BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company.	DOCKET NO. 041291-EI ORDER NO. PSC-05-0420-PHO-EI ISSUED: April 19, 2005

PREHEARING ORDER

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on April 8, 2005, in Tallahassee, Florida, before Commissioner Charles M. Davidson, as Prehearing Officer.

APPEARANCES:

KENNETH HOFFMAN, ESQUIRE, Rutledge Ecenia Law Firm, Post Office Box 551, Tallahassee, FL 32302, R. WADE LITCHFIELD, ESQUIRE, and NATALIE SMITH, ESQUIRE, 700 Universe Blvd., Juno Beach, FL 33408-0420
On behalf of Florida Power & Light Company (FPL or the Company)

HAROLD MCLEAN, ESQUIRE, JOSEPH A. MCGLOTHLIN, ESQUIRE, PATRICIA A. CHRISTENSEN, ESQUIRE, Office of the Public Counsel c/o The Florida Legislature, 111 West Madison Street, Room 812, Tallahassee, FL 32399-1400
On behalf of the Citizens of the State of Florida (OPC).

TIMOTHY J. PERRY, ESQUIRE, McWhirter Reeves Davidson & Arnold, P.A., 117 South Gadsden Street, Tallahassee, FL 32301
On behalf of Florida Industrial Power Users Group (FIPUG)

ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN LAVIA, III, ESQUIRE, Landers & Parsons P.A., Post Office Box 271, Tallahassee FL 32302
On behalf of Florida Retail Federation (FRF)

MICHAEL B. TWOMEY, ESQUIRE, Post Office Box 5256, Tallahassee, FL 32314-5256
On behalf of Thomas and Genevieve E. Twomey (TWOMEYS) and AARP

WM. COCHRAN KEATING IV, ESQUIRE, and KATHERINE FLEMING, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850
On behalf of the Florida Public Service Commission (STAFF).

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Formal hearing proceedings before the Florida Public Service Commission are governed by Chapter 120, Florida Statutes, and Chapters 25-22, 25-40, and 28-106, Florida Administrative Code. To the extent provided by Section 120.569(2)(g), Florida Statutes, the Florida Evidence Code (Chapter 90, Florida Statutes) shall apply. To the extent provided by Section 120.569(2)(f), Florida Statutes, the Florida Rules of Civil Procedure shall apply.

Rule 28-106.211, Florida Administrative Code, specifically provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of this case. This Order is issued pursuant to that authority. The scope of this proceeding shall be based upon the issues raised by the parties up to and during the prehearing conference, unless modified by the Commission or Prehearing Officer.

II. 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. In its petition, FPL asserted that as a result of Hurricanes Charley, Frances, and Jeanne, FPL estimated its extraordinary storm-related costs to be approximately $710 million, net of insurance proceeds, which would result in a deficit of approximately $356 million in its storm reserve fund at the end of December 2004. By its petition, FPL proposed to recover $354 million of this estimated deficit through a monthly surcharge to apply to customer bills over a 24-month recovery period.

On November 19, 2004, FPL filed a petition seeking approval to implement its proposed surcharge on a preliminary basis, subject to refund pending the Commission's final order in this docket. Along with its petition, FPL filed a tariff sheet reflecting its proposed surcharge by rate class. By Order No. PSC-05-0187-PCO-EI, issued February 17, 2005, the Commission granted FPL's request to implement its proposed surcharge on a preliminary basis, and the preliminary surcharge became effective, subject to refund, for meter readings taken on or after February 17, 2005.

By Order No. PSC-05-0283-PCO-EI, issued March 16, 2005, the Commission granted FPL leave to amend its original petition to reflect an updated estimate of the storm-related costs contained in its original petition. In its amended petition, FPL updated its estimate of

extraordinary storm-related costs to approximately $890 million, net of insurance proceeds, which would result in a deficit of approximately $536 million in its storm reserve fund at the end of December 2004. By its amended petition, FPL proposes to recover $533 million of this estimated deficit through a monthly surcharge to apply to customer bills based on a 36-month recovery period.

A formal administrative hearing on FPL's petition, as amended, is scheduled for April 20-22, 2005.

III. ATTENDANCE AT HEARING: PARTIES AND WITNESSES

Unless excused by the Presiding Officer for good cause shown, each party (or designated representative) shall personally appear at the hearing. Failure of a party, or that party's representative, to appear shall constitute waiver of that party's issues, and that party may be dismissed from the proceeding.

Likewise, all witnesses are expected to be present at the hearing unless excused by the Presiding Officer upon the staff attorney's confirmation prior to the hearing date that:

(i) all parties agree that the witness will not be needed for cross examination; and
(ii) all Commissioners assigned to the panel do not have questions for the witness.

In the event a witness is excused in this manner, his or her testimony may be entered into the record as though read following the Commission's approval of the proposed stipulation of that witness' testimony.

IV. PENDING MOTIONS

As of the issuance of this Prehearing Order, there are no pending motions in this docket.

V. PROPOSED STIPULATIONS

As of the issuance of this Prehearing Order, there are no proposed stipulations.

VI. OPEN PROCEEDINGS AND PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Confidential information should be treated in accordance with the provisions of the Order Establishing Procedure previously issued in this docket.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing by the Commission.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

   a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing, unless approved by the Prehearing Officer for good cause shown. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

   b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

   c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.

   d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.

   e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of the Commission Clerk and Administrative Services' confidential files.

VII. PENDING CONFIDENTIALITY MATTERS

Florida Power & Light Company's request for confidential classification of certain work papers provided in connection with the Storm Cost Recovery Audit No. 04-343-4-1 (Document No. 02236-05) is pending.

VIII. OPENING STATEMENTS

Opening statements, if any, shall not exceed 25 minutes per side.

IX. WITNESSES: OATH, PREFILED TESTIMONY, EXHIBITS, AND CROSS-EXAMINATION

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

Testimony of all witnesses to be sponsored by the parties has been prefiled and will be inserted into the record as though read. However, all testimony remains subject to appropriate objections. Upon insertion of a witness' testimony into the record, exhibits appended thereto may be marked for identification.

Following affirmation that the witness has been sworn, the witness shall then be tendered for cross-examination by all parties and staff. Commissioners may also pose questions as they deem appropriate. Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer. After all parties and staff have had the opportunity to object and cross-examine, exhibits may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

X. WITNESSES

Witnesses will be heard in the following order except that where a witness has submitted any combination of direct, supplemental direct, and rebuttal testimony, all such testimony submitted by that witness will be heard at the same time.

Witness	Proffered By	Issue Nos.
Direct		
Linda R. Whalin	FPL	7, 8, 14, 17, 18

Witness	Proffered By	Issue Nos.
K. Michael Davis	FPL	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29
Rosemary Morley	FPL	25, 26, 27, 28
James A. Rothschild	OPC	20
Michael J. Majoros	OPC	2, 4, 5, 8, 9, 12, 13, 14, 19, 21
Iliana H. Piedra	STAFF	3, 4, 5
Supplemental Direct		
K. Michael Davis (Updated storm cost estimate)	FPL	16, 21, 26, 27, 28, 29
Rosemary Morley (Updated storm cost estimate)	FPL	25, 26, 27, 28
Michael J. Majoros (I. Updated storm cost estimate)	OPC	2, 4, 5, 8, 9, 12, 13, 14, 19, 21
Michael J. Majoros (II. Impact of depreciation reserve)	OPC	21
Rebuttal		
K. Michael Davis	FPL	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23
Geisha J. Williams	FPL	6, 8, 17, 18
William E. Avera	FPL	19, 20
Moray P. Dewhurst	FPL	1, 2, 17, 18, 19, 20

Witness	Proffered By	Issue Nos.
Supplemental Rebuttal		
K. Michael Davis (Impact of FPL depreciation reserve)		21

XI. EXHIBIT LIST

Witness	Proffered By	I.D. No.	Description
Direct/Supplemental Direct			
Linda R. Whalin	FPL	(LRW– 1)	Characterization of Hurricanes and Timeline
Linda R. Whalin	FPL	(LRW– 2)	Peak External and FPL Personnel Resources
Linda R. Whalin	FPL	(LRW– 3)	Percent of Customers Restored by Day
Linda R. Whalin	FPL	(LRW–4)	FPL vs. DVP, Percent of Customers Restored by Day
K. Michael Davis	FPL	(KMD–1) Revised	Hurricane Restoration Costs by Storm and Cost Category
K. Michael Davis	FPL	(KMD–2)	FPL Storm Cost Estimate Combined for Charley, Frances, and Jeanne
Rosemary Morley	FPL	(RM–1)	Storm Restoration Surcharge Computation (Derivation of the Rate Class Charges)

Witness	Proffered By	I.D. No.	Description
Rosemary Morley	FPL	(RM–2) Revised	Original Sheet No. 8.033, Storm Restoration Surcharge
James A. Rothschild	OPC	(JAR–1)	Eastern electric utilities and their earned rates of return
James A. Rothschild	OPC	(JAR–2)*	Appendix A—List of prior appearances. *This appendix, containing the witness' background, was attached to the prefiled testimony but was not labeled as an exhibit at the time.
Michael J. Majoros	OPC	(MJM–1)	Summary of FPL's basic estimates
Michael J. Majoros	OPC	(MJM–2)	Estimate of cost of removal reserve
Michael J. Majoros	OPC	(MJM–3)	FPL's answer to OPC Interrogatory 27 (re treatment of payroll)
Michael J. Majoros	OPC	(MJM–4)	Uncompleted project—salt spray and vegetation study
Michael J. Majoros	OPC	(MJM–5)	Payroll charged to storm reserve
Michael J. Majoros	OPC	(MJM–6)	Breakdown of vehicle expense
Michael J. Majoros	OPC	(MJM–7) Revised	Summary of recommended adjustments
Michael J. Majoros	OPC	(MJM–8)	Return on equity worksheet
Michael J. Majoros	OPC	(MJM–9)*	Appendix—witness qualifications. *This appendix, containing the witness' background, was attached to the prefiled testimony but was not labeled as an exhibit at the time.

