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Patricia A. Christensen
Associate Public Counsel

February 10, 2005

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

RE: Florida Power & Light Company's petition for approval of storm cost recovery clause for extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan – FPSC Docket No. 041291-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Office of Public Counsel's Response to Florida Power & Light Company's Motion for Leave to File Amended Petition and Supplemental Direct Testimony, Motion to Hold Proceeding in Abeyance, or, in the Alternative, Reschedule the Hearing, 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,

A handwritten signature in black ink, appearing to read "Patricia A. Christensen".

Patricia A. Christensen
Associate Public Counsel

PC/pwd
Enclosures

DOCUMENT NUMBER-DATE
01479 FEB 10 05
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: February 10, 2004

**RESPONSE IN OPPOSITION TO FLORIDA POWER & LIGHT COMPANY'S
MOTION FOR LEAVE TO FILE AMENDED PETITION AND SUPPLEMENTAL
DIRECT TESTIMONY, MOTION TO HOLD PROCEEDING IN ABEYANCE, OR,
IN THE ALTERNATIVE, RESCHEDULE THE HEARING**

The Citizens of the State of Florida (Citizens), by and through undersigned counsel, Associate Public Counsel, pursuant to Rule 28-106.204, Florida Administrative Code, hereby files Citizens' Response in Opposition to Florida Power & Light Company's Motion for Leave to File Amended Petition and Supplemental Direct Testimony. Citizens also hereby submit their Motion to Hold Proceeding in Abeyance, or, in the Alternative, Reschedule the Hearing. In support of the thereof, Citizens state:

Summary

Florida Power and Light's (FPL) Motion for Leave to File Amended Petition and Supplemental Direct Testimony unduly prejudices Citizens' ability to present their case. FPL now seeks to increase its request for storm damages by an additional \$180 million. FPL claims that the increase is due to its gross underestimations regarding foreign crews and contractor follow-up work. Yet, FPL in its pleading and proposed supplemental testimony fails again to present even a basic, prima facie case to justify its expenses. The supplemental information upon which FPL relies to justify its newest

request consists solely of two tables, each on a single page, with total dollar figures broken down by broad categories. In view of the dearth of information, if the Commission allows the amendment, Citizens will be required to engage in extensive discovery to determine if these charges are even justified. In other words, given the radical change to FPL's request and the scant, almost nonexistent testimony and documentary evidence provided by the company, the interveners and Commission staff will have to "discover" FPL's case anew before they can even begin to determine the validity of FPL's request. Given the lack of information, testimony, and evidence provided by FPL in its Motion for Leave to File Amended Petition and Supplemental Testimony, the Motion should be denied. The Commission should hold this proceeding in abeyance until such time as FPL can demonstrate that it is requesting final, accurate numbers for the storm cost recovery it proposes to collect from customers.

However, if FPL is permitted to amend its Petition and supplement its testimony, due process requires, at a minimum, that Citizens should be provided the same amount of time that they had to conduct discovery on the first Petition and be permitted to file supplemental testimony. To provide this opportunity, the Commission must adjust the hearing schedule.

Arguments

1. On November 4, 2004, FPL filed its Petition requesting recovery of excess storm-related costs related to Hurricanes Charley, Frances, Jeanne, and Ivan. On November 19, 2004, FPL filed its second petition to be allowed to implement its surcharge prior to the hearing which was granted by the Commission at the January 18, 2005, Agenda Conference.

2. On February 4, 2005, FPL filed its Motion for Leave to File Amended Petition and Supplemental Direct Testimony (Motion). At the same time, FPL filed its Amended Petition to increase the storm recovery amount from \$710 million to \$890 million, an increase of \$180 million. FPL states in its Amended Petition that it is now seeking to apply its approved surcharge over a 36 month period, rather than the 2 year period in its current Petition. Along with the Motion and Amended Petition, FPL filed its supplemental testimony for K. Michael Davis and Rosemary Morley.

3. By Order No. PSC-04-1150-PCO-EI, issued November 18, 2004 (the Order Establishing Procedure), the schedule has been established for this docket. The hearing is currently scheduled for April 20-22, 2004, and the prehearing conference is currently scheduled for April 4, 2004. The Order Establishing Procedure also sets forth the testimony filing dates and discovery parameters and deadlines.

4. In accordance with the Order Establishing Procedure, interveners filed their testimony on February 8, 2004. Contrary to FPL's contention that there is no prejudice to the parties and that its amended Petition would not affect Citizens' substantive rights, Citizens' ability to present their case would be severely hampered by the amended petition under the current schedule. In support of its claim that there is no prejudice associated with the requested amendment, FPL says it apprised the parties of its updated estimate during the January 28, 2005, deposition of K. Michael Davis and provided a copy of its revised Exhibit KMD-1. This, however, does not mitigate the prejudice FPL has created in this case.

First, the proposed amendment is no mere "fine tuning" or update of the numbers. FPL wants to modify its petition so as to ask for an additional \$180 million.

Even in a docket full of large numbers, FPL's request would change the very nature of the proceeding.

Second, the revised exhibit was provided a mere 11 days before intervenor testimony was due to be filed. There was insufficient time to conduct any discovery on the document. In accordance with the Order Establishing Procedure, even if Citizens had propounded discovery on the day the information was provided, the discovery responses would not have been received before intervenor testimony was due. The discovery turnaround time set forth in the Order Establishing Procedure is 20 days and the information was provided less than 14 days before the intervenor testimony due date.

