State of Florida

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

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

DATE: December 21, 2004

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

FROM: Office of the General Counsel (Brubaker, Rodan) JSB JAR MBR
Division of Economic Regulation (Slemkewicz, Willis) JDJ

RE: Docket No. 041272-EI – Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc.

AGENDA: 01/04/05 – Regular Agenda – Motion to Dismiss - Oral argument has not been requested, but may be heard at the Commission's discretion.

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\GCLWP\2004\041272\041272RCM.DOC

Case Background

The instant docket was opened on November 2, 2004, when Progress Energy Florida, Inc. (PEF) filed a Petition for implementation of a storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan (Petition). The requested clause would provide for the recovery of approximately $251.9 million plus interest over two years. On November 17, 2004, the Office of Public Counsel (OPC) and the Florida Industrial Power Users Group (FIPUG) (collectively, Movants) filed a joint Motion to Dismiss PEF's petition. That motion asserts that PEF's Petition is inconsistent with the stipulation and settlement agreement (Settlement) in PEF's last rate case. On November 24, 2004, PEF filed its response in opposition to the motion.

The Commission approved the Settlement of PEF's last rate case by Order No. PSC-02-0655-AS-EI, issued May 14, 2002, in Docket No. 000824-EI. Among other things, the Settlement provided that PEF will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates, except as provided for in Section 9 of the Settlement regarding PEF's Hines Unit 2. The Settlement

further provided that PEF will not petition for an increase in its base rates and charges, including interim rate increases, that would take effect prior to December 31, 2005.[1]

This recommendation addresses the Motion to Dismiss filed by OPC and FIPUG, and PEF's response to the Motion to Dismiss. The Commission has jurisdiction pursuant to Sections 366.04, 366.05, and 366.06, Florida Statutes.

Discussion of Issues

Issue 1: Should the joint Motion to Dismiss filed by OPC and FIPUG be granted?

Recommendation: No. The Motion to Dismiss should be denied. (BRUBAKER)

Standard of Review

A motion to dismiss raises as a question of law the sufficiency of the facts alleged in a petition to state a cause of action. See Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). The standard to be applied in disposing of a motion to dismiss is whether, with all factual allegations in the petition taken as true and construed in the light most favorable to the petitioner, the petition states a cause of action upon which relief may be granted. See id. at 350. In determining the sufficiency of the petition, the Commission should confine its consideration to the petition and documents incorporated therein and the grounds asserted in the motion to dismiss. See Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958), overruled on other grounds, 153 So. 2d 759, 765 (Fla. 1st DCA 1963), and Rule 1.130, Florida Rules of Civil Procedure.

OPC and FIPUG's Joint Motion to Dismiss

The Movants contend that PEF's request to establish a Storm Cost Recovery Clause is an attempt to circumvent the provisions of the Settlement, by which PEF agreed not to seek an increase in its base rates and charges that would take effect prior to December 31, 2005.

In support of their arguments, the Movants cite to Order No. PSC-93-0918-FOF-EI, issued June 17, 1993, in Docket No. 930405-EI, Petition to implement a self-insurance mechanism for storm damage to transmission and distribution system and to resume and increase annual contribution to storm and property insurance reserve fund by Florida Power & Light Company (FPL), which established the storm damage reserve for FPL. In that Order, the Commission acknowledged that hurricane-related expenses were included in base rates and declined to create a 100% pass-through mechanism such as the clause PEF is proposing. Order No. PSC-93-1522-FOF-EI, issued October 15, 1993, in Docket No. 930867-EI, Petition for

[1] A copy of the Settlement is attached to this recommendation as Attachment A

authorization to implement a self-insurance program for storm damage to its transmission and distribution (T&D) lines and to increase annual storm damage expense by Florida Power Corporation, approved the creation of PEF's storm reserve fund. In that Order, the Commission noted that PEF was collecting for transmission and distribution property damage in its base rates. Again, the Commission did not create a 100% pass-through mechanism via clause [for the sake of clarification, PEF did not ask for the creation of a storm recovery clause in Docket 930867-EI]. The Commission further noted that Rule 25-6.0143, Florida Administrative Code, governs the treatment of storm-related costs, and provides that balances in these storm accounts are to 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 of a rate proceeding.