Witness	Proffered By	I.D. No.	Description
Michael J. Majoros	OPC	(MJM–10)	Summary of New FPL Depreciation Study
Iliana H. Piedra	STAFF	(IHP–1)	FPL Storm Cost Recovery Audit
Rebuttal			
K. Michael Davis	FPL	(KMD–3)	Transmission and Distribution Insurance Replacement, Florida Power & Light Company October 1, 1993 Study – Docket No. 930405-EI
K. Michael Davis	FPL	(KMD–4)	Commission Order No. PSC-95-0264-FOF-EI issued February 27, 1995 - Notice of Proposed Agency Action Order Approving Storm Damage Study and Adjustments to Self Insurance Mechanism, Docket 930405-EI
K. Michael Davis	FPL	(KMD–5)	Florida Power & Light Company Response to Twomeys First Set of Interrogatories, Interrogatory No. 41 - Description of Company's computation of lost revenues
Geisha J. Williams	FPL	(GJW–1)	Projects>$100,000 Not Completed as of 12/31/04

Witness	Proffered By	I.D. No.	Description
Geisha J. Williams	FPL	(GJW–2)	FPL Hurricane Assessment Operating Committee, January 25, 2005, Davies Consulting Inc.
William E. Avera	FPL	(WEA–1)	Qualifications of William E. Avera
Moray P. Dewhurst	FPL	(MPD–1)	Stipulation and Settlement, Docket No. 001148-EI
Supplemental Rebuttal			
K. Michael Davis	FPL	(KMD-6)	Revenue Requirement Comparison

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XII. BASIC POSITIONS

FPL: As a result of the unprecedented storm season of 2004, FPL undertook reasonable, necessary, and prudent measures in responding to the devastating impacts of the most active hurricane season on record in the State of Florida, safely and rapidly restoring service to the more than 5.35 million FPL customers who lost power due to the impact of one or more of the three major hurricanes that struck FPL's service territory within the short span of six weeks. FPL's efforts and its approach to restoration were consistent with the overarching public policy favoring prompt and safe restoration of electric service, consistent with the unwavering and oft-repeated expectations of state and local government, and consistent with the regulatory framework instituted by the Florida Public Service Commission following Hurricane Andrew.

Despite the punishing circumstances and monumental challenges presented by three back-to-back hurricanes, as a result of FPL's solid foundation of hurricane preparedness, within three days following each of the three storms the Company was successful in restoring power to more than 75% of the customers who had lost power. FPL's performance compares favorably with that of Dominion Virginia Power following Hurricane Isabel. FPL's performance also has been reviewed by an independent consultant, Davies Consulting, Inc., ("DCI"), which

concluded that FPL met or exceeded standard industry practices in virtually every facet of the restoration, particularly in the areas of infrastructure performance, crew and logistics mobilization, restoration planning and implementation, and FPL's ability to restore a large percentage of customers within the first few days. In DCI's opinion, no other U.S. utility could have addressed the restoration effort in a six-week period as successfully as FPL did. The receipt earlier this year of the Edison Electric Institute (EEI) award for emergency response (our third in the past four years) provided further validation of FPL's recognized industry-leading expertise.

To achieve such results under extraordinarily difficult circumstances required extraordinary measures on the part of FPL. In responding to Hurricane Charley, FPL mobilized a peak work force of more than 13,500 individuals in the field performing repairs and reconstruction or directly supporting those tasks. This was comprised of 7,500 FPL employees and local contractors, and 6,000 external personnel. Efforts in responding to Hurricane Frances and Jeanne involved similar massive deployments of personnel: for Frances, 8,700 FPL employees and local contractors, and 8,000 external personnel for a peak work force of 16,700; and for Jeanne more than 16,500 personnel, including 8,600 FPL employees and local contractors, and 7,900 external personnel. The costs associated with these efforts were significant. The Company estimates total storm damages of $999 million. The insurance reimbursement estimate is $109 million. Thus, the total amount charged to the reserve is $890 million. The $890 million (system) storm damage cost, net of the storm reserve positive balance of $354 million at December 31, 2004, results in a deficiency of $536 million on a total system basis. The jurisdictional portion of the deficiency is approximately $533 million. FPL seeks to recover the jurisdictional deficit through a special assessment or surcharge. The surcharge would remain in place for three years, or for such shorter period as may be sufficient to recover the deficit. In addition, FPL has agreed to limit recovery of storm restoration costs through the proposed surcharge to the amount by which the updated estimate of $890 million ($886 million jurisdictional) exceeds the amount of the Storm Damage Reserve. Thus, if the actual amount incurred exceeds $890 million, FPL would not seek to recover those costs through the proposed surcharge mechanism. If the final costs are less than $890 million ($886 million jurisdictional), the mechanism requested by FPL ensures that the surcharge ends as soon as the Storm Damage Reserve Deficit is recovered, so that no more than the actual costs would be recovered. FPL's request is consistent with Commission policy and the regulatory framework established subsequent to Hurricane Andrew.

Prior to Hurricane Andrew, FPL had a small storm damage reserve and maintained commercial insurance coverage for its Transmission and Distribution ("T&D") system in the amount of $350 million per occurrence. The costs of carrying this insurance, a bona fide cost of doing business, were recovered through base rates. The cost of storm restoration, therefore, was borne by

customers through the cost of insurance. Following Andrew, commercial insurers effectively withdrew from the utility windstorm coverage market. In the absence of commercial coverage, FPL, with the Commission's approval, instituted an approach that relied more heavily on the Storm Damage Reserve, the existence of which pre-dated Andrew. In 1993, FPL initially proposed an automatic revolving storm clause, but this was rejected by the Commission. Instead, the Commission endorsed an approach which consists of three parts: (1) an annual storm accrual, adjusted over time as circumstances change; (2) a funded Storm Damage Reserve adequate to accommodate most but not all storm years; and (3) a provision for utilities to seek recovery of costs that go beyond the Storm Damage Reserve. These three parts act together to allow FPL over time to recover the full costs of storm restoration, while at the same time balancing potentially competing customer interests: as small an ongoing impact on customer bills as possible; minimal volatility of "rate shock" in customer bills because the reserve is insufficient; and intergenerational equity. To accomplish this balance requires periodic adjustment in the main components of the framework – the annual accrual and the target reserve balance – in light of changing storm experience and the growth of FPL's T&D network.

Over the years, the Commission periodically has reviewed the levels of the target reserve amount and the annual accrual and, in some instances, has increased those amounts. In 1998, the Commission explicitly considered the adequacy of the $20.3 million annual accrual then (and still) in effect as well as the target amount of the storm damage reserve. The Commission concluded that no changes in those amounts were needed at that time. However, consistent with the Post-Andrew regulatory framework, the Commission acknowledged that:

> "[i]n the event FPL experiences catastrophic losses, it is not unreasonable or unanticipated that the reserve could reach a negative balance.... The December 1997 balance of $251.3 million, is, we believe, sufficient to protect against most emergencies. In cases of catastrophic loss, FPL continues to be able to petition the Commission for emergency relief, as reflected in Order No. PSC-95-1588-FOF."

