

# ORIGINAL

**Timolyn Henry**

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**From:** Mike Twomey [miketwomey@talstar.com]  
**Sent:** Thursday, December 30, 2004 4:54 PM  
**To:** Filings@psc.state.fl.us; Tim Perry; Vicki Gordon Kaufman; Joseph McGlothlin  
**Subject:** Electronic filing in Docket No. 041291-EI

December 30, 2004  
4:50 p.m.

Please file the attached Petition to Intervene of Thomas P. Twomey and Genevieve E. Twomey in the following docket:

DOCKET NO. 041291-EI -

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. )

The document consists of a total of five pages including the certificate of service.

Parties to this docket will be served with a hard-copy of this document this evening.

Mike Twomey

CMP \_\_\_\_\_

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GCL \_\_\_\_\_

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MMS \_\_\_\_\_

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SEC 1

OTH *Ken P* *none attached* *Ken P* ✓

12/30/2004 *added* *(KJ)*

DOCUMENT NUMBER-DATE

13663 DEC 30 3

FPSC-COMMISSION CLERK

# ORIGINAL

## 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. )  
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DOCKET NO. 041291-EI  
Filed: December 30, 2004

### Petition to Intervene

Thomas P. Twomey and Genevieve E. Twomey, pursuant to Rules 25-22.039 and 28-106.205, Florida Administrative Code, hereby file their Petition to Intervene in this docket and in support thereof state:

1. The names, address and telephone number of Petitioners are:

Thomas P. Twomey and Genevieve E. Twomey  
3984 Grand Meadows Blvd.  
Melbourne, Florida 32934  
321-242-3487

2. The name, address and telephone number of Petitioners' representative for purposes of service during the course of the proceeding are:

Michael B. Twomey  
Post Office Box 5256  
Tallahassee, Florida 32314-5256  
850-421-9530  
miketwomey@talstar.com

3. Petitioners Thomas P. Twomey and Genevieve E. Twomey are residential customer of Florida Power and Light Company (FPL), taking service at the address listed in paragraph 1. The cost of electricity represents one of the larger variable costs in Petitioners' household budget. Therefore, Petitioners will be substantially affected by any action the Commission takes in this docket, which will necessarily include retail rate increases if the utility's requested relief is granted.

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FPSC-COMMISSION CLERK

4. Statement of Affected Interests The Commission will decide in this docket whether to approve FPL's request to implement a "Storm Restoration Surcharge" in the amount of \$356 million. Approving the requested surcharge will necessarily increase Petitioners' electric rates.
5. Petitioners' interests are of the type that this proceeding is designed to protect. See Agrico Chemical Company v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2<sup>nd</sup> DCA 1981). The purpose of the proceeding is to evaluate FPL's request, to review the nature of its costs and expenditures to determine if any such costs are appropriate for recovery and to review the manner in which FPL requests to recover such costs. These issues will affect Petitioners' substantial interests by potentially increasing their costs of electricity, which necessarily will reduce their monies available for other purposes.
6. Disputed Issues of Material Fact Petitioners anticipate there will be numerous disputed issues of material fact which the Commission will be required to resolve through an evidentiary hearing pursuant to Chapter 120, Florida Statutes. Such disputed issues of material fact will include, but not be limited to, the following:
  - A. What is the appropriate recovery period for any storm-related costs the Commission permits FPL to recover?
  - B. Did FPL act reasonably and prudently prior to the storm to minimize storm-related costs? Specifically, were FPL's tree-trimming and pole and transformer replacement programs reasonable and prudent and, if not, did failures in those programs exacerbate the level of storm damage experienced and/or lengthen the duration of the outages experienced by its customers?
  - C. Have all costs incurred in the normal course of business been removed from FPL's request?
  - D. Has FPL appropriately booked and accounted for storm-related costs?
  - E. What is the amount of FPL's reasonably and prudently incurred storm-related costs?
  - F. Should all or some of FPL's storm-related costs be absorbed through base rates?
  - G. What ROE should be applicable to FPL?

H. What is the proper mechanism for FPL to recover storm-related costs?

7. Disputed Legal Issues Disputed legal issues include, but are not limited to, the following:

- A. Does the Commission have the statutory authority to create a new cost recovery clause?
- B. Even if the Commission has the statutory authority to create a new cost recovery clause, can it approve such a charge or surcharge prior to holding an evidentiary hearing on whether the requested amounts for recovery are reasonable, prudent and necessary, even if the charges or surcharges are made subject to refund?
- C. Is FPL entitled to any recovery if it cannot prove it is earning below its authorized ROE?

8. Statement of Ultimate Facts Alleged Ultimate facts include, but are not limited to, the following:

- A. FPL has the burden to prove and document all alleged storm-related costs for which it seeks recovery.
- B. FPL had the burden to prove that such costs have been appropriately accounted for and booked.
- C. FPL has the burden prove that no costs are included in its recovery request that are part of ordinary operations and maintenance expenses.
- D. FPL has the burden to prove that no costs for which it seeks recovery are or should be included in base rates.
- E. FPL has the burden to prove that all costs for which FPL seeks recovery were reasonably and prudently incurred.
- G. FPL has the burden of proving that the Commission has the statutory legal authority to approve a surcharge, or other named charge, prior to holding an evidentiary hearing on the amount, reasonableness and prudence of storm-related expenditures, even if such a surcharge or charge is legal and irrespective of whether the surcharge or charge is made subject to refund.

WHEREFORE, Thomas P. Twomey and Genevieve E. Twomey request that the Florida Public Service Commission grant their Petition to Intervene and accord them full party status in this docket.

/s/ Michael B. Twomey  
Michael B. Twomey  
Post Office Box 5256  
Tallahassee, Florida 32314-5256  
Ph. (850-421-9530  
Fax. (850) 421-8543  
[miketwomey@talstar.com](mailto:miketwomey@talstar.com)

Attorney for Petitioners

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of this Petition to Intervene has been furnished to the following this 30<sup>th</sup> day of December, 2004, by U.S. Mail:

Wm. Cochran Keating, Esquire  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

R. Wade Litchfield, Esquire  
Natalie F. Smith, Esquire  
Florida Power & Light Company  
700 Universe Blvd.  
Juno Beach, Florida 33408

Patricia Christensen, Esquire  
Office of Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, Florida 32399-1400

McWhirter Law Firm  
Vicki Gordon Kaufman, Esquire  
Timothy J. Perry, Esquire  
117 S. Gadsden Street  
Tallahassee, Florida 32301

/s/ Michael B. Twomey  
Michael B. Twomey