The Movants contend that both of these Orders and the Rule clearly demonstrate that storm damage expenses are part of base rates, and that PEF is attempting to have the Commission create a clause because, pursuant to the Settlement, PEF can not seek an increase in base rates that would be effective before January 1, 2006, which would include an increase to the storm reserve fund.

The Movants note that, pursuant to the Settlement, PEF has agreed not to use the various cost recovery clauses to recover for new capital items that were traditionally and historically treated as recoverable through base rates. Thus, the Movants argue that the Commission should uphold the Settlement and not allow PEF to use a clause mechanism to obtain storm-related costs that have been traditionally and historically treated as recoverable through base rates.

The Movants further argue that approval of PEF's petition would weaken the Settlement, and permanently chill any possibility of future settlement of cases before the Commission. The Movants contend that PEF's Petition fails to state a claim upon which relief may be based, and should therefore be dismissed.

PEF's Response

In its Response, PEF states that the argument that its Petition is prohibited by the Settlement is belied by specific language in the Settlement addressing the Company's use of cost recovery clauses. That language prohibits one particular use of the clauses – the recovery of new capital items that are traditionally recovered through base rates. PEF argues that the Settlement imposes no restriction on its use of a clause to recover non-capital costs that have not been traditionally recovered through base rates, which PEF contends are the only costs subject to its proposed Storm Cost Recovery Clause. PEF states that its proposal is limited to only the incremental non-capital operating and maintenance ("O&M") costs associated with the catastrophic storms which exceed the reserve's balance. The proposal does not seek to recover or replenish the depleted reserve balance that had been accrued for non-catastrophic storms, nor does it seek a higher level of accruals to the reserve that recent experience suggests is needed. The Company considered those to be prospective matters outside its petition's limited scope related to the immediate consequences of the recent hurricanes, and therefore would be more appropriately dealt with in other proceedings.

PEF contends that the catastrophic storm damage costs for which it seeks recovery are not and never have been part of its base rates. In establishing the storm damage reserve for self-insured utilities in 1993, the Commission declined to provide for the recovery of costs associated with catastrophic storms, but made it clear the utilities could petition for recovery if they experience such costs. PEF also cites to Order No. PSC-93-1522-FOF-EI, in which the Commission made the following statement after declining to act on the Company's request to address storm-related costs that exceed the reserve balance: "If FPC experiences 'significant storm related damage, it can petition for appropriate regulatory action."

PEF contends that the remaining points in the joint Motion simply state the parties' position on disputed issues of regulatory policy and fact, and are insufficient to support their motion to dismiss. PEF contends that the Commission's decision on the Motion to Dismiss must be based on issues of law, assuming all facts alleged in the Company's petition to be true. Moreover, by raising disputed issues of policy and fact, PEF argues that the Movants actually support the need for evidence adduced at hearing, since dismissal is not favored unless compelled as a matter of law.

Nevertheless, PEF does address the other points raised by the Movants in its Response. With respect to the allegation that PEF's recovery clause proposal is PEF's attempt to accomplish an "end run" around the Settlement's restriction on base rate increases, PEF argues that there are well-recognized characteristics of the extraordinary hurricane-related costs at issue that make the use of a cost recovery clause, rather than base rates, particularly well suited for the recovery of these costs. PEF also contends that its proposal is not "a 100% pass through mechanism" which would "shift 100% of the risk to customers." Rather, PEF has limited the portion of its total hurricane-related costs that would be subject to recovery through the proposed clause to only the O&M expenses by excluding the significant amount of hurricane-related capital costs, by further limiting O&M expenses to only the portion that exceeds the reserve balance, by limiting the scope of the proposed clause to only the portion of O&M expenses that are a direct consequence of the hurricanes, and by not including other pressing concerns related to the effects of the hurricanes on the storm damage reserve, such as replenishment of the depleted reserve balance and adjustment of the annual accrual in light of recent events. Further, PEF states that under its proposal, it must demonstrate whether the costs were reasonable and prudent under the circumstances in which they were incurred, thus ensuring that PEF will assume some of the risk associated with those costs.