Third, the fact that revised KMD-1 was provided during deposition of the witness who would be sponsoring the testimony does not remedy the prejudice. There was no time to prepare even basic questions for the deposition. Nor should it be expected that Citizens should have been able to ask any questions at his deposition, given the time constraints. Additionally, at the time of the deposition, FPL had not even filed its motion for leave to supplement testimony or amend its petition. Its Motion was not filed until February 4, 2004, a mere two business days before the intervenor testimony due date.

Fourth, the document provided at the deposition contained only conclusory numbers, insufficient to support the company's Amended Petition. The document, revised Exhibit KMD-1, is a one page table with the following broad categories identified by storm: FPL Payroll; Contractor & Foreign Utility; Vehicle & Fuel; Materials; Logistics; and other. From this revised document, it is impossible to divine what caused the claimed \$180 million increase. Revised KMD-1 indicates only that it represents an

updated estimate of the costs. Nowhere on the document does it even indicate which of the broad categories changed due to the revision.

5. The proposed supplemental testimony of Mr. Davis sheds no more light. Mr. Davis provides scant testimony regarding what caused the changes in its estimated storm damages. The witness claims that the increase is due primarily to FPL's underestimations regarding foreign crews and contractor follow-up work. Yet his testimony and exhibits fail to identify what estimates were under-calculated with any specificity.

FPL in its Amended pleading and supplemental testimony fails to present even a basic, prima facie case to justify its expenses (as with the original Petition and testimony). As noted previously, the supplemental testimony consists of only two tables, each on a single page, with total dollar figures broken down by the broad categories. Unlike a rate case where the Company is required to file extensive information in the form of minimum filing requirements (MFRs) to establish a prima facie case, FPL in this case is seeking approximately \$533 million from customers based on these two tables. These two tables provide nowhere near the information that should be given to establish a prima facie showing to justify recovery.

As a result of FPL's failure to meet its burden of proof obligation, Citizens would be required to complete extensive discovery to determine if these charges are even justified since the information has not been provided in either of the company's petitions. In other words, given the scant and almost nonexistent testimony and documentary evidence provided by the company, the interveners and Commission staff will have to

“discover” FPL’s case before they can even begin to determine the validity of FPL’s request.

6. Given the lack of information, testimony, and evidence provided by the FPL in its Motion, Amended Petition, and Supplemental Testimony, the Motion should be denied. Additionally, even with its revised estimates there is no indication that this is the final amount on which the Citizens can rely in preparing our case. FPL has given no indication in its testimony or pleadings that it believes that the door has closed for inclusion of costs in storm recovery.

In supplemental testimony, Mr. Davis uses words like “estimated” and “approximate” when referring to the updated amounts of this latest request. Although Mr. Davis claims in his supplemental testimony that approximately 93% of the total estimated costs are based on actual payments, invoices or direct contact with applicable vendor, without additional specific evidence or extensive discovery there is no way to verify if, in fact, 93% of the costs have been captured. This Commission is still faced with the impossible task of sorting through FPL’s estimates, not actual data, which FPL used to prepare its case. FPL’s last estimated amounts for foreign crews and contract “follow-up” work were grossly under estimated (by \$180 million).

In addition, it is unclear from FPL’s Motion whether this is the last time FPL will seek to amend its petition because its original petition was faulty or premature. What is now abundantly clear is that FPL rushed and provided inaccurate data to the Commission to start the clock for billing its customers (for what it hopes will be \$583 million increase). The Commission should deny FPL’s Motion to amend and hold this proceeding abeyance because the company has failed to meet its burden of proof.

Further, the company's errors are so great, as demonstrated by its request to amend its petition, that this proceeding should be held in abeyance until FPL has its facts straight and its costs finalized.

7. However, if FPL is permitted to amend its Petition and supplement its testimony, due process requires, at a minimum, that Citizens should be provided the same amount of time that we had to conduct discovery on the first Petition. When the first petition was filed November 4, 2004, Citizens sent their first set of discovery to FPL on November 16, 2004. Citizens had 90 days to conduct discovery before being required to file testimony. They should be given the same amount of time now. As noted above, extensive discovery is going to be required for Citizens to be able to file their own supplemental testimony to address FPL's newest petition. In the interest of due process, FPL's dramatic change has necessitated a change in the hearing schedule if its Motion is granted. FPL filed an amended Petition seeking an additional \$180 million increase with little to no information two business days before intervenor testimony was due, and approximately two months prior to the scheduled hearing. (While Citizens believe that the hearing and prehearing conference date need to be rescheduled due to FPL's Amended Petition, in our opinion any currently scheduled service hearings would not need to be moved.)

Wherefore, the Citizens requests the Commission deny FPL's Motion for Leave to File Amended Petition and Supplemental Direct Testimony and hold this proceeding in abeyance until such time as FPL can demonstrate that it is requesting final, accurate numbers for storm cost recovery, or, in alternative, adjust the hearing schedule to provide

Citizens with the same amount of time they had to conduct discovery on the first Petition (approximately 90 days) before supplemental intervener testimony.

Dated this 10th day of February, 2005.

Respectfully submitted,

Harold McLean
Public Counsel



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Attorneys for Citizens

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Office of Public Counsel's Response to Florida Power & Light Company's Motion for Leave to File Amended Petition and Supplemental Direct Testimony, Motion to Hold Proceeding in Abeyance, or, in the Alternative, Reschedule the Hearing, to Florida Power & Light Company has been furnished by hand delivery and U.S. Mail on this 10th day of February 2005, to the following:

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