

Matilda Sanders

From: Nanci_Nesmith@fpl.com
 Sent: Tuesday, April 05, 2005 3:46 PM
 To: Filings@psc.state.fl.us
 Cc: Wade_Litchfield@fpl.com; Natalie_Smith@fpl.com; John_Hepokoski@fpl.com; Lynne_Adams@fpl.com; Nanci_Nesmith@fpl.com; Bill_Feaster@fpl.com; Sabrina_Spradley@fpl.com; Elizabeth_Carrero@fpl.com; Eyry_Martin@fpl.com; Kirk_Gillen@fpl.com
 Subject: Electronic Filing for Docket No. 041291-EI, 050188-EI, 050045-EI/ FPL's Response to OPC's Motion to Consolidate and Response to OPC's Motion for Leave to File Supplemental Testimony
 Attachments: FPL's Response in opposition to OPC's Motion to Consolidate and Response to OPC's Motion to file Supp. Testimony.DOC



FPL's
Response in oppositi
Electronic Filing

a. Person responsible for this electronic filing:

Natalie F. Smith, Attorney
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408
(561) 691-7207
natalie_smith@fpl.com

b. Docket No. 041291 re: FPL's Petition for Authority to Recover Prudently Incurred Storm Restoration Costs Related to the 2004 Storm Season that exceed the Storm Reserve Balance

Docket No. 050188 re: 2005 Comprehensive Depreciation Studies by FPL

Docket No. 050045-EI re: Petition for rate increase by Florida Power & Light Company

c. Document being filed on behalf of Florida Power & Light Company.

d. There are a total of 16 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to the Office of Public Counsel's Motion to Consolidate and Response to the Office of Public Counsel's Motion for leave to file supplemental testimony.

(See attached file: FPL's Response in opposition to OPC's Motion to Consolidate and Response to OPC's Motion to file Supp. Testimony.DOC)

- ~~CMP~~
- COM 5
- CTR _____
- ECR _____
- GCL _____
- OPC _____
- MMS _____
- RCA _____
- SCR _____
- SEC 1
- OTH Leach dlt

DOCUMENT NUMBER-DATE
 03357 APR-5 '05
 FPSC-COMMISSION CLERK

attempts that would thwart the just, speedy and inexpensive resolution of FPL's request for recovery of prudently incurred storm damages resulting from the most active hurricane season on record in this State. OPC's Motion raises an issue that has been explicitly or implicitly addressed in prior pleadings filed by OPC and others in this Docket – whether the case should be delayed and combined with FPL's retail base rate docket. While extending several procedural accommodations to OPC and other parties throughout this docket, the Commission has rejected the ultimate requests to dismiss or otherwise delay the hearings. Though packaged slightly differently in this instance, OPC's latest request should be viewed and treated no differently. The existing procedural schedule should be maintained, among other reasons, to permit prompt resolution of important questions in advance of the impending 2005 hurricane season. In fact, at the March 1, 2005 Agenda Conference where the Commission considered OPC's Motion to Hold this Proceeding in Abeyance, or, in the alternative, Reschedule the Hearing ("Motion to Delay"), the parties agreed to proceed with the existing schedule subject to the accommodations agreed to by FPL relative to accelerated discovery and supplemental testimony dates by OPC. Certainly FPL had understood that, given those accommodations, at last the parties had resolved to move forward with the proceeding. Thus, it is with no small amount of surprise that FPL finds itself again having to assert many of the same arguments and positions it has urged before this Commission.

2. FPL respectfully requests that the Commission deny OPC's Motion to Consolidate. OPC's suggestion that non-cash theoretical excesses in the depreciation reserves be used as a proxy to move actual book accumulated reserve amounts to eliminate the substantial deficit in the Storm Damage Reserve, in addition to being inconsistent with Commission policy and orders, Generally Accepted Accounting Principles ("GAAP"), Securities and Exchange

