed an original.

In Witness Whereof, the Parties evidence their acceptance and agreement with the provisions of this Stipulation and Settlement by their signature.

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ATTACHMENT 2
PAGE 1 OF 2

RESIDENTIAL FUEL COST RECOVERY FACTORS FOR THE PERIOD: **April 15, 2002 - December 2002**

NOTE: This schedule reflects a midcourse correction to Florida Power & Light Company's fuel factors effective April 15, 2002.

		Florida Power & Light Co.	Florida Power Corporation	Tampa Electric Company	Gulf Power Company	Florida Public Utilities Co. (2) Marianna	Florida Public Utilities Co. (2) Fernandina Beach
Present (cents per kwh):	January 2002 - April 14, 2002	2.866	2.692	3.313	2.239	4.060	3.983
Proposed (cents per kwh):	April 15, 2002 - December 2002	**2.635**	**2.692**	**3.313**	**2.239**	**4.060**	**3.983**
	Increase/Decrease:	-0.231	0.000	0.000	0.000	-0.000	0.000

TOTAL MONTHLY BILL - RESIDENTIAL SERVICE - 1,000 KILOWATT HOURS

PRESENT **January 2002 - April 14, 2002**	Florida Power & Light Co.	Florida Power Corporation	Tampa Electric Company	Gulf Power Company	Florida Public Utilities Co. (2) Marianna	Florida Public Utilities Co. (2) Fernandina Beach
Base Rate Charges	43.26	49.05	51.92	42.20	20.43	19.20
Fuel and Purchased Power Cost Recovery Clause	28.66	26.92	33.13	22.39	40.60	39.83
Energy Conservation Cost Recovery Clause	1.87	2.07	1.16	0.64	0.83	0.58
Environmental Cost Recovery Clause	0.00	N/A	1.59	1.02	N/A	N/A
Capacity Cost Recovery Clause	7.01	11.32	3.79	0.27	N/A	N/A
Gross Receipts Tax (1)	0.83	2.29	2.35	0.68	1.59	0.61
Total	**$81.63**	**$91.65**	**$93.94**	**$67.20**	**$63.45**	**$60.22**

PROPOSED **April 15, 2002 - December 2002**	Florida Power & Light Co. (3)	Florida Power Corporation	Tampa Electric Company	Gulf Power Company	Florida Public Utilities Co. (2) Marianna	Florida Public Utilities Co. (2) Fernandina Beach
Base Rate Charges	40.22	49.05	51.92	42.20	20.43	19.20
Fuel and Purchased Power Cost Recovery Clause	26.35	26.92	33.13	22.39	40.60	39.83
Energy Conservation Cost Recovery Clause	1.87	2.07	1.16	0.64	0.83	0.58
Environmental Cost Recovery Clause	0.00	N/A	1.59	1.02	N/A	N/A
Capacity Cost Recovery Clause	7.01	11.32	3.79	0.27	N/A	N/A
Gross Receipts Tax (1)	0.77	2.29	2.35	0.68	1.59	0.61
Total	**$76.22**	**$91.65**	**$93.94**	**$67.20**	**$63.45**	**$60.22**

PROPOSED INCREASE / (DECREASE)	Florida Power & Light Co.	Florida Power Corporation	Tampa Electric Company	Gulf Power Company	Florida Public Utilities Co. (2) Marianna	Florida Public Utilities Co. (2) Fernandina Beach
Base Rate Charges	-3.04	0.00	0.00	0.00	0.00	0.00
Fuel and Purchased Power Cost Recovery Clause	-2.31	0.00	0.00	0.00	0.00	0.00
Energy Conservation Cost Recovery Clause	0.00	0.00	0.00	0.00	0.00	0.00
Environmental Cost Recovery Clause	0.00	0.00	0.00	0.00	0.00	0.00
Capacity Cost Recovery Clause	0.00	0.00	0.00	0.00	0.00	0.00
Gross Receipts Tax (1)	-0.06	0.00	0.00	0.00	0.00	0.00
Total	($5.41)	$0.00	$0.00	$0.00	$0.00	$0.00

(1) Additional gross receipts tax is 1% for Gulf, FPL and FPUC-Fernandina Beach. FPC, TECO and FPUC-Marianna have removed all GRT from their rates, and thus entire 2.5% is shown separately. (2) Fuel costs include purchased power demand costs of 1.726 for Marianna and 1.888 cents/KWH for Fernandina allocated to the residential class.