In re: Petition for authority to increase annual storm fund accrual commencing January 1, 1997 to $35 million by Florida Power & Light Company, Docket No. 971237-EI, Order No. PSC-98-0953-FOF-EI, at 3 (issued July 14, 1998). The Commission also affirmed that "the costs of storm damage incurred over and above the balance in the reserve and the costs of the use of the lines of credit would still have to be recovered from ratepayers." Id. (emphasis added). The Commission's approach is entirely consistent with the observation that the costs of restoring electric service, fundamentally, are a cost of providing electric service in Florida, a region susceptible to tropical storms and hurricanes, and therefore are legitimately recoverable from customers under basic principles of regulation. They are not foreseeable "business risks." FPL does not now (and has not since

Andrew) recovered through base rates the full expected costs of restoring service after storms. Nor does FPL recover through base rates the amounts that would be necessary to compensate for the risk capital that would need to be supplied were investors to assume an insurance function. That is because the Commission has determined that the current, alternate regulatory framework is a less costly means of attaining the same end. But an integral part of that framework is the ability of the utility to recover prudently incurred costs in excess of whatever Storm Damage Reserve balance happens to exist at the precise moment that hurricanes strike.

In 1995, the Commission approved standards for charging costs to the Storm Damage Reserve. Docket No. 930405-EI, Order No. PSC-95-0264-FOF-EI (issued February 27, 1995). The Company has accounted for storm restoration costs in compliance with these standards since they were approved in 1995. The costs charged to the Storm Damage Reserve were booked consistent with those standards, a fact confirmed in this proceeding by the Commission's Audit Staff. The approved standards continue to be appropriate for the reasons considered in Docket No. 930405-EI. OPC, FIPUG, and others were parties to that proceeding, but now seek to raise in this proceeding the same types of arguments that were considered in Docket No. 930405-EI. The passage of time has not cured the flaws in OPC's position. Moreover, even if OPC's guidelines were to be applied, in several cases they would not result in any changes to the amounts sought for recovery in this proceeding. Finally, even if the guidelines were deemed to have merit, changes should only be made prospectively. Storm restoration costs were booked in accordance with the approved standards and were included in the Storm Damage Reserve deficit that was reported as an asset in the Company's 2004 financial statements. Changing the standards retroactively would undermine the basis for financial reporting with potentially serious consequences for the capital market's perception of regulatory risk.

FPL's request is consistent with, and expressly contemplated by, the Stipulation and Settlement that was executed by all parties to this proceeding, including OPC, in Docket No. 001148-EI, and approved by the Commission in Order No. PSC-02-0501-AS-EI, issued April 11, 2002, ("2002 Stipulation and Settlement" or "Settlement Agreement"). Pursuant to the Settlement Agreement, OPC and its constituents received a base rate reduction of $250 million, and an opportunity for refunds should FPL's revenues exceed certain threshold amounts. As a result of these concessions, FPL's customers will have realized approximately $1 billion in savings and refunds through calendar year 2005, the end of the Stipulation and Settlement. But, in exchange for these benefits, FPL required certain protections. First, it was agreed that "the revenue mechanism ... [was to] be the appropriate and exclusive mechanism to address earnings levels." (emphasis added.) Second, FPL sought a general level of protection by reserving the right to petition the Commission for rate relief due to earnings falling below 10%. Third, FPL needed specific assurance that excess storm costs, to the extent reasonably and prudently

incurred, could be recovered during the term of the 2002 Stipulation and Settlement. Specifically, OPC agreed that FPL would have the right to "petition the FPSC for recovery of prudently incurred costs not recovered from [the Storm Damage Reserve and insurance coverage]," that "[t]he 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 ... the basis of a disallowance" and that "the revenue mechanism herein described [--not excess storm restoration costs--] will be the appropriate and exclusive mechanism to address earnings levels." And yet if OPC's position is accepted, FPL would: (a) have no right to rate relief without reference to a 10% earnings level, (b) be faced with a significant disallowance, the effective result of not having had sufficient funds accumulated in the Storm Damage Reserve, and (c) have its earnings levels "addressed," if not lowered, by reference to something other than the Settlement Agreement's "exclusive" revenue mechanism. These are key benefits that were conditions to FPL's acceptance of the Settlement Agreement and would be eviscerated by application of OPC's position.

The positions of OPC and others in this proceeding would have the Commission, on an ex post basis, ignore prior regulatory decisions, existing settlement agreements, and Company and investor expectations relative to the recovery of reasonable and prudent storm restoration costs. Instead, the Commission's decision in this proceeding should uphold those prior decisions, the existing Settlement Agreement, and affirm the expectations of the Company and its investors relative to the recovery of storm restoration costs. In so doing, the Commission should consider the impact that any decision may have on future settlements, avoid introducing into the current regulatory framework any element of "second guessing," and continue to ensure that the message communicated to utilities is one that encourages the prompt and safe restoration of electric service to customers, unburdened by economic decisions during restoration activities, and consistent with the obvious public interest expressed by government at all levels in this past hurricane season.

OPC: A. *FPL has overstated costs to be charged to the storm damage reserve.* The storm damage reserve should be limited to those extraordinary costs that are incremental to the expenditures the utility would make if there had been no storms. Instead, FPL has booked to the storm reserve all costs of the restoration efforts, including costs that should be capitalized and other costs that it has already collected through base rates. FPL bases its proposal on its "1993 study." There, FPL justified booking all costs to the reserve on the grounds that the method was consistent with the manner in which "replacement cost insurance" claims are processed. FPL asserted that an accounting methodology based on the insurance practice would obviate the necessity of maintaining separate accounting records for insurance and regulatory purposes. However, FPL currently has no such insurance. When the "replacement cost" bill is presented to customers instead of an insurance company, the approach results in "double dipping" of

O&M costs and costs of removal that have already been collected through base rates, as well as the inappropriate expensing of plant items that should be capitalized and depreciated over their useful lives.
To correct inappropriate booking of costs to the storm damage reserve, the Commission should require FPL to remove $134.8 million from the storm damage reserve and book the appropriate amounts to plant in service, cost of removal reserve, and appropriate O&M accounts. This requirement does not mean that FPL has not or will not recover these costs; only that they have been or will be recovered through the appropriate mechanisms (i.e. depreciation expense, existing base rates).

B. *FPL should be required to recover some of the negative balance in the storm damage reserve through earnings.* The central issue in this case is not whether FPL will be permitted to recover the 2004 storm-related costs reflected in the negative balance of the storm reserve. Instead, the issue is whether the Commission will require FPL to recover some of those costs by applying earnings to eliminate a portion of the negative balance in the storm reserve rather than eliminating it exclusively with incremental revenues collected from customers through a new surcharge to base rates. In either event, FPL will have fully "recovered its costs."

By attempting to collect 100% of the costs through a surcharge, thereby insulating its earnings from the effect of the storms, FPL has failed to adhere to the terms of a 2002 stipulation, which requires FPL to absorb expenses associated with storm damages until its return on equity is reduced to 10% before it seeks to increase rates. A reference in the 2002 stipulation to FPL's ability to petition the Commission for recovery of storm costs does not alter this conclusion, because the reference cannot be divorced from the separate, *unqualified* provision that requires FPL to absorb unusual costs until its ROE has fallen to 10%.

However, even if the Commission decides the terms of the stipulation do not require this result, the 10% ROE criterion nonetheless is an appropriate basis on which to quantify the amount of 2004 storm related costs for which FPL should be responsible. For the following reasons, the Commission should not grant FPL's petition in the form it was presented. First, it is certain that, by approving an agreement stating that FPL has the procedural ability to file a petition, the Commission did not prejudge the manner in which it would assess and rule upon the merits of such a petition. Over time, the Commission has stated clearly that, upon receipt of a petition related to a negative storm reserve balance, it may direct the utility to defer, amortize, or recover the related costs. The Commission has also rejected FPL's efforts to exact a guarantee that it will be insulated from the effects of storm costs. The instant case is simply another example of a request by FPL that ratepayers be required to indemnify the company for storm costs. The Commission did not give away its discretion to tailor a result that fits the

circumstances fairly when it approved a provision that says merely that FPL may file a petition.

Further, as OPC's witness will testify, ratepayers compensate investors for the risks of their investment by providing, through the rates they pay, a return that is commensurate with those risks. It would be inequitable and unfair to require customers to compensate investors fully for assuming business risks, which in Florida include the potential for hurricane damage, and the0n place on customers 100% of the burden of storm damages through an approach that insulates investors from the risk they are paid to accept. Again, a return on equity of 10%0 is more than adequate to provide a reasonable return on shareholders' investment under prevailing economic conditions.

Accordingly, then, whether to enforce the 2002 stipulation or whether—independent of the stipulation--to allocate storm costs fairly and equitably between ratepayers and stockholders, the Commission should require FPL to absorb storm-related costs to the extent required to reduce its ROE to 10% based on 2004 results. Based on available information for 2004, the Commission should require FPL to absorb approximately $108 million through retail earnings rather than through a surcharge to base rates.

Without conceding such concerns are warranted, to allay any concerns expressed by FPL regarding the impact on financial indicators if it were to expense this amount in one year, OPC does not object to a provision in the final order permitting FPL to defer and amortize the expense over a period of two or three years, provided that FPL does not attempt to incorporate the unamortized costs into a calculation of revenue requirements to be borne by customers during that time frame.