Commission (“SEC”) guidance and Federal Energy Regulatory Commission (“FERC”) policies and orders, is a bad idea economically. Indeed, OPC’s and Mr. Majoros’ proposal would cost FPL’s customers \$144 million more on a net present value basis compared to the surcharge FPL is requesting. FPL, on the other hand, has properly addressed the theoretical depreciation reserve surplus by using the remaining useful depreciation rates over the lives of the assets to which the surplus relates, resulting in reduced depreciation rates reflected in base rates. Further, OPC’s Motion to Consolidate is untimely and does not meet the standard for consolidation that governs this proceeding. In particular, consolidation of the Storm Recovery Docket and Docket Nos. 050188-EI (the “Depreciation Docket”) and 050045-EI (the “Retail Base Rate Case”) would not promote the just, speedy, and inexpensive resolution of the proceeding, and would unduly prejudice the rights of FPL. Further, the claims in OPC’s Motion to Consolidate lack merit and could be litigated as part of the Storm Recovery Docket. In addition, the Motion for Leave should be rejected as untimely because FPL is unduly prejudiced by its filing at this late date. To the extent OPC wishes at this late date to litigate a new position, it should be required to do so through cross examination of Mr. Davis. Mr. Majoros was given an additional opportunity for direct testimony in this docket and should not now be given a third. However, should the Commission accept the Motion for Leave, FPL respectfully requests that the Commission accept the supplemental rebuttal testimony of K. Michael Davis being filed in the Storm Recovery Docket under separate cover concurrently with the filing of this Response, which addresses the merits of OPC’s and Mr. Majoros’ claims.

3. The Storm Recovery Docket is ripe for hearing. Testimony has been filed, Commission Staff has conducted an audit of costs, many sets of discovery have been served and answered, and depositions have been taken and are scheduled to be taken in the near term.

Further, prehearing statements have been filed and served and the prehearing conference is scheduled for Friday, April 8. At this late stage in the proceeding, OPC's Motion for Leave and Motion to Consolidate would simply be disruptive of a process that can and should be completed under the existing procedural schedule.

Background

4. From the moment FPL filed its Petition for Authority to Recover Prudently Incurred Storm Restoration Costs Related to the 2004 Storm Season that Exceeded the Storm Reserve Balance ("Petition"), OPC has made every effort to disrupt the Storm Recovery Docket. First, OPC argued in a joint filing with the Florida Industrial Power Users Group ("FIPUG") that FPL's Petition should be dismissed because FPL failed to allege how the deficit in the Storm Reserve would impact its earnings. OPC argued as early as that November 17, 2004 pleading that the storm recovery "costs would be best addressed in conjunction with the company's next rate proceeding" See Joint Motion to Dismiss of the Citizens and FIPUG, ¶ 5, November 17, 2004; see also Order No. PSC-05-0187-PCO-EI, at p. 3, Docket No. 041291-EI (issued February 17, 2005). The Commission rejected OPC and FIPUG's Motion to Dismiss and determined that FPL did not fail to state a cause of action by failing to address the effects of its storm-related costs on its earnings. See id. at p. 6. The procedural schedule was not altered. Not dissuaded, OPC and FIPUG next moved to strike FPL's separate request to implement the Storm Recovery Surcharge on a preliminary basis subject to refund after the hearing in this matter. That time, their hyper-technical argument was that FPL was attempting to amend its original pleading without the Pre-Hearing Officer's approval. Again, the Commission denied OPC's and FIPUG's motion. See id. at 8.

5. Still, OPC and FIPUG were undeterred in their resolve. At the January 4, 2005, Agenda Conference where the Commission considered the Motion to Dismiss and the request for a preliminary surcharge, OPC and FIPUG strayed from the arguments presented in their Motion to Dismiss and Motion to Strike and latched on to the oral arguments of the Twomeys' counsel that the Commission lacked authority to implement a surcharge subject to refund. OPC and FIPUG argued that the Commission's authority to approve the storm surcharge subject to refund was "limited to the situation in which the utility has filed an application, complete with minimum filing requirements, for a general increase in base rates." See Joint Memorandum of OPC and FIPUG Addressing Issue of Statutory Authority, p. 8, Docket No. 041291-EI (filed January 7, 2005). Yet again, the Commission rejected OPC and FIPUG's arguments. See Order No. PSC-05-0187-PCO-EI, at p. 14, Docket No. 041291-EI (issued February 17, 2005).

6. Not dissuaded, OPC next filed its Motion to Delay, arguing that FPL's Amended Petition and Supplemental Direct Testimony reflecting an updated estimate and extended period for recovery of the Storm Reserve Deficit so fundamentally changed the case that the hearing in this proceeding should be delayed and an additional 90 days should be allowed for conducting discovery and filing supplemental testimony. OPC ultimately withdrew its request and agreed to proceed with the schedule, subject to FPL's willingness to accelerate responses to discovery and the Commission allowing supplemental testimony dates. See Order No. PSC-05-0283-PCO-EI, Docket No. 041291-EI (issued March 16, 2005). It is noteworthy that, after OPC requested three additional months to address the updated estimate of storm costs and argued that it would "have to 'discover' FPL's case anew," (OPC's Motion to Delay, p. 2) OPC filed a single page of supplemental testimony and one exhibit essentially agreeing that FPL was entitled to the entire

amount of the difference between FPL's original estimate of storm costs and the updated estimate.

