

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for issuance of a storm recovery financing order, by Florida Power & Light Company. | DOCKET NO. 060038-EI  
ORDER NO. PSC-06-0626-FOF-EI  
ISSUED: July 21, 2006

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
J. TERRY DEASON  
ISILIO ARRIAGA  
MATTHEW M. CARTER II  
KATRINA J. TEW

ORDER ON MOTION FOR RECONSIDERATION AND CLARIFICATION  
OF FINANCING ORDER

BY THE COMMISSION:

On May 30, 2006, this Commission issued Order No. PSC-06-0464-FOF-EI ("Financing Order") by which it authorized pursuant to Section 366.8260, Florida Statutes, the issuance of up to \$708 million in storm-recovery bonds to be used by Florida Power & Light Company ("FPL") to finance the after-tax equivalent of: (i) recovery of the estimated unrecovered balance of FPL's 2004 storm-recovery costs as of July 31, 2006; (ii) recovery of FPL's unrecovered, prudently incurred storm-recovery costs related to the four named storms that affected its service territory in 2005; (iii) replenishment of FPL's storm reserve to a level of approximately \$200 million; and (iv) recovery of the estimated upfront storm-recovery bond issuance costs.

As set forth in the Financing Order, requests for reconsideration of the Order were required to be filed by June 6, 2006, consistent with Section 366.8260(2)(b)1.b., Florida Statutes. On June 6, 2006, FPL filed a motion for reconsideration and request for clarification as to specified portions of the Financing Order related to the issuance of storm-recovery bonds. FPL did not seek reconsideration or clarification of matters associated with the amount of storm-recovery costs or level of storm-recovery reserve authorized for recovery through storm-recovery bonds. Along with its motion for reconsideration and request for clarification, FPL filed a request for oral argument. No party filed a response to these pleadings.

On July 10, 2006, our staff filed its written recommendation addressing FPL's motions. At our July 18, 2006, Agenda Conference, we considered our staff's recommendation and heard oral argument from FPL. Upon consideration of FPL's motion, our staff's written recommendation, and the arguments presented at our July 18 Agenda Conference, we issue this Order to resolve all issues addressed in FPL's motion for reconsideration and request for clarification.

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

Consistent with the analysis in our staff's recommendation, we hereby make the following amendments to the Financing Order, which are shown in legislative format.

Finding of Fact 77 is amended as follows:

77. ~~To protect the interests of customers, w~~We find that partial payments ~~should~~shall be allocated ~~first~~ to the Storm Bond Repayment Charge, ~~including any past due Storm Bond Repayment Charge~~ in the same proportion that such charge bears to the total bill.

Finding of Fact 81 is amended as follows:

81. We find that this True-Up Mechanism together with the broad based nature of the State Pledge set forth in Section 366.8260(11), Florida Statutes, constitute a guarantee of regulatory action for the benefit of investors in storm-recovery bonds, and we anticipate that stress case analyses will show that these features will serve to effectively eliminate for all practical purposes and circumstances any credit risk associated with the storm-recovery bonds (i.e., that sufficient funds will be available and paid to discharge all principal and interest obligations when due). We direct that this transaction be structured ~~to achieve this result~~consistent with this expectation.

Finding of Fact 95 is amended as follows:

95. As noted above, certain costs, such as debt service on the storm-recovery bonds, as well as the ongoing fees of the trustee, rating agency surveillance fees, and the ongoing costs of any other credit enhancement or interest rate swaps, will not be known until the pricing of a series of storm-recovery bonds. This Order provides flexibility to recover such costs through the Storm-Recovery Bond Charge and the true up of such charge. At the same time, we have established standards and procedures throughout this Financing Order which are intended to ensure that the structuring, marketing, and pricing of storm-recovery bonds result in the lowest overall cost and the greatest possible customer protections. These standards and procedures are designed to allow for meaningful and substantive cooperation between FPL and the Commission and its representatives through the Bond Team described herein to ensure that the structuring, marketing and pricing of the series of storm-recovery bonds will result in the lowest storm-recovery charges consistent with market conditions and the terms of this Financing Order. Consistent with the lowest cost objective, this Financing Order does not require that each tranche be reviewed solely based on interest rate achieved but also in light of upfront and ongoing costs, including marketing costs. Each of the standards and procedures set forth in this Financing Order must be met. This Financing Order grants authority to issue storm-recovery bonds and to impose and collect storm-recovery charges only if the final structure of the transaction and the procedures followed comply in all respects with the standards and procedures set forth herein. If this Commission determines, upon receipt and review of an

Issuance Advice Letter submitted pursuant to this Order and all certifications required by this Order, that the final structure of the transaction and the procedures followed do not comply with the standards and procedures set forth in this Order, this Commission may issue a stop order no later than 5:00 p.m. Eastern Time on the third business day following pricing.