(3) Proposed FPL base rate charges reflect reduction resulting from proposed stipulation and settlement in Docket No. 001148-EI.

ATTACHMENT 2

FUEL ADJUSTMENT FACTORS IN CENTS PER KWH BASED ON LINE LOSSES BY RATE GROUP
April 15, 2002 - December 2002

				TIME OF USE		LINE LOSS	AD	TIME OF USE	
			Standard	On/Peak	Off/Pea	MULTIPLIER	Standard	On/Peak	Off/Peak
			2.630	2.915	2.502	1.00210	2.635	2.921	2.507
			2.568	NA	NA	1.00210	2.573	NA	NA
			2.630	2.915	2.502	1.00202	2.635	2.921	2.507
			2.630	2.915	2.502	1.00078	2.632	2.917	2.504
	D	GSLD-2,GSLDT-2, CS-2, CST-2, OS-2, MET	2.630	2.915	2.502	0.99429	2.614	2.898	2.487
	E	GSLD-3,GSLDT-3,CS-3,CST-3,CILC-1(T),ISST-1(T)	2.630	2.915	2.502	0.95233	2.504	2.776	2.382
	F	CILC-1(D),ISST-1(D)	NA	2.915	2.502	0.99331	NA	2.895	2.485
FPC	1	Distribution Secondary Delivery	2.692	3.273	2.442	1.00000	2.692	3.273	2.442
	2	Distribution Primary Delivery	2.692	3.273	2.442	0.99000	2.665	3.241	2.417
	3	Transmission Delivery	2.692	3.273	2.442	0.98000	2.638	3.208	2.393
	4	Lighting Service	2.597	NA	NA	1.00000	2.597	NA	NA
TECO	A	RS, RST, GS, GST, TS	3.301	4.518	2.783	1.00350	3.313	4.535	2.793
	A-1	SL-2,OL-1,3	3.301	NA	NA	NA	3.054	NA	NA
	B	GSD, GSDT, GSLD, GSLDT, SBF, SBFT	3.301	4.518	2.783	1.00090	3.304	4.523	2.786
	C	IS-1 & 3, IST1 &3, SBI-1 & 3, SBIT1 & 3	3.301	4.518	2.783	0.97920	3.232	4.425	2.725
GULF	A	RS,GS,GSD,OS-III,OS-IV, SBS (100 to 499 kW)	2.212	2.680	2.013	1.01228	2.239	2.713	2.038
	B	LP, SBS (Contract Demand of 500 to 7499 kW)	2.212	2.680	2.013	0.98106	2.170	2.629	1.975
	C	PX, PXT, RTP,SBS (Contract Demand above 7499 kW)	2.212	2.680	2.013	0.96230	2.129	2.579	1.938
	D	OS-1,OS-2	2.182	NA	NA	1.01228	2.208	NA	NA
FPUC									
Fernandina	A	RS	3.983	NA	NA	1.00000	3.983	NA	NA
Beach:	B	GS	3.732	NA	NA	1.00000	3.732	NA	NA
	C	GSD	3.581	NA	NA	1.00000	3.581	NA	NA
	D	OL, OL-2, SL-2, SL-3, CSL	2.591	NA	NA	1.00000	2.591	NA	NA
	E	GSLD						Actual Fuel Cost plus $6.28 per CP kW	
Marianna:	A	RS	4.059	NA	NA	1.00000	4.060	NA	NA
	B	GS	4.042	NA	NA	1.00000	4.042	NA	NA
	C	GSD	3.654	NA	NA	1.00000	3.654	NA	NA
	D	GLSD	3.492	NA	NA	1.00000	3.492	NA	NA
	E	OL, OL-2	2.529	NA	NA	1.00000	2.529	NA	NA
	F	SL1-2, SL-3	2.526	NA	NA	1.00000	2.526	NA	NA