In summary, PEF states that the storm damage reserve included in base rates was never designed and has never been funded for catastrophic storm-related costs such as those experienced by PEF this year. The Commission declined to do so because of the uncertainty as to if and when such a catastrophic event might occur and, if so, what the magnitude of the related costs might be. However, as cited in Order No. PSC-93-1522-FOF-EI, the Commission has indicated that if a utility did, in fact, experience catastrophic storm-related costs, it would be receptive to considering the utility's petition for relief on an expedited basis.

Staff Analysis

Staff first addresses whether the Petition should be dismissed because, as the Movants argue, it violates past Commission practice as to the recovery of storm-related damages. As

stated previously, the Settlement provides that PEF agrees not to use the various cost recovery clauses to recover for new capital items that were traditionally and historically treated as recoverable through base rates. PEF notes, however, that it is limiting the types and amounts of costs for which it is seeking recovery, subject to a prudency review by the Commission. Further, PEF argues that the Settlement does not specifically bar PEF from seeking the Commission's approval to establish a storm cost recovery clause.

Both PEF and the Movants rely on Orders PSC-03-0918-FOF-EI and PSC-93-1522-FOF-EI, which established the storm damage reserve for FPL and PEF, respectively. The Movants cite the orders for the proposition that the Commission has never created a 100% pass-through mechanism for recovery of storm damage via a clause mechanism, and that storm damage expenses are clearly part of base rates. However, PEF correctly notes that in Order No. PSC-93-1522-FOF-EI, the Commission stated that:

> If FPC [PEF] experiences significant storm related damage, it can petition for appropriate regulatory action. In the past, this Commission has allowed recovery of prudent expenses and has allowed amortization of storm damage expense. Extraordinary events such as hurricanes have not caused utilities to earn less than a fair rate of return. FPC shall be allowed to defer storm damage loss over the amount in the reserve until we act on any petition filed by the company.
>
> No prior approval will be given for the recovery of costs to repair and restore T&D facilities in excess of the Reserve balance. However, we will expeditiously review any petition for deferral, amortization or recovery of prudently incurred costs in excess of the reserve.

This language is substantially similar to that which appears in Order No. PSC-93-0918-FOF-EI, regarding FPL's proposal to create a storm cost recovery clause in Docket No. 930405-EI. In that Order, the Commission declined to approve FPL's proposal, stating that:

> FPL's cost recovery proposal goes beyond the substitution of self-insurance for its existing policy. The utility wants a guarantee that storm losses will have no effect on its earnings. We believe it would be inappropriate to transfer all risk of storm loss directly to ratepayers. The Commission has never required ratepayers to indemnify utilities from storm damage. Even with traditional insurance, utilities are not free from this risk. This type of damage is a normal business risk in Florida. ...
>
> Storm repair expense is not the type of expenditure that the Commission has traditionally earmarked for recovery through an ongoing cost recovery clause. Conservation, oil backout, fuel and environmental costs are currently recoverable under Commission created cost recovery clauses. These expenses are different from storm repair expense in that they are ongoing rather than sporadic expenditures. ...
>
> Therefore, we decline to authorize the implementation of a Storm Loss Recovery Mechanism, in addition to the base rates in effect at the time. ...

> If a hurricane strikes, FPL can petition at that time for appropriate regulatory action. In the past, we have acted appropriately to allow recovery of prudent expenses and allowed storm damage amortization. We do not believe that regulated utilities should be required to earn less than a fair rate of return because of extraordinary events such as hurricanes or storms.
>
> The Commission will expeditiously review any petition for deferral, amortization or recovery of prudently incurred costs in excess of the reserve. Our vote today does not foreclose or prevent further consideration at a future date of some type of a cost recovery mechanism, either identical or similar to what has been proposed in this petition. The Commission could implement a cost recovery mechanism, or defer the costs, or begin amortization, or such other treatment as is appropriate, depending on what the circumstances are at that time.

(Emphasis added). Although the Commission has never approved recovery of storm damages through the establishment of a storm cost recovery clause, staff believes that the plain language of Order No. PSC-93-0918-FOF-EI indicates that the Commission has not foreclosed reviewing a similar proposal, depending on what the circumstances are at that time. Whether or not such circumstances exist to support the relief requested in the current Petition, staff believes that a cause of action for review of PEF's Petition exists, based on Commission precedent.