7. It was reasonable for parties to believe that OPC would not make another attempt to disrupt the schedule in Docket No. 041291-EI. At the Commission's Agenda Conference where the Commission considered the Motion to Delay, the following dialogue occurred:

Commissioner Deason: And speaking about stipulations, one other question. We're still going to keep the same hearing schedule, and I know Power & Light has committed to expediting discovery and things of that nature. The question I have is, if the parties are inclined to negotiate on a settlement, is there enough time built in there for you to have an opportunity to do that?

Mr. McLean (Public Counsel): We'll negotiate until the jury comes back. We're happy to talk to Power & Light or any of the other companies about settling at any time. We will make time and do the best we possibly can. Speaking only for Public Counsel at this point, if negotiations are likely to bear fruit, to the extent that we believe it would not be a squander of public resources to ask you to postpone the hearings, we'll certainly do so. That's not the case at this point ...

So to answer the question you didn't ask, we're ready to talk to them at any time. To answer the one you did ask, if we believe that things are moving along to the point where it makes good sense for you to postpone something, we'll certainly ask you to do so.

See March 1, 2005 Agenda Conference, Item No. 23A, Tr. at 19 (emphasis added). Based on that discussion, and based on OPC's prior suggestions to take this up in a rate case in the context of other pleadings and discussions before the Commission that already had been resolved, FPL reasonably assumed that the hearing schedule would be maintained, but for a jointly requested delay to accommodate settlement discussions. In discussing the updated estimate of Storm Recovery Costs at the March 1, 2005 Agenda Conference, Mr. McLean had the following statements about FPL's commitment not to further increase its estimate of Storm Recovery Costs from the 2004 Storm Season:

If they discover another million or two – this is the time to take your best hold in the storm event. We believe that’s what this commitment is from Florida Power & Light, this is the extent of our storm case. We don’t look to see an increment of storm case at any other time, and that’s the way we took that pleading [FPL’s Response in Opposition to the Motion to Delay].

See March 1, 2005 Agenda Conference, Item No. 23A, Tr. at 10 (emphasis added).

8. During the course of the storm recovery proceeding, FPL has agreed to a number of accommodations to OPC. For example, FPL agreed to, and did, respond to discovery requests related to its updated estimate in a 10-day instead of 20-day time frame. Further, FPL agreed to accommodate the filing of supplemental direct testimony addressing the updated estimate. In addition, despite the fact that OPC served FPL discovery to which FPL was not obligated to respond given the limited time remaining in the discovery phase of the storm recovery docket, FPL agreed to provide responses to OPC’s discovery. FPL has complied timely with all discovery requests and been very cooperative in working with OPC to arrange depositions of FPL employees, including agreeing to a limited extension of the discovery cut-off date for the purpose of conducting several depositions. There have been no discovery disputes to date. The parties have resolved issues among themselves with no need for the intervention of the Prehearing Officer. FPL believes that it has done everything in its power to facilitate a just and expeditious resolution of the Storm Recovery Docket.

9. Despite all of FPL’s efforts and accommodations, the Company is met with yet another motion to delay. FPL’s depreciation study is OPC’s latest reason for pushing the Commission to delay its hearing in this matter. As has been noted in prior pleadings filed in response to OPC’s motions to dismiss or the delay these proceedings, OPC’s Motion to Consolidate flies in the face of Commission policy to “act quickly to protect the company and its

customers” and, effectively, undermines the overarching public policy in the State of Florida to promote and encourage safe and rapid storm restoration.