FIPUG: FPL's petition gives new meaning to the term "self insurance plan." Unlike typical insurance plans where risks and costs are shared between insurer and insured, FPL's proposal places the entire burden of storm-related expenses on its customers while completely insulating itself from all risk associated with storm damage. FPL's plan seeks an insurance windfall by shifting normal O&M to the storm damage reserve—thus converting those monies to profits—and taking a storm casualty deduction that reduces FPL's taxes during the storm year with no benefit to FPL's customers.

FIPUG recommends a sharing of the risk of storm damage. FIPUG agrees that a cost recovery surcharge independent of base rates is an appropriate mechanism for the collection of FPL's storm damage deficit after the customer's appropriate share of the deficit is determined. The deficit is calculated by removing normal operating expenses from alleged storm costs, then removing an appropriate amount of capital costs for inclusion in the rate base rather than the surcharge.

Once the deficit is determined, FPL should be allowed to recover from customers all net-of-tax storm damage costs that cause FPL's return on equity to fall below 10% during the recovery period. The surcharge should terminate as soon as the storm damage balance is recovered.

This methodology is in keeping with the 2002 rate case Settlement and Stipulation approved by the Commission in which FPL agreed to assume a revenue decline until its return on equity fell to 10%. Under the FIPUG recommended methodology it is estimated that customers will pay a surcharge of $225 million in addition to the $354 they previously contributed to the storm reserve. This approach will result in a fair and equitable resolution of the issues. Customers will pay approximately 65% of $890 million in storm costs, provide a return on the capital portion of the cost and pay all interest on FPL's short-term borrowings. FPL's 35% share of the risk will still enable it to earn the after tax return on equity of 10% for 2004.

FRF: Through its petition, FPL seeks to put the entire burden of storm-related expenses onto its customers, over and above base rates, thereby completely insulating itself - and its earnings - from the risks and impacts associated with the 2004 storms. FPL's proposal seeks to hold FPL harmless from any damages related to the storms, while increasing costs to residents and businesses in FPL's service territory that have already absorbed storm damage costs of their own. Its proposal seeks 100% cost recovery from consumers, with no contribution from FPL, while the company benefits from increased profits. The FRF agrees that FPL is entitled to charge rates that recover the reasonably and prudently incurred costs of restoring service following storms, so long as those rates are, considered in their totality, fair, just, and reasonable. FPL's proposals here, however, would result in the totality of FPL's rates being unfairly, unjustly, and unreasonably high, with the result that FPL's customers would bear 100% of the impact and risk of the storms while FPL's shareholders bear none.

In determining whether to allow FPL to recover any storm-related costs from its customers, the Commission should limit such allowable costs (subject to the normal reasonableness and prudency standard) to the amount necessary to enable FPL to earn a 10% return on equity for 2004. If, taking this principle into account, the Commission determines that some amount of storm-related costs should be borne by FPL's customers, then a surcharge to base rates, with interest at the commercial paper rate, would be appropriate for such recovery.

TWOMEYS: Same position as Office of Public Counsel (OPC).

AARP: Same position as Office of Public Counsel (OPC).

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing

for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

XIII. ISSUES AND POSITIONS

ISSUE 1: **What is the legal effect, if any, of FPL's 1993 storm cost study and Order No. PSC-95-0264-FOF-EI entered in Docket No. 930045-EI on the decisions to be made in this docket?**

POSITIONS

FPL: In its Order No. PSC-95-0264-FOF-EI, issued February 27, 1995, in Docket No. 930405-EI, the Commission approved accounting standards submitted by the Company pursuant to Commission order. FPL is obliged to adhere to Commission orders and has relied upon the Commission's 1995 order. Storm restoration costs were booked in accordance with the approved standards and were included in the Storm Damage Reserve deficit that was reported as an asset in the Company's 2004 financial statements. Changing the standards retroactively would undermine the basis for financial reporting with detrimental consequences for the capital market's perception of regulatory risk. Nothing has changed that would alter the propriety of using the standards approved in Docket No. 930405-EI.

OPC: FPL's 1993 study and Order No. PSC-95-0264-FOF-EI are not legally dispositive of the accounting methodology that the Commission should require FPL to apply to 2004 storm costs. In the order, the Commission characterized the study as "adequate," then immediately stated its interest in opening a rulemaking proceeding for the purpose of considering the adoption of uniform guidelines for the storm accounting of all utilities. In context, then, it is clear that the Commission did not regard its order as having a permanent effect on future proceedings. Further, in the study FPL justified its "total restoration cost" approach largely on the proposition that, because FPL expected it would continue to have insurance on transmission and distribution in place, an approach that mirrored the manner in which "replacement cost" insurance policies and claims work would simplify the storm accounting and eliminate administrative burdens by avoiding the necessity of maintaining separate accounting records for insurance and regulatory purposes. As FPL no longer has T&D insurance, the premise on which the Commission based its review at the time is no longer valid. Applied to circumstances in which FPL wants to deliver the bill to customers, not an insurance company, the approach has the effect of requiring customers to pay the same costs twice.

Further, because (consistent with the Commission rule that permits utilities to defer catastrophic storm costs) FPL has not yet recognized the 2004 expenses for purposes of its financial statements, there is nothing "ex post" about applying the more appropriate accounting methodology to the 2004 storm-related costs.

Finally, the 1993 study and order, on the one hand, and the different proposal advanced by OPC in this docket, on the other, involve only the determination of which costs are properly charged to the storm damage reserve. They have no bearing on the separate issue regarding whether, once the amount to be charged to the storm damage reserve has been determined, the Commission should require FPL to absorb some of those costs through corporate earnings achieved through base rates instead of through a surcharge to customers.

FIPUG: The 1993 study and Order No. PSC-95-0264-FOF-EI are not dispositive of the issues regarding the manner in which FPL should account for the storm-related costs in this proceeding. In addition, the Order did not prejudge cost recovery from FPL's ratepayers under the storm damage reserve.

FRF: The 1993 study and Order No. PSC-95-0264-FOF-EI are not dispositive of the issues regarding the manner in which FPL should account for the storm-related costs in this proceeding. In addition, the Order did not prejudge cost recovery from FPL's ratepayers under the storm damage reserve.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position at this time.

ISSUE 2: Is the methodology in Order No. PSC-95-0264-FOF-EI, issued in Docket No. 930405-EI, for booking costs to the Storm Damage Reserve the appropriate methodology to be used in this docket? If not, what is the appropriate methodology that should be used?

POSITIONS

FPL: Yes. FPL properly recorded costs based on the standards approved by the Commission in Docket No. 930405-EI and in effect at the time the costs were incurred. FPL's books as of December 31, 2004 reflect the Company's adherence to those standards. Nothing has changed that would alter the propriety of using the standards approved in Docket No. 930405-EI. Changes, if any, in these standards should only be made on a prospective basis.

OPC: No. The storm damage reserve should be limited to extraordinary costs that are incremental to the amounts that FPL would have spent on the replacement plant, cost of removal, and O&M in the absence of the storms. Instead, FPL wants to book to the storm damage reserve, and collect from customers immediately, costs of capital investments that are more appropriately placed in rate base and

recovered over the lives of the plant. FPL also wants to book to the storm reserve all of the costs it incurred when removing the damaged plant, even though it has been collecting (through depreciation rates) the normal costs of removing the damaged plant through base rates since the plant was installed. The normal, current cost of replacing plant (labor and materials) should be booked to plant in service and recovered through depreciation expense over time. The normal cost of removing damaged plant should be removed from the storm account and charged to the reserve established and maintained specifically for that purpose. This approach does not "penalize" FPL. It does not prevent FPL from *recovering* any of these costs. As to the normal cost of replacement plant, the effect is no different than other plant items—including very large ones—that FPL has placed in rate base and "carried" through existing rates until its next revenue requirements case. As to cost of removal, over time FPL has been collecting revenues earmarked for that purpose through the depreciation rates that are built into base rates; to allow FPL to book "normal cost of removal" to the storm damage reserve would be to permit double recovery.

In fact, when implementing its "total restoration cost" approach FPL actually calculates the "normal" replacement plant costs and "normal" cost of removal expense, and even makes entries to plant in service and accumulated depreciation that are consistent with OPC's position. However, as an additional step in the accounting methodology FPL then reduces both plant in service and accumulated depreciation to "pre-storm" values and charges the amounts of these reductions to the storm damage reserve through an additional accounting entry it labels "contribution in aid of construction." Therefore, to convert FPL's accounting mechanism to the "incremental and extraordinary" concept for plant and cost of removal advocated by OPC, the Commission has only to require FPL to reverse these inappropriate "CIAC" entries.

Finally, with respect to labor, vehicle costs, and other O&M, FPL has charged the storm damage reserve for all such costs, even though it would have incurred a normal level of related O&M in these categories even if there had been no storms. This has the effect of requiring customers to pay the same costs twice.