The Movants further contend that PEF's request to establish a Storm Cost Recovery Clause is nothing more than an attempt to circumvent the provisions of the Settlement, by which PEF agreed not to seek an increase in its base rates and charges that would take effect prior to December 31, 2005. PEF contends that there are characteristics of extraordinary hurricane-related costs at issue that make the use of a cost recovery clause, rather than base rates, particularly well-suited for the recovery of those costs. Taking PEF's assertions as true, PEF's position states a basis on which the Commission could grant the requested relief. The proper interpretation of the Settlement and its application to the factual circumstances described in PEF's Petition is a matter to be resolved at hearing. The existence of a dispute about the applicability of the Settlement does not present a proper ground for dismissing the Petition.

The Movants argue that approval of PEF's petition would weaken the Settlement, and permanently chill any possibility of future settlement of cases before the Commission. The Commission has a longstanding commitment to the support and encouragement of negotiated settlements. Further, the principle of administrative finality assures that there will be a terminal point in proceedings at which the parties and the public may rely on an agency's decision as being final and dispositive of the rights and issues involved therein. See Peoples Gas System, Inc. v. Mason, 187 So. 2d 335 (Fla. 1966) (the inherent authority of the Commission to modify its final orders is a limited one).

However, the Commission is also charged to act in the public interest. Assuming for the sake of argument that PEF's proposal were inconsistent with Order No. PSC-02-0655-AS-EI (approving the Settlement), the Commission's obligation to act in the public interest might nevertheless authorize it to revisit that Order. For example, in Peoples Gas System, supra, the

Florida Supreme Court vacated a Commission Order which modified its previous approval of a territorial service agreement. In support of its decision, the Court stated that the vacated Commission order was not entered on rehearing or reconsideration as permitted by the Commission's rules of procedure, it was entered more than four years after the entry of the order which it purported to modify, and it was not based on any change in circumstances or on any demonstrated public need or interest.

The Court also recognized, however, the differences between the functions and orders of courts and those of administrative agencies, particularly those regulatory agencies which exercise a continuing supervisory jurisdiction over the persons and activities regulated, and which are usually concerned with deciding issues according to a public interest that often changes with shifting circumstances and passage of time. Id. at 339. The Court noted that pursuant to Sections 366.03, 366.04, 366.05, 366.06, and 366.07, Florida Statutes, the legislature has given the Commission broad powers to regulate the operation of electric utilities. Id. Furthermore:

> Nor can there be any doubt that the Commission may withdraw or modify its approval of a service area agreement, or other order, in proper proceedings initiated by it, a party to the agreement, or even an interested member of the public. However, this power may only be exercised after proper notice and hearing, and upon a specific finding based on adequate proof that such modification or withdrawal of approval is necessary in the public interest because of changed conditions or other circumstances not present in the proceedings which led to the order being modified. This view accords requisite finality to orders of the Commission, while still affording the Commission ample authority to act in the public's interest.

Id. at 339-340.

Staff is cognizant of the concerns raised by the Movants that granting PEF's Petition would weaken the Settlement, and chill future settlement of cases before the Commission. However, staff does not believe that that concern, in and of itself, states sufficient grounds to dismiss PEF's petition. Section 366.04, Florida Statutes, is the substantive law from which the Commission derives its authority to regulate and supervise the rates and charges of public utilities. Whether a rate case is resolved through a fully adjudicated evidentiary hearing, or through a settlement agreement negotiated by the parties and approved by the Commission, the Commission has a continuing responsibility to exercise its regulatory jurisdiction in a manner consistent with the public interest.

Whether PEF's proposal may or may not contravene the Settlement, staff believes that PEF's Petition, taken in the most favorable light, does state a cognizable claim on which the Commission can take further action. Staff believes that an evidentiary hearing is an appropriate forum for weighing the various interests that are at stake in this case. Whether or not PEF is ultimately persuasive in carrying its evidentiary burden of proof, the petition on its face states a sufficient cause of action to survive a motion to dismiss. Staff therefore recommends that OPC and FIPUG's Motion to Dismiss should be denied.

Issue 2: Should the docket be closed?