OPC’s Position Regarding FPL’s Depreciation Reserve Lacks Merit

10. OPC’s position regarding FPL’s Depreciation Reserve lacks merit, and is merely the latest attempt to delay this proceeding. OPC’s suggestion that FPL apply a portion of its depreciation reserve accounts to eliminate the negative balance in the Storm Reserve lacks merit. OPC’s and Mr. Majoros’ contentions that theoretical depreciation reserve surpluses calculated as a “snapshot” of FPL’s depreciation reserves at a single point in time should be used to offset the unrelated substantial deficiency that exists in FPL’s Storm Damage Reserve have no basis in regulatory accounting. It is neither proper nor appropriate regulatory accounting to make a lump-sum adjustment to a depreciation reserve account meant for assets that remain in FPL’s system. Indeed, doing so would contradict Commission policy and orders, GAAP, SEC guidance and FERC policies and orders. In addition, OPC’s and Mr. Majoros’ proposal is economically unsound because it would cost FPL’s customers more on a net present value basis compared to the surcharge FPL is requesting. Using an 8% discount rate, on a net present value basis, Mr. Majoros’ proposal would cost customers \$144 million more than FPL’s proposed storm surcharge and the discount rate required for customers to break even is approximately 15% consistently over a 22-year period. In addition, what OPC is proposing as an option to this Commission will shift cost responsibility from wholesale to retail customers. Should the Commission accept OPC’s Motion for Leave, FPL respectfully requests that the Commission accept the supplemental rebuttal testimony of K. Michael Davis being filed in the Storm Recovery Docket under separate cover concurrently with filing this Response, which describes in greater detail the problems with Mr. Majoros’ proposal.

11. At this late stage in the proceeding, OPC's Motion for Leave and Motion to Consolidate would simply be disruptive of a process that can and should be completed under the existing procedural schedule. Though FPL opposes the Motion for Leave at this late stage, FPL believes that if the Commission accepts OPC's Motion to Leave, the testimony filed in support of OPC's position can reasonably be framed under Issue 21 in Docket No. 041291-EI, related to "the appropriate amount of storm-related costs to be recovered from the customers."

OPC's Motion to Consolidate Does Not Meet the Standard for Consolidation

12. OPC's Motion to Consolidate the Storm Recovery Docket with the Depreciation Docket and the Retail Base Rate Case should be rejected because the request does not meet the standard for consolidation articulated in the Florida Administrative Code. Pursuant to Rule 28-106.108, titled "Consolidation":

If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

See Rule 28-106.108, Fla. Admin. Code (2004). The issues of fact and law in the Storm Recovery Docket are narrow and relate to the recovery of prudently incurred storm-restoration-related costs from the 2004 Storm Season that created a deficit in FPL's Storm Damage Reserve through a mechanism independent of base rates. Those issues can be discretely resolved. In contrast, the issues in the Retail Base Rate Case are vast and cover every aspect of FPL's retail base rates. Issues related to the Storm Damage Reserve in the Retail Base Rate Case will involve the amount of the Storm Damage Reserve accrual going forward to replenish the fund. The issues in the Depreciation Docket involve the appropriate depreciation rates on a prospective

basis and will include consideration of the many assumptions and parameters that result in the proposed depreciation rates.

13. Further, the Commission has never indicated that it would limit its consideration of a special assessment to recover a negative balance in a Storm Reserve account to a base rate proceeding. Rather, the Commission has repeatedly instructed that if FPL “experiences significant storm-related damage, it can petition the Commission for appropriate regulatory action.” See Order No. PSC-93-0918-FOF-EI, at 5, Docket No. 930405-EI (issued June 17, 1993); see also Order No. PSC-04-0976-PAA-EI, at 2, Docket No. 041057-EI (issued Oct. 8, 2004) (concluding that through the application of Rule 25-6.0143, FPL could defer storm restoration costs in excess of the Storm Reserve and recover prudently incurred costs through a means to be determined at a later date upon application by FPL); Order No. 98-0953-FOF-EI, at 3, Docket No. 971237-EI (issued July 14, 1998) (determining that the December 1997 reserve balance of \$251.3 million was “sufficient to protect against most emergencies,” and FPL continued to be able to petition the Commission for emergency relief “[i]n cases of catastrophic loss”); Order No. PSC-95-1588-FOF-EI, at 9, Docket No. 951167-EI (issued Dec. 27, 1995) (recognizing “that FPL has experienced a catastrophic loss from Hurricane Andrew and that the potential for another loss of this magnitude exists,” and instructing that “FPL may petition the Commission for emergency relief if FPL experiences a catastrophic loss.”). In fact, the Stipulation and Settlement negotiated by OPC and FPL, signed by all but one party to FPL’s last base rate case in 2002 and approved by the Commission in Order No. PSC-02-0501-AS-EI, issued April 11, 2002 expressly contemplates that FPL could seek recovery outside of base rates. Paragraph 13 of the Stipulation and Settlement states in pertinent part:

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.

See Order No. PSC-02-0501-AS-EI, Docket No. 020001-EI (issued April 11, 2002), Stipulation and Settlement, at ¶ 13 (emphasis added). FPL's Petition for recovery of the Storm Reserve Deficit is, therefore, appropriately considered in the Storm Recovery Docket.

