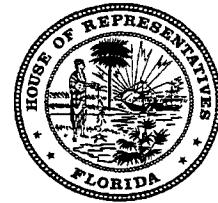


ORIGINAL

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President

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Harold McLean
Public Counsel

November 17, 2004

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0870

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COMMISSION
CLERK

Docket No. 041291-EI, In Re: Florida Power & Light Company's 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.

Dear Ms. Bayó:

Enclosed for filing in the above-referenced docket are the original and fifteen (15) copies of the Office of Public Counsel's and the Florida Industrial Power Users Group's (FIPUG) Joint Motion to Dismiss to Florida Power & Light for filing in the above referenced docket.

Please indicate the time and date of receipt on the enclosed duplicate of this letter and return it to our office.

Sincerely,

Patricia A. Christensen
Associate Public Counsel

- CMP _____
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- DPC _____
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FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's
Petition for Authority to Recover Prudently
Incurred Storm Restoration Costs Related
to the 2004 Storm Season That Exceed the
Storm Reserve Balance

Docket No. 041291-EI

Filed: November 17, 2004

Joint Motion to Dismiss of the Citizens and FIPUG

The Citizens of the State of Florida (Citizens), by and through Harold McLean, Public Counsel, and the Florida Industrial Power Users Group (FIPUG) (collectively, Joint Movants), pursuant to Rule 28-106.204, Florida Administrative Code, hereby file their Motion to Dismiss. In support of their Motion to Dismiss, Joint Movants state that:

Summary

Florida Power and Light's (FP&L) petition should be dismissed because it fails to state a claim upon which relief may be granted. Although the regulatory process is supposed to be a surrogate for the free market place, FP&L would place the entire burden of storm-related expenses on the backs of their customers - - unlike a free market place which does not hold proprietors totally harmless from the effects of natural events. Moreover, for all the Commission or any interest party or customer know, the storm related expenses, extraordinary though they may be, do not render the company's earnings below the range currently approved for FP&L by this Commission. FP&L has neither pled nor offered to prove that the storm-related expenses render its current earnings inadequate.

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FPSC-COMMISSION CLERK

Arguments

1. The Commission should dismiss Florida Power and Light's (FP&L) Petition seeking authority to recovery storm-related costs in excess of the storm reserve fund balance. FP&L's Petition should be dismissed for the reasons discussed below.

2. On November 4, 2004, FP&L filed its Petition requesting recovery of excess storm-related costs related to Hurricanes Charley, Frances, Jeanne, and Ivan. FP&L asserts that the Commission should establish a monthly surcharge to allow it to recover from its ratepayers over a two years period beginning January 1, 2005, its reasonable storm costs in excess of the balance in its storm reserve. FP&L contends that allowing it to recover these storm-related expenses enables it to fulfill its statutory obligation to serve by safely and expeditiously restoring power after a storm with the understanding of timely reimbursement for its reasonably and prudently incurred storm-related cost. However, nowhere in its Petition does FP&L allege that the storm-related costs in excess of the storm reserve fund have caused it to earn less than a fair rate of return or its approved earnings.

3. A storm reserve fund was established for FP&L in Order No. PSC-03-0918-FOF-EI, issued June 17, 1993, in Docket No. 930405-EI. In that Order, the Commission acknowledged that hurricane-related expenses were included in base rates and, therefore, declined to create a 100% past through mechanism which is essentially what FP&L is requesting the Commission do now with the surcharge. Id. at p. 5. In foregoing the

establishment of a 100% past through mechanism in the past, the Commission noted that it would be inappropriate to transfer all risk of storm loss directly to the ratepayer to indemnify the utilities from storm damage. Id. at p. 5. The Commission further noted that even with traditional insurance, the utilities were not free from risk and that this type of risk was a normal business risk in Florida. Id. at p. 5. The storm reserve fund was designed to fill the gap due to lack of insurance for T&D property damage, not to shift 100% of the risk of storm-related costs to the customers, who have themselves borne significant loss due to the storms. The imposition of the surcharge would in fact shift 100% of the risk to the customers which the Commission declined to do in the past. In fact, the Commission stated that:

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

Order No. PSC-93-0918-FOF-EI at p. 4. Additionally, the Commission noted that FP&L's proposal at that the time did not take into account the utility's earnings or achieved rate of return. Id. at p. 5. Similarly, FP&L's proposal now fails to take into account or even mention how and to what extent the storm-related costs affect its earnings or achieved rate of return.

4. Further, the Commission noted that it had a rule which governed the treatment of storm-related costs. Id. at p. 3. Rule 25-6.0143, Florida Administrative Code, addresses the treatment of actual expenses from storm damage that exceed the storm reserve fund. Under Rule 25-6.0143, Florida Administrative Code, the balances in these storm accounts would be evaluated at the time of a rate proceeding and adjusted as necessary, while permitting a utility to petition the Commission for a change in the provision level and accrual rate outside a rate proceeding. Storm damage expenses are part of base rates, and thus a company's earning must be taken into account when evaluating the appropriate amount of storm-related costs which should be passed on to customers, if any. The Commission acknowledged in the Order that it would be appropriate to consider the company's earning in determining the appropriate recovery when the Commission said that:

Extraordinary events such as hurricanes have not caused utilities to earn less than a fair rate of return, and FPL has shown no reason to believe that the Commission will require a utility to book exorbitant storm loss without recourse.

Id. at p. 5.

5. The Commission stated in Order No. PSC-03-0918-FOF-EI that it would address storm-related costs in excess of the storm reserve funds based on a petition filed by the company. In that Order, the Commission observed that it in the past it has allowed recovery of prudent expenses and allowed amortization of storm damage expenses noting extraordinary events such as hurricanes have not caused the utilities to earn less than a

fair rate of return. Thus, the Commission permitted the company to defer storm damage loss over the amount in the reserve until the Commission acted on any petition filed by the company. Order No. PSC-03-0918-FOF-EI at pp. 5-6. Citizens and FIPUG believe that due to the alleged magnitude of the storm-related costs in excess of the storm reserve fund, these costs need to be thoroughly analyzed. Citizens and FIPUG believe these costs are best addressed in conjunction with the company's next rate proceeding in which customers can review the prudence of the expenses, the company's revenues, and the company's earnings, thereby having a complete picture of the company's financial situation.

6. In conclusion, FP&L's Petition to establish a "storm surcharge" to recover 100% of the storm-related costs without even alleging how this would impact its earning or fair rate of return should be dismissed. While this year's storms were extraordinary in nature and may have resulted in unusual storm-related expenses, for all the Commission or any other interested party or customer knows, the storm-related expenses did not render the company's earnings below the range currently approved for FP&L by this Commission. In the absence of any proof that current rates are inadequate, FP&L is not entitled to any relief.

Wherefore, the Citizens and FIPUG request that the Commission grant their Motion to Dismiss FP&L's petition.

Dated this 17th day of November, 2004.

Respectfully submitted,

Harold McLean
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above and foregoing has been furnished by U.S. Mail or *hand-delivery this 17th day of November, 2004:

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