Recommendation: No. If the Commission votes in favor of staff's recommendation in Issue 1, the docket should remain open to accommodate the hearing currently scheduled in this docket. (BRUBAKER)

Staff Analysis: If the Commission votes in favor of staff's recommendation in Issue 1, the docket should remain open to accommodate the hearing currently scheduled in this docket.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.	Docket No. 000824-EI

STIPULATION AND SETTLEMENT

Florida Power Corporation, the Office of Public Counsel, the Florida Industrial Power Users Group, the Florida Retail Federation, Publix Super Markets, Inc., and Buddy Hansen and Sugarmill Woods Civic Association (collectively, the Stipulating Parties), hereby enter into this Stipulation and Settlement for the purpose of reaching an informal resolution of all outstanding issues in Docket No. 000824-EI pending before the Florida Public Service Commission (the Commission) and, accordingly, stipulate and agree as follows:

1. Upon approval and final order of the Commission, this Stipulation and Settlement will become effective on May 1, 2002 (the "Implementation Date"), and continue through December 31, 2005, except as otherwise provided in Sections 6, 7 and 15 hereof.

2. Florida Power Corporation (FPC) will reduce its revenues from the Sale of Electricity by a permanent annual amount of $125 million. This reduction will be reflected on FPC's customer bills by reducing all base rate charges for each rate schedule by 9.25%. All other cost of service and rate design matters will be determined in accordance with Section 16. FPC will begin applying the lower base rate charges required by this Stipulation and Settlement to meter readings made on and after the Implementation Date.

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

4. No Stipulating Party will request, support, or seek to impose a change in the application of any provision hereof. The Stipulating Parties other than FPC will neither seek nor support any additional reduction in FPC's base rates and charges, including interim rate decreases, that would take effect prior to December 31, 2005 unless such reduction is initiated by FPC. FPC will not petition for an increase in its base rates and charges, including interim rate increases, that would take effect prior to December 31, 2005, except as provided in Section 7.

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

6. Commencing on the Implementation Date and for the remainder of 2002 and for calendar years 2003, 2004 and 2005, and for each calendar year thereafter until terminated by the Commission, FPC will be under a Revenue Sharing Incentive Plan as set forth below. For purposes of this Revenue Sharing Incentive Plan, the following retail base rate revenue threshold amounts are established:

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

retail base rate revenue cap for 2002 will be $1,356 million. For 2002 only, the refund to customers will be limited to 67.1% (May 1 through December 31) of the retail base rate revenues exceeding the cap. The retail base rate revenue caps for calendar year 2003 and for each calendar year thereafter in which this Plan is in effect will be increased by $37 million over the prior year's revenue cap. Section 8 explains how refunds will be paid to customers.

II. Sharing Threshold - Retail base rate revenues between the sharing threshold amount and the retail base rate revenue cap will be divided into two shares on a 1/3, 2/3 basis. FPC's shareholders shall receive the 1/3 share. The 2/3 share will be refunded to retail customers. The sharing threshold for 2002 will be $1,296 million in retail base rate revenues. For 2002 only, the refund to the customers will be limited to 67.1% (May 1 through December 31) of the 2/3 customer share. The retail base rate revenue sharing threshold amounts for calendar year 2003 and for each calendar year thereafter in which this Plan is in effect will be increased by $37 million over the prior year's revenue sharing threshold. Section 8 explains how refunds will be paid to customers.

7. If FPC's retail base rate earnings fall below a 10% ROE as reported on an FPSC adjusted or pro-forma basis on an FPC monthly earnings surveillance report during the term of this Stipulation and Settlement, FPC may petition the Commission to amend its base rates notwithstanding the provisions of Section 4. The other Stipulating Parties are not precluded from participating in such a

proceeding. This Stipulation and Settlement shall terminate upon the effective date of any Final Order issued in such proceeding that changes FPC's base rates.

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

9. Beginning with the in-service date of Hines Unit 2 through December 31, 2005, FPC will be allowed to recover through the fuel cost recovery clause a return on average investment and straight-line depreciation expense (but no other non-fuel expense) for Hines Unit 2, to the extent such costs do not exceed the unit's cumulative fuel savings over the recovery period. All costs associated with Hines Unit 2, including those described in this section, are subject to Commission review for prudence and reasonableness as a condition for recovery through the fuel cost recovery clause. The investment for Hines Unit 2 upon which a return is recovered under this section will be excluded from rate base for surveillance reporting purposes during the recovery period.