FIPUG: No. FPL's storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

FRF: No. FPL's storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 3: **Were the costs that FPL has booked to the Storm Damage Reserve consistent with the methodology in the study filed on October 1, 1993, by the Company in Docket No. 930405-EI?**

POSITIONS

FPL: Yes. Costs were booked to the Storm Damage Reserve were recorded consistent with the methodology in the study filed on October 1, 1993 in Docket No. 930405-EI and approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995.

OPC: In its 1993 study FPL advocated the "total restoration cost" approach, which OPC assumes is the subject of this issue. OPC notes that FPL accomplishes its "total restoration cost" accounting, in part, by first identifying the "normal" cost of the replacement plant and the "normal" cost of removal expense and recording those amounts in plant in service and accumulated depreciation, respectively—just as OPC would have it do. FPL then records to plant in service and accumulated depreciation entries it labels "contribution in aid of construction" that are designed to reduce those accounts to pre-storm levels. FPL "pays" for these adjusting entries by charging the amounts of the "contributions in aid of construction" to the storm damage reserve, thereby increasing the extent to which the balance becomes negative as a result of the 2004 restoration activities. This accounting treatment is inconsistent with the 1993 study in the following significant respect. In the study, FPL assumed the reduction of accounts to "prestorm levels" would be paid by insurance proceeds; the study showed no "CIAC" charged to the storm damage reserve.

FIPUG: No position.

FRF: (Tentative) Yes, but the costs thus booked are not appropriate for determining the level or amount of costs to be charged to the storm reserve in these proceedings.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 4: **Has FPL quantified the appropriate amount of non-management employee labor payroll expense that should be charged to the storm reserve? If not, what adjustments should be made?**

POSITIONS

FPL: Yes. FPL has booked payroll costs to the Storm Damage Reserve consistent with the methodology in the study filed on October 1, 1993 in Docket No. 930405-EI and approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995. No adjustment is necessary.

OPC: No. Consistent with the principle that FPL should charge to the storm damage reserve only incremental and extraordinary costs, the Commission should require FPL to remove $10,906,236 of non-management employee labor payroll expense from the amount charged to the storm reserve because it is already included in the budgeted amounts supported by base rates.

FIPUG: FPL's storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

FRF: No; FPL has not appropriately quantified such costs. FPL's claimed storm-related costs, including non-management employee labor payroll expense, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding the amount of adjustments that should be made to non-management employee labor payroll expense in determining FPL's allowable storm-related costs, if any.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 5: **Has FPL properly treated payroll expense associated with managerial employees when determining the costs that should be charged to the storm reserve? If not, what adjustments should be made?**

POSITIONS

FPL: Yes. FPL has booked payroll costs to the Storm Damage Reserve consistent with the methodology in the study filed on October 1, 1993 in Docket No. 930405-EI

and approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995. No adjustment is necessary.

OPC: No. The Commission should require FPL to remove $18,300,983 of managerial payroll expense from the amount that FPL charged to the storm reserve.

FIPUG: FPL's storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

FRF: No; FPL has not appropriately quantified such costs. FPL's claimed storm-related costs, including management employee labor payroll expense, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding the amount of adjustments that should be made to management employee labor payroll expense in determining FPL's allowable storm-related costs, if any.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 6: At what point in time should FPL stop charging costs related to the 2004 storm season to the storm reserve?

POSITIONS

FPL: Application of PSC Rule 25-6.0143, Florida Administrative Code, provides that all costs determined to be the result of storm damages should be charged to the Storm Damage Reserve.

OPC: FPL should stop charging amounts related to the 2004 storm season to the storm damage reserve after foreign utilities have departed, FPL employees are no longer working overtime hours beyond the level normally expected, and the contractors that FPL employs routinely are working at a normal rate.

FIPUG: FPL should stop charging such costs to the storm damage reserve effective January 1, 2005, or at the conclusion of storm restoration activities, whichever is sooner. Such costs should not exceed $890 million.

FRF: FPL should stop charging such costs to the storm damage reserve effective January 1, 2005, or at the conclusion of storm restoration activities, whichever occurred first.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 7: Has FPL charged to the storm reserve appropriate amounts relating to employee training for storm restoration work? If not, what adjustments should be made?

POSITIONS

FPL: Yes. No pre-storm training costs have been charged to the Storm Damage Reserve. No adjustments should be made.

OPC: Employee training, including training for storm-related activities, is a normal function for which customers should not be required to bear charges through the storm damage reserve.

FIPUG: FPL's storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

FRF: No; FPL has not appropriately quantified such costs. FPL's claimed storm-related costs, including employee training expenses, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. Pending review of the evidence of record on this issue, the FRF takes the position that it is not persuaded that any employee training costs are appropriately charged to the storm reserve.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 8: Has FPL properly quantified the costs of tree trimming that should be charged to the storm reserve? If not, what adjustments should be made?

POSITIONS

FPL: Yes. Only tree trimming costs incurred in conjunction with storm restoration have been charged to the Storm Damage Reserve. No adjustments should be made.

OPC: No. The Commission should disallow $4,220,000 from the amount that FPL charged to the storm damage reserve.

FIPUG: FPL's storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

FRF: No; FPL has not appropriately quantified such costs. FPL's claimed storm-related costs, including tree-trimming expenses, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding the amount of adjustments that should be made to tree-trimming expense in determining FPL's allowable storm-related costs, if any.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 9: Has FPL properly quantified the costs of company-owned fleet vehicles that should be charged to the storm reserve? If not, what adjustments should be made?

POSITIONS

FPL: Yes. FPL has charged vehicle costs to the Storm Damage Reserve consistent with the methodology in the study filed on October 1, 1993 in Docket No. 930405-EI and approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995. No adjustment is necessary.

OPC: No. FPL would have incurred the fixed costs and normal operating costs of its vehicles in any event. The amount charged to the storm reserve should be limited to one half the fuel cost charged to the storm, reflecting the additional shifts during which the vehicles were operated. $5,261,887.

FIPUG: FPL's storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

FRF: No; FPL has not appropriately quantified such costs. FPL's claimed storm-related costs, including the costs associated with company-owned fleet vehicles, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding the amount of adjustments that should be made to expenses associated with company-owned fleet vehicles in determining FPL's allowable storm-related costs, if any.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 10: Has FPL properly determined the costs of call center activities that should be charged to the storm reserve? If not, what adjustments should be made?

POSITIONS

FPL: Yes. FPL has charged incremental costs of the call center operation to the Storm Damage Reserve consistent with the methodology in the study filed on October 1, 1993 in Docket No. 930405-EI and approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995. No adjustment is necessary.

OPC: No position at this time.

FIPUG: FPL's storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

FRF: No; FPL has not appropriately quantified such costs. FPL's claimed storm-related costs, including the costs of call center activities, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding the amount of adjustments that should be made to call center expenses in determining FPL's allowable storm-related costs, if any.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 11: Has FPL appropriately charged to the storm reserve any amounts related to advertising expense or public relations expense for the storms? If not, what adjustments should be made?

POSITIONS

FPL: Yes. FPL has properly charged certain advertising expenses or public relations expenses to the Storm Damage Reserve consistent with the methodology in the study filed on October 1, 1993 in Docket No. 930405-EI and approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995. No adjustment is necessary.

OPC: No. The amount of the negative deficiency calculated by FPL should be reduced by $1,700,000.

FIPUG: FPL's storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

FRF: FPL's claimed storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding advertising or public relations costs or related adjustments to FPL's allowable storm-related costs, if any. Additionally, any advertising that was "image-enhancing" is not eligible for cost recovery.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 12: Has uncollectible expense been appropriately charged to the storm reserve? If not, what adjustments should be made?

POSITIONS

FPL: FPL has not charged the Storm Damage Reserve with uncollectible accounts expense. If the Commission follows the methodology in the study filed on October 1, 1993 in Docket No. 930405-EI and approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995, no adjustments should be made. See Issue 15.

OPC: The storm damage reserve properly is limited to the incremental and extraordinary costs of restoring service and repairing the physical system following storm events. Uncollectible expense, which consists of money owed to the company that the company writes off, does not fall into that category. Further, whether uncollectible expense can be attributed to the storm is speculative. It is inappropriate to charge any portion of uncollectible expense to the storm damage reserve.

FIPUG: FPL should not charge uncollectible expense to the storm damage reserve.

FRF: FPL should not charge uncollectible expense to the storm damage reserve. The use of the reserve should be limited to the extraordinary costs of repairing FPL's system and restoring service. Uncollectible expense does not fall into this category. In addition, the determination as to whether uncollectible expense was attributable to the storms is speculative.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 13: Of the costs that FPL has charged or proposes to charge to the storm reserve, should any portion(s) instead be booked as capital costs associated with its retirement (including cost of removal) and replacement of plant items affected by the 2004 storms? If so, what adjustments should be made?