Finding of Fact 105 is amended as follows:

105. We find that FPL, the bookrunning underwriter(s), and this Commission's financial advisor each are required to certify that the structuring, marketing, and pricing of each tranche of storm-recovery bonds of each series in fact achieved the lowest cost objective. Consistent with the lowest cost objective, this Financing Order does not require that each tranche be reviewed solely based on interest rate achieved but also in light of upfront and ongoing costs, including marketing costs. Floating rate bonds and interest rate swap agreements may be utilized to the extent agreed and approved by the Bond Team pursuant to the procedures set forth in Finding of Fact 136. If such a structure is utilized, the certificates delivered by FPL, the bookrunning underwriter(s), and this Commission's financial advisor should confirm that the net interest costs taking into account the interest rate swap agreement(s) and the risks associated with those agreements achieved the lowest cost objective.

Finding of Fact 114b is amended as follows:

b. FPL's proposed form of Servicing Agreement provides for a \$350,000 servicer set-up fee to adapt FPL's existing systems to bill, collect, and process storm-recovery charges and set up the reporting function. The evidence shows that this amount represents an incremental cost to FPL. FPL's proposed form of Servicing Agreement also provides for an annual fee of up to .05 percent of the initial principal amount of the storm-recovery bonds for ongoing services. We find that the activities associated with the annual fee for ongoing services – billing and collecting storm-recovery charges, remitting funds to the SPE, and developing storm-recovery charges – are tightly bound with operations already performed by FPL in the normal course of business. FPL has not justified that the annual fee is necessary to cover any incremental costs to be incurred by FPL in performing ongoing services as servicer. Thus, we find that FPL shall apply to the Reserve all amounts it will receive under the annual fee specified in the Servicing Agreement for ongoing services. However, FPL will have the opportunity to seek recovery of any incremental costs associated with FPL's role as servicer or administrator of the storm-recovery bonds incurred during or after a test period as part of FPL's retail base rate proceedings.

Finding of Fact 116 is amended as follows:

116. FPL's proposed form of Administration Agreement provides for a \$125,000 annual fee for performing the services required by the Administration

Agreement. We find that FPL has not demonstrated that this annual fee is necessary to cover any incremental costs to be incurred by FPL in performing services as administrator. Thus, we find that FPL shall apply to the Reserve ~~all amounts it will receive under~~ the \$125,000 annual fee specified in the Administration Agreement for its services. However, FPL will have the opportunity to seek recovery of any incremental costs associated with FPL's role as servicer or administrator of the storm-recovery bonds incurred during or after a test period as part of FPL's retail base rate proceedings.

Finding of Fact 135 is amended as follows:

135. The actual details of the transaction, including lowest cost certifications from FPL, the underwriter(s), and the Commission's financial advisor shall be provided on the first business day after pricing. The members of the Bond Team representing this Commission will review this information on the second business day after pricing. At the meeting previously noticed for the third day after pricing, the members of the Bond Team representing this Commission will present to this Commission the results of their review. If this Commission determines that all required certifications have been delivered and the transaction complies with applicable law and the financing order, the transaction proceeds without any further action of this Commission. ~~However, if this Commission determines that the transaction fails to comply with applicable law or this Financing Order, or if FPL, the bookrunning underwriter(s), or this Commission's financial advisor is unable or unwilling to deliver the required certifications in a form acceptable to this Commission, we retain discretion to issue an order to stop the transaction.~~ The Commission anticipates that it will issue an order to stop the transaction unless the Commission determines that (a) the transaction complies with applicable law and this Financing Order, and (b) FPL, the bookrunning underwriter(s), and this Commission's financial advisor each has delivered the required certifications in a form acceptable to the Commission. However, this Commission retains discretion either to allow the transaction to be completed or to issue an order to stop the transaction if FPL, the bookrunning underwriter(s), and/or this Commission's financial advisor fail to deliver the required certifications or are unable or unwilling to deliver the required certifications in a form acceptable to this Commission. We will not issue an order to stop the transaction for any other reason, for example, a change in market conditions after the moment of pricing.