10. Beginning with the Implementation Date through December 31, 2005, FPC will suspend accruals to its reserves for nuclear decommissioning and fossil

dismantlement. For each calendar year during this period, FPC will also record $62.5 million as a credit to depreciation expense and a debit to the bottom line depreciation reserve and may, at its option, record up to an equal annual amount as an offsetting accelerated depreciation expense and a credit to the bottom line depreciation reserve. Any such reserve amount will be applied first to reduce any reserve excesses by account, as determined in FPC's depreciation studies filed after the term of this Stipulation and Settlement, and thereafter will result in reserve deficiencies. Any such reserve deficiencies will be allocated to individual reserve balances based on the ratio of the net book value of each plant account to total net book value of all plant. The amounts allocated to the reserves will be included in the remaining life depreciation rate and recovered over the remaining lives of the various assets. Additionally, depreciation rates as addressed in Order No. PSC-98-1723-FOF-EI, Docket No. 971570-EI, will not be changed for the term of this Stipulation and Settlement.

11. FPC will be authorized, at its discretion, to accelerate the amortization of the regulatory assets for FAS 109 Deferred Tax Benefits Previously Flowed Through, Unamortized Loss on Reacquired Debt, and Interest on Income Tax Deficiency over the term of this Stipulation and Settlement.

12. Beginning with meter readings made on and after the Implementation Date, FPC shall effect a mid-course correction of its fuel cost recovery clause to reduce the fuel clause factor based on projected over-recoveries, in the amount of $50 million, for the remainder of calendar year 2002. The fuel cost recovery clause shall continue to operate as normal, including but not limited to, any additional mid-course adjustments that may become necessary and the calculation of true-ups to

actual fuel clause expenses. FPC will not use the various cost recovery clauses to recover new capital items which traditionally and historically would be recoverable through base rates, except as provided in Section 9.

13. FPC will continue the implementation of its four-year Commitment to Excellence Reliability Plan, including its objective of a 20% improvement in FPC's System Average Interruption Duration Index (SAIDI), measured on a calendar-year basis, by no later than 2004. FPC will provide a $3 million refund to customers in the event this SAIDI improvement is not achieved for calendar years 2004 and 2005. Any such refunds will be paid in equal amounts to the 10% of FPC's total retail customers served by FPC's worst performing distribution feeder lines based on each feeder line's SAIDI performance. SAIDI levels will be calculated consistent with the Commission's reliability reporting procedures, but SAIDI performance levels during 2004 and 2005 will be adjusted for extraordinary weather conditions that may occur during those years. Any disputes concerning the existence or extent of extraordinary weather conditions will be resolved by the Commission.

14. Effective on the Implementation Date, FPC will refund to customers $35 million of the interim revenues collected subject to refund since March 13, 2001, through a credit to the fuel cost recovery clause in conjunction with the mid-course correction provided in Section 12. No other interim revenues collected by FPC during this period will continue to be held subject to refund.

15. The billing demand credits for Interruptible and Curtailable customers currently receiving service under FPC's IS-1, IST-1, CS-1 and CST-1 rate schedules shall remain in effect for the term of this Stipulation and Settlement, and thereafter until these rate schedules are reviewed in a general rate case, provided,

however, that these rate schedules shall continue to be closed to new customers, as defined in the stipulation approved by the Commission in Docket No. 950645-EI.

16. The cost of service and rate design matters identified in Exhibit A to this Stipulation and Settlement will be treated in the manner described therein. The Office of Public Counsel and the Florida Retail Federation have taken no position on the cost of service and rate design issues in this proceeding and, therefore, neither support nor oppose the cost of service and rate design provisions set forth in Exhibit A.

17. The provisions of Sections 1 through 15 of this Stipulation and Settlement are contingent on approval of these sections in their entirety by the Commission. The treatment of the cost of service and rate design matters identified in Exhibit A in accordance with Section 16 of this Stipulation and Settlement is contingent on approval of these matters in their entirety by the Commission. Approval of this Stipulation and Settlement in its entirety will resolve all matters in this Docket pursuant to and in accordance with Section 120.57(4), Florida Statutes (2001). This Docket will be closed effective on the date the Commission Order approving this Stipulation and Settlement is final.