POSITIONS

FPL: No. FPL has appropriately accounted for additions, retirements and removal costs in accordance with the methodology in the study filed October 1, 1993 in Docket No. 930405-EI and approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995.

OPC: Yes. FPL booked all such costs to the storm damage reserve. Costs of labor and materials incurred to install plant are capital investments, and normally should be placed in rate base. The storm damage reserve should be used only for extraordinary increments of costs caused by storm conditions. FPL should be

required to book the normal cost of replacements to plant in service. FPL estimates this amount to be $58,000,000. The Commission should require FPL to provide the final value after all costs have been booked.

FPL's depreciation rates include a component through which FPL collects from customers the cost of removing plant over its life. Of the cost of removing damaged plant incurred during 2004 restoration activities, FPL should be required to book the "normal" amount to the reserve in which amounts collected for the purpose reside; only the extraordinary increment should be booked to the storm damage reserve. FPL estimates the "normal" amount to be $36,400,000. Again, FPL should be required to provide the final amount for purposes of the adjustment after it has completed booking all costs.

FIPUG: Yes. FIPUG adopts the OPC's findings with respect to cost of removal and recommends that an appropriate amount of the remaining storm asset restoration cost be applied to the depreciation reserve rather than to the storm reserve. The storm damage deficit surcharge should be reduced accordingly. FIPUG demands that FPL provide proof of the appropriate amount of storm damage cost to be capitalized.

FRF: Yes. FPL should book to Plant In Service the amounts that it would normally spend on plant and charge the excess to the storm reserve. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding the appropriate amount of costs that should be booked as capital costs as opposed to being charged to the storm reserve.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 14: Has FPL appropriately quantified the costs of materials and supplies used during storm restoration that should be charged to the storm reserve? If not, what adjustments should be made?

POSITIONS

FPL: Yes. Materials and supplies inventory costs directly related to storm restoration activities were appropriately charged to the Storm Damage Reserve in accordance with the study filed October 1, 1993 in Docket No. 930405-EI and approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995. No adjustments should be made.

OPC: FPL should charge only the costs of the materials and supplies used during restoration activities to the storm reserve. It should not charge the costs of replenishing supplies and inventories to the reserve.

FIPUG: FPL should provide proof that it is seeking recovery only for incremental materials and supplies required to restore its system.

FRF: No; FPL has not appropriately quantified such costs. FPL's claimed storm-related costs, including materials and supplies costs, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding the amount of adjustments that should be made to expenses associated with materials and supplies costs in determining FPL's allowable storm-related costs, if any.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 15: **If the Commission does not apply, in this docket, the methodology applied by FPL for charging expenses to the storm reserve pursuant to the study filed on October 1, 1993 by the Company and addressed by the Commission in Order No. PSC-95-0264-FOF-EI in Docket No. 930405-EI, should the Commission take into account:**

a. Revenues lost by the Company due to the disruption of customer service during the 2004 storm season or the absence of customers after the storms;

b. Overtime incurred by Company personnel in work areas not directly affected by the storm due to loss of some personnel to storm assignments (backfill work);

c. Costs associated with work which must be postponed due to the urgency of the storm restoration and accomplished after the restoration was completed (catch-up work);

d. Uncollectible accounts receivable write-offs directly related to the storms; and

e. **Incremental contractor, outside professional services and temporary labor costs due to work postponed due to the urgency of the storm restoration and accomplished after the restoration was completed.**

POSITIONS

FPL: Yes. If the Commission departs from the methodology applied by FPL for charging expenses to the Storm Reserve pursuant to the study filed on October 1, 1993 by the Company and addressed by the Commission in Order No. PSC-95-0264-FOF-EI in Docket No. 930405-EI, the Commission should take into account impacts on the Company and expenses incurred that were directly caused by the hurricanes, but were not charged to the Storm Damage Reserve. Such impacts and adjustments would include $38.2 million in lost base rate revenues, $9.0 million in overtime worked by Company employees during the last two months of 2004 (catch-up work), nearly $6 million in uncollectible accounts receivable write-offs directly related to the storms, and $7.0 million in incremental expenses associated with contractors and outside professional services during the last two months of 2004.

OPC: a. Lost revenues due to the impact of the 2004 storm season

No. The storm damage reserve should be limited to the incremental and extraordinary costs of restoring service and repairing the physical system. "Lost revenues" are not *costs* at all, and labeling them as such does not make them so. Further, in this case OPC advocates measuring the amount of costs associated with the negative balance in the storm damage reserve that FPL should absorb through earnings by applying 10% ROE as the criterion. If FPL had realized greater revenues, its earnings subject to this calculation would have been greater, and FPL would have been assigned a larger portion of the negative balance to be recovered through earnings. Accordingly, by adopting the 10% ROE criterion the Commission will have effectively taken FPL's claim of "lost revenues" into account; because FPL's earnings are lower than they would have been had it not "lost revenues," the amount it will absorb through earnings is also commensurately lower.

b. Overtime incurred by Company personnel in work areas not directly affected by the storm due to loss of some personnel to storm assignments (backfill work);

Only if the Commission first requires FPL to remove regular payroll costs from the storm reserve should it consider this category of overtime. The burden is on FPL to demonstrate and document that there was such overtime, and that it was caused directly by loss of personnel to storm assignments.

c. Costs associated with work which must be postponed due to the urgency of the storm restoration and accomplished after the restoration was completed (catch-up work):

Only if the Commission first requires FPL to remove regular, normal payroll costs from the storm reserve should it consider a claim for "catch-up" work. Further, given the degree to which FPL will have modified its entire transmission and distribution system during restoration, the burden is on FPL to demonstrate that (a) specific catch-up work exists after the modifications, replacements and improvements, and (b) such work cannot be performed, as a result of the budgeting and scheduling processes, by employees during regular hours or by contractors during the normal amount of budgeted contract work.

d. Uncollectible accounts receivable write-offs directly related to the storms

The storm damage reserve should be limited to incremental, extraordinary costs of restoring service and repairing the physical system. Uncollectible accounts receivable, consisting of money owed to FPL that FPL decides to write off, are not *costs,* and labeling them as such does not make them so. Further, the amount of uncollectibles "directly related to the storms" would be speculative, as would be the determination of those that will never be collected at some point in the future, through collection efforts, suits, etc. Finally, this item is duplicative of both "uncollectible expense" and "lost revenues," both of which FPL has identified above and neither of which is properly charged to the storm damage reserve.

e. Incremental contractor, outside professional services and temporary labor costs due to work postponed due to the urgency of the storm restoration and accomplished after the restoration was completed.

Like (d) above, item "e" appears to be duplicative of at least one other of the list of claims that FPL says it wants the Commission to consider if it rejects FPL's "total restoration cost" approach. See (c) above for OPC's position on item "e".

FIPUG: No, unless the losses cause return on equity to fall below 10%.

FRF: Agree with the Office of Public Counsel (OPC).

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 16: **Taking into account any adjustments identified in the preceding issues, what is the appropriate amount of storm-related costs to be charged against the storm reserve?**

POSITIONS

FPL: $890 million.

OPC: Approximately $398.2 million.

FIPUG: The appropriate amounts of costs are those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.

FRF: FPL's claimed storm-related costs to be charged against the storm damage reserve should be limited to those that are incremental to the level of normal operating and maintenance expenses, and incremental to other relevant costs that would have otherwise been incurred. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding the total costs that may appropriately be charged against the storm damage reserve.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 17: **Were the costs FPL has booked to the storm reserve reasonable and prudently incurred?**

POSITIONS

FPL: Yes. The $890 million in costs FPL has incurred and booked to the Storm Damage Reserve were necessary, reasonable and prudent in safely and rapidly restoring service to more than 5.35 million customers during the most active hurricane season on record in the State of Florida. FPL's efforts and its approach to restoration were consistent with the overarching public policy favoring prompt and safe restoration of electric service, consistent with the unwavering and oft-repeated expectations of state and local government, and consistent with the regulatory framework instituted by the Florida Public Service Commission following Hurricane Andrew.

Despite the punishing circumstances and monumental challenges presented by three back-to-back hurricanes, within three days following each of the three

storms the Company was successful in restoring power to more than 75% of the customers who had lost power. FPL's performance compares favorably with that of Dominion Virginia Power following Hurricane Isabel. FPL's performance also has been reviewed by an independent consultant, Davies Consulting, Inc., ("DCI"), which concluded that FPL met or exceeded standard industry practices in virtually every facet of the restoration, particularly in the areas of infrastructure performance, crew and logistics mobilization, restoration planning and implementation, and FPL's ability to restore a large percentage of customers within the first few days. In DCI's opinion, no other U.S. utility could have addressed the restoration effort in a six-week period as successfully as FPL did. The receipt earlier this year of the Edison Electric Institute ("EEI") award for emergency response (FPL's third in the past four years) provided further validation of FPL's recognized industry-leading expertise.