14. Had OPC wished to make the issue of whether a portion of FPL's depreciation reserve accounts should somehow be used to eliminate the negative balance in the Storm Damage Reserve a part of the Storm Recovery Docket, it could certainly have done so in its Prehearing Statement filed March 28, 2005, where OPC noted that it intended "to seek leave to submit supplemental testimony of Michael J. Majoros." See OPC's Prehearing Statement, p. 15, Docket No. 041291-EI (filed March 28, 2005). Further, based on the Stipulation and Settlement negotiated by OPC and FPL and executed by the parties to FPL's last retail base rate case, Docket No. 001148-EI, OPC was on notice that FPL was "required to file its next depreciation study by October 31, 2005, with an implementation date of January 1, 2006, for new depreciation rates" See Order No. PSC-02-1103-PAA-EI, Docket No. 020332-EI (issued Aug. 12, 2002). OPC could have served discovery and timely filed testimony related to its position regarding FPL's depreciation reserve. OPC did not do so. Nor did OPC at any time in its earlier arguments relative to delaying or dismissing the instant proceeding even raise the prospect of FPL filing its new depreciation study or the alleged relevance of the study or potentially revised depreciation rates in the context of this case. Instead, OPC waited to file testimony and a Motion to Consolidate after it filed its Prehearing Statement in another attempt to disrupt the proceedings.

15. In addition, it would be unjust to grant OPC's Motion to Consolidate when there are certain parties to the Storm Recovery Docket, such as the Florida Retail Federation and AARP, who, although fully aware of this well publicized docket, have only recently intervened and joined too late to file testimony or participate in the five months of extensive discovery that have occurred in that docket. OPC's Motion to Consolidate would provide such parties an opportunity to contend that the discovery cutoff and testimony due dates set forth in the Commission's Order Establishing Procedure in Docket No. 041291-EI, Order No. 04-1150-PCO-EI, issued November 18, 2004, should be extended to accommodate their interests -- interests that could have been but were not advanced within the existing procedural schedule. It is significant too, that many of the FPL employees who would have responsibility for responding to discovery will be directly involved in or responsible for storm preparation and hurricane restoration efforts in the 2005 Storm Season.

16. Indeed, OPC has failed to demonstrate or even allege that "consolidation would promote the just, speedy, and inexpensive resolution of the proceedings." See Rule 28-106.108, Fla. Admin. Code (2004). Rather, OPC's Motion to Consolidate would clearly prevent the Commission from justly, expeditiously and inexpensively resolving the Storm Recovery Docket. The procedural schedule is set and has been affirmed and the Storm Recovery Docket is ripe for formal hearings in approximately two weeks. To delay the hearing and decision in the Storm Recovery Docket and combine it with the Retail Base Rate Case would bog down the many complex issues to be considered in the context of FPL's general base rate case that is far broader than FPL's discrete request for a Storm Recovery Surcharge. All testimony has been filed in the Storm Recovery Docket, Staff has audited FPL's storm costs and the five-month long discovery period will soon pass. The prehearing conference in the Storm Recovery Docket is set for April

8 and all parties have filed their prehearing statements. The Commission is on track to resolve this matter in early July. OPC's last-minute curve ball is another attempt to disrupt this orderly schedule.

17. To accept OPC's Motion to Consolidate and delay the hearing in the Storm Recovery Docket would "unduly prejudice" FPL in contravention of the standard for consolidation. OPC's position that a request for storm recovery should be postponed to the Commission's decision in FPL's retail base rate case is inconsistent with Commission policy and precedent and would unduly prejudice FPL and its customers. In an "emergency situation" where a deficit in the Storm Damage Reserve exists, the Commission has promised to "act quickly to protect the company and its customers." See Order No. PSC-93-0918-FOF-EI, p. 5, Docket No. 930405-EI (issued June 17, 1993); see also Order No. PSC-95-1588-FOF-EI, p. 9, Docket No. 951167-EI (issued Dec. 27, 1995) (recognizing "that FPL has experienced a catastrophic loss from Hurricane Andrew and that the potential for another loss of this magnitude exists," and instructing that "FPL may petition the Commission for emergency relief if FPL experiences a catastrophic loss.") Without an expeditious ruling in the Storm Recovery Docket, the cloud on FPL's financial picture in the eyes of the investment community is certain to persist.