18. This Stipulation and Settlement dated as of March 27, 2002 may be executed in counterpart originals, and a facsimile of an original signature shall be deemed an original

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

Florida Power Corporation

By _____

James A. McGee, Esquire
Post Office Box 14042
St. Petersburg, Florida 33733

Office of Public Counsel

By _____

Jack Shreve, Esquire
111 W. Madison St., Room 812
Tallahassee, Florida 32399

Florida Industrial Power Users Group

By _____

John W. McWhirter, Jr., Esquire
McWhirter, Reeves, McGlothlin,
Davidson, Decker, Kaufman
Arnold & Steen, P.A.
Post Office Box 3350
Tampa, Florida 33601

Florida Retail Federation

By _____

Ronald C. LaFace, Esquire
Greenberg Traurig, P.A.
Post Office Drawer 1838
Tallahassee, Florida 32302

Publix Super Markets, Inc.

By _____

Thomas A. Cloud, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32802

Buddy Hansen and Sugarmill Woods Civic Association

By _____

Michael B. Twomey, Esquire
Post Office Box 5256
Tallahassee, Florida 32314

ATTACHMENT A

EXHIBIT A
Stipulation and Settlement

Cost of Service and Rate Design Matters[1]

1. The current flat-rate energy charge for Rate Schedules RS-1, RSS-1, RSL-1, and RSL-2 shall be redesigned using an inverted rate design. Such inverted rate design shall provide: (a) two rate blocks consisting of a unit charge for the first 1000 kWh and a unit charge for all additional kWh, (b) the second rate block shall have a unit charge of one cent per kWh more than the first rate block, (c) the first rate block shall reflect 66.7% and the second block shall reflect 33.3% of the annual energy sales of these rate schedules for the test period, and (d) the total revenues produced shall be the same amount as that which would have been produced by a flat rate energy charge for the test period as applied to the annual energy sales of these rate schedules. Because of implementation time requirements, the inverted residential rate schedules described above will be effective beginning with cycle 1 meter readings for July 2002.

2. The billing demand credits for Rate Schedule CS-2, Curtailable General Service, and Rate Schedule CST-2, Curtailable General Service Optional Time of Use Rate, are $2.31 per kW of load factor adjusted demand. The billing demand credits for Rate Schedule IS-2, Interruptible General Service, and Rate Schedule IST-2, Interruptible General Service Optional Time of Use Rate, are $3.08 per kW of load factor adjusted demand.

3. A 500 kW minimum billing demand provision shall be added to Rate Schedules IS-2, IST-2, CS-2, and CST-2. Any existing customer under any of these rate schedules who established a billing demand of less than 500 kW in any of the 12 billing months preceding the implementation of this provision shall be advised by FPC that the minimum demand of 500 kW would not apply in the event the customer gives FPC written notice requesting to transfer to a firm rate schedule.

4. The CIAC payment option for the additional installed cost of a time of use meter shall be $132 for Rate Schedules RST-1 and GST-1. No CIAC payment is required for any other time of use rate schedule.

5. FPC's revised base rate charges do not reflect any cost recovery for purchased power capacity costs. Therefore, the credit in the present Capacity

[1] The Office of Public Counsel and the Florida Retail Federation neither support nor oppose the cost of service and rate design provisions set forth in this exhibit.

Cost Recovery clause that recognizes a base rate contribution for production capacity costs associated with sales resulting from the acquisition of retail customers in and near the City of Sebring shall terminate effective with the Implementation Date.

6. The 12 Coincident Peak and 1/13 Average Demand (12 CP & 1/13 AD) methodology will continue to be used for the allocation of FPC's production capacity costs to its retail customer classes during the term of this Stipulation and Settlement.

7. The monthly charge for additional equipment that the Company may optionally provide to a customer under its general service rate schedules is not subject to the base rate reduction and shall remain at the rate of 1.67% per month of the installed cost.

8. The service charges for Rate Schedules SC-1 and TS-1 are as follows:

Initial Service	$61.00
Re-establishment of service	$28.00
Re-establishment of service for customers with a Leave Service Active agreement	$10.00
Reconnection after disconnection for non-pay during normal business hours	$40.00
Reconnection after disconnection for non-pay outside of normal business hours	$50.00
Temporary service extension	$104.00

9. The charges for lighting fixtures, maintenance, and poles, as well as the additions, deletions, and restrictions of certain fixture and pole types, shall be those set forth in FPC's proposed Rate Schedule LS-1, Lighting Service (attached).