The purpose of Docket No. 041291-EI is to investigate FPL's performance in responding to the extraordinary events of the 2004 Storm Season and the reasonableness and prudence of the costs FPL incurred in doing so. In the course of the Docket, FPL has timely responded to five months of extensive discovery from Staff and various parties, as well as a Staff audit, in order to facilitate the investigation of the reasonableness and prudence of costs incurred during the 2004 storm season that are eligible for recovery through FPL's proposed surcharge mechanism. Given that Staff and parties to this Docket have had an opportunity to investigate the reasonableness and prudence of greater than 95 percent of the costs proposed for recovery through discovery and the Staff audit, it would be inappropriate and a waste of limited resources to re-litigate the issue of the reasonableness and prudence of those costs in the context of a contested true-up proceeding.

OPC: OPC believes it is inappropriate to consider a blanket request for a single overall finding as to the reasonableness and prudence of the myriad of storm-related costs, totaling some $890 million, that FPL says it was required to incur. Further, as was the case in the counterpart PEF petition (Docket No. 041272-EI), in the disposition of this issue the Commission should preserve the right of any party to challenge the reasonableness and/or prudence of any expenditure during the true-up phase of the proceeding.

FIPUG: FIPUG demands strict proof.

FRF: Agrees with the Office of Public Counsel.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 18: **Is FPL's objective of safe and rapid restoration of electric service following tropical storms and hurricanes appropriate?**

POSITIONS

FPL: Yes. FPL's efforts and its approach to restoration were consistent with the overarching public policy favoring prompt and safe restoration of electric service, consistent with the unwavering and oft-repeated expectations of state and local government, and consistent with the regulatory framework instituted by the Florida Public Service Commission following Hurricane Andrew.

OPC: The "issue" as framed implies that FPL is assuming a discretionary burden by establishing as its objective the safe and rapid restoration of service that, absent some approval in this docket, it would not otherwise undertake. The notion is nonsensical. FPL is the monopoly provider of an essential service. The response to the "issue" is found in its statutory obligations.

OPC could as well ask, "Is OPC's objective of vigorously protecting customers' interests appropriate?" If OPC's counterpart question were to elicit a laudatory response, it nonetheless would be meaningless in terms of resolving matters genuinely at issue in the docket. The same is true of this question.

This is particularly true in light of the fact that the only way FPL makes money is by selling electricity. When customers have no electric service, FPL receives no revenues. Therefore, it is as much in FPL's interest as it is in customers' interests for FPL to undertake to restore service rapidly and safely.

Finally, OPC notes that in its recently filed revenue requirements case FPL has requested a "bonus." This "issue" does not bear on any decision the commission must make, but could possibly be connected to an attempt by FPL to increase revenue requirements in its pending rate case.

FIPUG: FPL is applauded for its efforts; however, this burden—assumed in return for its retail monopoly—is not relevant to storm cost recovery.

FRF: The FRF objects to this issue because the FRF believes that nothing less than "safe and rapid restoration of electric service" following storms is required by Chapter 366, and accordingly, this issue appears to be framed to give FPL credit for actions that it is already obliged to take pursuant to its statutory obligation to serve.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 19: **Does the stipulation of the parties that the Commission approved in Order No. PSC-02-0501-AS-EI affect the amount or timing of storm-related costs that FPL can collect from customers through the proposed surcharge? If so, what is the impact?**

POSITIONS

FPL: No. FPL's request is consistent with, and expressly contemplated by, the Stipulation and Settlement that was executed by all parties to this proceeding, including OPC, in Docket No. 001148-EI, and approved by the Commission in Order No. PSC-02-0501-AS-EI, issued April 11, 2002. The Stipulation and Settlement establishes a regulatory mechanism that constitutes the "appropriate and exclusive mechanism to address earnings levels" and expressly contemplates that FPL would have the opportunity to recover expenditures incurred in the event of an extraordinary storm season.

OPC: Yes. The stipulation requires FPL to absorb storm-related expenses through earnings until its ROE is reduced to 10% before modifying rates. This equates to $270,512,000 that FPL should be required to absorb through earnings.

FIPUG: Yes. FPL should be limited to recovering only such costs that would reduce its after-tax return on equity for 2004 to 10%. The remainder could be recovered through a surcharge with interest.

FRF: Yes, consistent with the Commission's overriding mandate to ensure that the totality of FPL's rates are fair, just, and reasonable, the Commission should limit FPL's storm cost recovery to only the amount of such costs that would reduce FPL's after-tax return on equity for 2004 to 10%. The remainder, if any, could be recovered through a surcharge with interest on the unamortized balance.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 20: **In the event that the Commission determines the stipulation approved in Order No. PSC-02-0501-AS-EI does not affect the amount of costs that FPL can recover from ratepayers, should the responsibility for those costs be apportioned between FPL and retail ratepayers? If so, how should the costs be apportioned?**

POSITIONS

FPL: No. The recovery from customers of all reasonable and prudent costs associated with storm restoration is central to the cost-of-service approach to regulation followed in Florida. Storm restoration costs are a cost of providing electric service in Florida and, as such, are properly recoverable from customers. There should be no apportionment of costs between the Company and its customers. Customers are the direct beneficiaries of the Company's restoration efforts.

OPC: Yes. Investors are paid to take risks. It would be unfair to compensate investors for the risks they take, then insulate them from those risks by placing 100% of the 2004 storm costs on customers. Even if the Commission determines the 2002 stipulation does not govern the disposition of FPL's petition, the Commission correctly has stated in past orders that FPL is not immune from all risk of storm losses. The Commission also has indicated that it will not require a utility to earn less than a fair rate of return as a result of catastrophic storm losses. Because a return on equity of 10% is more than adequate to enable FPL to earn a reasonable rate of return, the Commission should identify the 2004 earnings above 10% ROE as the amount of costs associated with the negative balance in the storm reserve that FPL should recover by the application of corporate earnings to reduce the negative balance rather than a surcharge on customers' bills. In its discretion, in order to allay any concerns expressed by FPL regarding the impact on FPL's financial viability associated with expensing these costs in a single year, the Commission can authorize FPL to defer the costs and amortize them over a period of two or three years. However, FPL should not be allowed to roll unamortized costs into the revenue requirements borne by base rates in the pending rate case.

FIPUG: Yes. FPL should be limited to recovering only such costs that would reduce its after-tax return on equity for 2004 to 10%. The remainder could be recovered through a surcharge with interest. Such an apportionment would fairly allocate the costs to ensure that FPL earns a fair rate of return while absorbing the costs of the hurricanes that FPL incurred as a normal business operating risk in Florida.

FRF: Consistent with the Commission's overriding mandate to ensure that the totality of FPL's rates are fair, just, and reasonable, the Commission should limit FPL's storm cost recovery to only the amount of such costs that would reduce FPL's after-tax return on equity for 2004 to 10%.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 21: What is the appropriate amount of storm-related costs to be recovered from the customers?

POSITIONS

FPL: $533 million (jurisdictional) plus interest on the unrecovered balance.

The Commission should not consider OPC's proposal to use the identification of a theoretical depreciation reserve surplus in FPL's recently filed depreciation study as a basis for offsetting the deficit balance in the Storm Damage Reserve that is approved for recovery by the Commission. Not only does this proposal violate FPSC and FERC policy and orders, it violates Generally Accepted Accounting Principles and Securities and Exchange Commission guidance and will cost customers substantially more than FPL's proposed storm surcharge. In addition, what OPC is proposing as an option to this Commission will shift cost responsibility from wholesale to retail customers. FPL has properly addressed the theoretical depreciation reserve surplus by using the remaining life depreciation rates over the lives of the assets to which the surplus relates, resulting in reduced deprecation rates reflected in base rates.

OPC: $128,000,000. The Commission should consider the availability of excess depreciation reserves to obviate some or all of the need to collect this amount from customers through a surcharge.

FIPUG: FPL should be limited to recovering only such costs that would reduce its after-tax return on equity for 2004 to 10%. The remainder could be recovered through a surcharge with interest. Such an apportionment would fairly allocate the costs to ensure that FPL earns a fair rate of return while absorbing the costs of the hurricanes that FPL incurred as a normal business operating risk in Florida.

FRF: The appropriate amount of storm-related costs to be recovered from FPL's customers through a Storm Surcharge are those reasonably and prudently incurred costs that are incremental to other relevant costs that would have otherwise been incurred and that are necessary to ensure that FPL's rates and charges are, when considered in their totality, fair, just, reasonable, and not unduly discriminatory. Pending review of the evidence of record on this issue, the FRF takes no position at this time regarding the total amount of costs that may appropriately be recovered from FPL's customers through any Storm Surcharge that the Commission may approve in this proceeding.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 22: If recovery is allowed, what is the appropriate accounting treatment for the unamortized balance of the storm-related costs subject to future recovery?