The fourth Ordering Paragraph on page 50 of the Financing Order is amended as follows:

ORDERED that FPL is authorized to impose, collect, and adjust from time to time (as described in this Order) a storm-recovery charge, which consists of a Storm Bond Repayment Charge and a Storm Bond Tax Charge, to be applied on a per kWh basis to all applicable customer classes over a period of approximately twelve years until the storm-recovery bonds are paid in full and all financing costs and other costs of the bonds have been recovered in full. Such storm-recovery

charges shall be in amounts sufficient to guarantee the timely recovery of FPL's storm-recovery costs and financing costs detailed in this Financing Order (including payment of principal and interest on the storm-recovery bonds). Although FPL might incur liability if there is a failure of its representations, warranties, or covenants in the Sale Agreement, the Servicing Agreement, or the Administration Agreement, or if FPL negligently, willfully, or in bad faith fails to perform its duties under any of those agreements, this provision is not intended to establish FPL as a guarantor of payments on the storm-recovery bonds.

The second Ordering Paragraph on page 55 of the Financing Order is amended as follows:

~~ORDERED that, to protect the interests of customers, partial payments shall be allocated first to the Storm Bond Repayment Charge, including any past due Storm Bond Repayment Charge, unless, pursuant to the process set forth in Finding of Fact 136, it is determined by the Bond Team that such allocation would result in undue delay and cost in the same proportion that such charge bears to the total bill.~~

The first full Ordering Paragraph on page 59 of the Financing Order is amended as follows:

ORDERED that at the meeting previously noticed for the third day after pricing, the members of the Bond Team representing this Commission will present to this Commission the results of their review. If this Commission determines that all required certifications have been delivered and the transaction complies with applicable law and this Financing Order, the transaction shall proceed without any further action of this Commission. ~~However, if this Commission determines that the transaction fails to comply with applicable law or this Financing Order, or if FPL, the bookrunning underwriter(s), or this Commission's financial advisor is unable or unwilling to deliver the required certifications in a form acceptable to this Commission, we retain discretion to issue an order to stop the transaction.~~ The Commission retains discretion either to allow the transaction to be completed or to issue an order to stop the transaction if FPL, the bookrunning underwriter(s), and/or this Commission's financial advisor fail to deliver the required certifications or are unable or unwilling to deliver the required certifications in a form acceptable to this Commission. We will not issue an order to stop the transaction for any other reason, for example, a change in market conditions after the moment of pricing.

The Financing Order is hereby reaffirmed in all other respects.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Order No. PSC-06-0464-FOF-EI, issued May 30, 2006 (the Financing Order) is hereby amended as set forth in the body of this Order. It is further

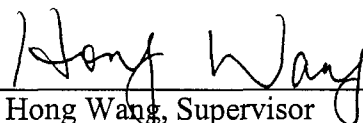
ORDERED that the Financing Order is hereby reaffirmed in all other respects. It is further

ORDERED that this Order is intended to resolve all issues addressed in Florida Power & Light Company's motion for reconsideration and request for clarification of the Financing Order. It is further

ORDERED that this docket shall remain open through completion of this Commission's review of the actual costs of the storm-recovery bond issuance conducted pursuant to Section 366.8260(2)(b)5., Florida Statutes.

By ORDER of the Florida Public Service Commission this 21st day of July, 2006.

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

By:   
\_\_\_\_\_  
Hong Wang, Supervisor  
Case Management Review Section

( S E A L )

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DISSENTS

COMMISSIONER ARRIAGA dissents as to the amendment to Finding of Fact 81 as follows:

Rather than amending the last sentence of Finding of Fact 81, I would amend the first sentence of Finding of Fact 81 to replace the phrase "effectively eliminate" with the phrase "effectively minimize."

NOTICE OF 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.

Any party adversely affected by the Commission's final action in this matter may request 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 by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.