18. If the Commission accepted OPC's Motion to Consolidate and delayed ruling on FPL's Petition for recovery of the negative balance in the Storm Damage Reserve until the Commission makes its decision in the Retail Base Rate Case, the 2005 Storm Season will be near its end. FPL would, therefore, face almost an entire new Storm Season without a decision from its regulator with respect to the recovery of hundreds of millions of dollars incurred in restoring power during the 2004 Storm Seasons, including whether the actions the Company took and the costs it incurred were reasonable and prudent. Given meteorologists' predictions that the 2005

Storm Season could be another active storm season, OPC's position is untenable and, again, should be rejected by the Commission. See, e.g., "Hurricane expert changes forecast – season will be busier than first expected," Southwest Florida News Press, April 1, 2005 (reporting that meteorologist William Gray and the Colorado State University forecast team now predict "significantly above-average Atlantic basin hurricane activity in 2005" including a projection for 13 named storms, seven of which are expected to develop into hurricanes and three of which are anticipated to evolve into intense or major hurricanes with sustained winds of 111 mph or greater; and also forecast a 53 percent probability of an intense hurricane making landfall along the U.S. East Coast, including the Florida Peninsula (the long-term average is 31 percent)). Without a decision from the Commission in line with the current procedural schedule, FPL would be forced to enter another potentially active storm season without the resolution of important questions. Thus, OPC's Motion to Consolidate would most certainly unduly prejudice FPL in contravention of the standard for consolidation of proceedings. See Rule 28-106.108, Fla. Admin. Code (2004).

Conclusion

19. FPL respectfully requests that the Commission deny OPC's Motion to Consolidate because the claims in OPC's Motion to Consolidate lack merit and could be litigated as part of the Storm Recovery Docket. Further, OPC's Motion to Consolidate is untimely and does not meet the standard for consolidation that governs this proceeding. In particular, consolidation of the Storm Recovery Docket, Depreciation Docket and Retail Base Rate Case would not promote the just, speedy, and inexpensive resolution of the proceeding, and would unduly prejudice the rights of FPL. In addition, the Motion for Leave should be rejected as untimely because FPL is unduly prejudiced by its filing at this late date. To the extent OPC

wishes at this late date to litigate a new position, it should be required to do so through cross examination of Mr. Davis. Mr. Majoros was given an additional opportunity for direct testimony in this docket and should not now be given a third. However, should the Commission accept the Motion for Leave, FPL respectfully requests that the Commission accept the supplemental rebuttal testimony of K. Michael Davis being filed in the Storm Recovery Docket under separate cover concurrently with filing this Response, which addresses the merits of OPC's and Mr. Majoros' claims.

WHEREFORE, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission:

1) Deny OPC's Motion to Consolidate Docket Nos. 041291-EI, 050188-EI and 050045-EI; and

2) Deny OPC's Motion for Leave or, in the alternative, accept FPL's Supplemental Rebuttal Testimony, which is being filed in the Storm Recovery Docket under separate cover concurrently with filing this Response.

Respectfully submitted,

By: s/ Natalie F. Smith
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 Florida Power & Light Company's Response in Opposition to the Office of Public Counsel's Motion to Consolidate and Motion for Leave, has been furnished electronically and by United States Mail this 5th day of April, 2005, to the following:

Wm. Cochran Keating, IV, Esq.
Katherine E. Fleming, Esq.
Florida Public Service Commission
Gerald L. Gunter Building
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Robert Scheffel Wright, Esq.
Landers and Parsons
P.O. Box 271
Tallahassee, FL 32302
Attorneys for the Florida Retail Federation

Harold McLean, Esq.
Patricia A. Christensen, Esq.
Joseph A. McGlothlin, Esq.
Office of Public Counsel
The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32399-1400

Bruce May, Esq.
Holland and Knight, LLP
Post Office Drawer 810
Tallahassee, FL 32302
Attorneys for Miami-Dade Public Schools

John W. McWhirter, Jr., Esq.
McWhirter, Reeves, et al.
400 North Tampa Street, Suite 2450
Tampa, FL 33602
Attorneys for Florida Industrial Power Users Group

Timothy J. Perry, Esq.
McWhirter, Reeves, et al.
117 South Gadsden Street
Tallahassee, FL 32301
Attorneys for Florida Industrial Power Users Group

Michael B. Twomey, Esq.
P.O. Box 5256
Tallahassee, FL 32314-5256
Attorney for Thomas P. Twomey and Genevieve E. Twomey
and AARP

By: s/ Natalie F. Smith
Natalie F. Smith, Esq.
Fla. Bar No. 470200