POSITIONS

FPL: The commission should authorize the transfer of the unamortized balance of the storm related costs subject to future recovery from the Storm Damage Reserve (Account 228.1) to a deferred Regulatory Asset (Account 182.3). The amount transferred should be amortized consistent with the amounts recovered as revenue through the authorized surcharge recovery factor.

OPC: The negative balance should be maintained in a separate subaccount, so as to segregate it from the positive balance resulting from future accruals.

FIPUG: The storm damage account should be credited each month with the actual amount recovered from ratepayers.

FRF: The storm damage account should be credited each month with the actual costs recovered from ratepayers.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 23: Should FPL be authorized to accrue and collect interest on the amount of storm-related costs permitted to be recovered from customers? If so, how should it be calculated?

POSITIONS

FPL: Yes. Interest should be calculated monthly using the average commercial paper rate applied to the average un-recovered balance for the month. The interest rate used should be the same interest rate used for cost recovery clause under/over recovered balances. Consistent with Commission policy regarding the treatment

of deferred debits and credits on the balance sheet, FPL should not be denied the ability to recover the minimum carrying cost of funds used to pay storm restoration costs. The tax benefit does not reduce the debit balance in the Storm Reserve Deficit, but rather, the tax benefits received are used for general corporate purposes. If the tax benefits of the deduction resulting from the storm restoration expenses are used to reduce the Storm Reserve Deficit on which carrying costs are applied, the amount associated with the tax benefit will need to be financed with other sources of capital. These funds will have a cost; at a minimum the 30-day commercial paper rate, but possibly as high as the Company's overall cost of capital.

OPC: To the extent that any amounts are approved for recovery from FPL's customers, FPL should be permitted to apply an interest factor, calculated as follows: Each month FPL should apply the 30 day commercial paper rate to the outstanding net-of-tax balance of the storm damage account, which shall be the outstanding balance of the storm damage account less 38.575% taxes.

FIPUG: Agree with Office of Public Counsel (OPC).

FRF: Agree with Office of Public Counsel (OPC).

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: The interest expense should be calculated net of the portion of deferred taxes that are not expected to be recognized in FPL's rate case (Docket No. 050045-EI).

ISSUE 24: WITHDRAWN

ISSUE 25: If the Commission approves recovery of any storm-related costs, how should they be allocated to the rate classes?

POSITIONS

FPL: The Storm Recovery Surcharge should be allocated to rate classes based on each rate class's share of gross plant divided by its kWh sales. The resulting calculation of the Storm Recovery Surcharge factors by rate class is reflected in Document No. RM-1 attached to the Direct Testimony of Rosemary Morley filed in this Docket.

OPC: No position at this time.

FIPUG: The costs should be allocated to the rate classes as recommended by FPL in its petition.

FRF: No position at this time.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: The jurisdictional costs approved by the Commission for recovery (Issue 21) after applying revenues collected since February 17, 2005 (Issue 29) should be allocated to the rate classes using the revised allocation percentages developed in FPL's response to Staff's 4th Set of Interrogatories, No. 35, Attachment 1, page 1 of 2. These percentages represent an allocation that approximates the way the storm damage costs would have been allocated in a base rate proceeding, i.e., based on the amount of damage in each functional area (e.g., transmission, distribution, etc.). Each rate class's cost responsibility should then be divided by its projected kWh sales for the period August 2005 through February 2008 to calculate a cents-per-kWh recovery factor.

ISSUE 26: What is the appropriate recovery period?

POSITIONS

FPL: The jurisdictional portion of the Storm Reserve Deficit, $533 million, should be recovered over a three-year period, or such shorter period as is necessary to recover the Storm Reserve Deficit.

OPC: The appropriate period is a function of the amount authorized to be recovered and the interest factor, as each has an impact on customers. The Commission should prescribe a period that takes both impacts into account.

FIPUG: No more than three years, depending on the amount FPL is authorized to collect.

FRF: No more than 3 years. If the Commission approves a total amount for cost recovery that can be recovered in 2 years or less at FPL's proposed surcharge rates, then those rates should be adjusted downward to provide for recovery over a 2-year period.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: The appropriate recovery period, which became effective on an interim basis on February 17, 2005, is three years. The recovery period should end with cycle 12 billing for February 2008, unless all costs are recovered sooner. If the costs are fully recovered prior to February 2008, the recovery period should continue until the cycle 12 billings for the following calendar month, so that all customers are assessed the surcharge for the same period of time.

ISSUE 27: **If the Commission approves a storm cost recovery surcharge, should the approved surcharge factors be adjusted annually to reflect actual sales and revenues?**

POSITIONS

FPL: FPL does not believe such an exercise is necessary. The Storm Recovery Surcharge will be subject to true-up based on actual sales and revenues, and any over- or under-recovery will be subject to disposition as ordered by the Commission.

OPC: Yes.

FIPUG: Yes, provided that the total recovery of storm restoration costs through the proposed surcharge is limited to $890 million less capital costs, the storm damage reserve and such adjustments as the Commission approves. FPL agreed to a maximum storm damage cost as a condition to the opportunity to amend its petition and file supplemental testimony.

FRF: Only if necessary to ensure that the totality of FPL's rates are fair, just, and reasonable.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: No. However, FPL should revise its interim surcharge factors based on the Commission vote on Issues 21, 25, 26, and 29.

ISSUE 28: **If the Commission approves a mechanism for the recovery of storm-related costs from the ratepayers, on what date should it become effective?**

POSITIONS

FPL: It should be deemed effective the same date as the interim surcharge became effective (Feb. 17, 2005).

OPC: Thirty days after the Commission's vote, to be applied to bills during the following billing cycle.

FIPUG: FPL should be allowed to begin recovering such costs from the final date of the Commission's order in this docket, with recovery beginning on the first billing cycle of the next month.

FRF: Any mechanism that the Commission approves for recovery of storm-related costs through retail rates should become effective 30 days following the date of the Commission's vote in this docket. Recovery should then begin with the first billing cycle of the following month.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: The revised surcharge factors based on the Commission vote on Issues 21, 25, 26, and 29 should become effective with cycle 13 billings for August 2005.

ISSUE 29: What is the appropriate disposition of the revenue collected as an interim storm cost recovery surcharge?

POSITIONS

FPL: Revenues collected on an interim basis, less revenue taxes, should be applied to the amount approved for recovery by the Commission.

OPC: If the Commission authorizes FPL to collect an amount that is less than that collected through the provisional measure, the differential should be refunded to customers with interest.

FIPUG: The storm damage account should be credited each month with the actual amount recovered from ratepayers.

FRF: Such revenues should be applied as a direct credit, including accrued interest at the commercial paper rate, against the total amount that the Commission determines to allow FPL to recover through Storm Surcharges on a going-forward basis. If the amount of revenues collected via the "interim" surcharge exceeds the total amount authorized for recovery by the Commission, the difference should be refunded to customers as soon as practicable.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position pending evidence adduced at hearing.

ISSUE 30: WITHDRAWN

ISSUE 31: Should the docket be closed?

POSITIONS

FPL: Yes.

OPC: No. The docket should remain open pending verification of actual costs.

FIPUG: Yes, as soon as possible.

FRF: No. If the Commission approves a Storm Surcharge for FPL, this docket should remain open to enable the Commission and the parties to ensure that FPL collects the appropriate amount.

TWOMEYS: Adopt the same position stated by the Office of Public Counsel (OPC).

AARP: Adopt the same position stated by the Office of Public Counsel (OPC).

STAFF: Staff has no position at this time.

XIV. POST-HEARING PROCEDURES

If the Commission does not make a bench decision at the hearing, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 80 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position. However, the position must be reduced to no more than 80 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 50 pages, and shall be filed at the same time, unless modified by the Presiding Officer.

XV. RULINGS

The summary of testimony at the time each witness takes the stand shall be limited to 3 minutes.

OPC's Motion for Leave to File Supplemental Testimony in Docket No. 041291-EI to Address Implications of FPL's New Depreciation Study Showing $1.24 Billion Surplus in FPL's Depreciation Reserve Accounts is granted. Accordingly, the supplemental direct testimony of OPC witness Michael J. Majoros concerning the impact of the depreciation reserve is identified in Section X of this Prehearing Order. FPL is granted leave to file its supplemental rebuttal testimony, included in its response to OPC's motion. Accordingly, the supplemental rebuttal testimony of K. Michael Davis concerning the impact of the depreciation reserve is identified in Section X of this Prehearing Order.

It is therefore,

ORDERED by Commissioner Charles M. Davidson, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Charles M. Davidson, as Prehearing Officer, this 19th day of April, 2005

CHARLES M. DAVIDSON
Commissioner and Prehearing Officer

(SEAL)

WCK/KEF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

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 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; 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 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.