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Sent: Thursday, March 24, 2005 4:33 PM
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Subject: Electronic Filing for Docket No. 041291-EI/ FPL's Response to Petition to Intervene
Attachments: FPL's Response to FRF's Petition to Intervene.3.24.05.doc



FPL's Response
to FRF's Petiti...

Electronic Filing

a. Person responsible for this electronic filing:

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b. Docket No. 041291-EI

In re: 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.

c. Document being filed on behalf of Florida Power & Light Company.

d. There are a total of 6 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response to Petition to Intervene

(See attached file: FPL's Response to FRF's Petition to Intervene.3.24.05.doc)

Thank you for your attention and cooperation to this request.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.)
_____)

Docket No: 041291-EI

Filed: March 24, 2005

**FLORIDA POWER & LIGHT COMPANY'S
RESPONSE TO PETITION TO INTERVENE**

NOW, BEFORE THIS COMMISSION, through undersigned counsel, comes Florida Power & Light Company ("FPL" or the "Company"), and pursuant to Rule 28-106.204(1), Florida Administrative Code, files this Response to the Petition to Intervene filed March 17, 2005, on behalf of The Florida Retain Federation ("FRF"), and in support states:

1. FPL does not object to FRF's participation as a party in Docket No. 041291-EI. FPL disagrees, however, with a number of allegations and issues in FRF's Petition to Intervene as incorrect, irrelevant and inappropriate for inclusion in this Docket. In particular, FPL disputes a number of FRF's allegations and issues as inconsistent with the Stipulation and Settlement negotiated by FPL and OPC, and signed by FPL, OPC, FRF and all but one party to Docket No. 001148-EI, and approved by the Commission in Order No. PSC-02-0501-AS-EI, issued April 11, 2002 in Docket No. 001148-EI ("Stipulation and Settlement"). FRF's assertion that FPL is only entitled to recover storm costs, which is a cost of providing electric service, to the extent sufficient to provide FPL an opportunity to earn a rate of return on equity of 10.0 percent is inconsistent with the terms of the Stipulation and Settlement, which has the force of law. FRF's interpretation completely ignores key provisions of the Stipulation and Settlement and

effectively deprives the Company of a significant portion of the protections and benefits the Company was to receive in exchange for agreeing to a \$250 million annual reduction in base rates that included a withdrawal of its request to increase the amount of the annual storm accrual by \$30 million. Moreover, FRF's interpretation of the Stipulation and Settlement and its objection to Draft Issue No. 18 related to the objectives of restoration of electric service are inconsistent with established public policy in the State of Florida that favors prompt and safe restoration of electric service in the wake of storms affecting Floridians, including FRF members.

2. Also, FPL disputes FRF's assertions, both in alleged facts and issues, that the Company should bear some portion of any reasonable and prudent storm restoration-related costs incurred as a result of the impact of the 2004 storm season on FPL's system and the restoration of service to FPL's customers, including the members of FRF, following such storms. FRF's concept of determining how much of the costs of storm restoration - a cost of providing utility service - should be borne by the Company is foreign to regulatory law and cost-of-service regulation. See, e.g., Bluefield Waterworks & Improvement Co. v. Public Service Commission of West Virginia, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed. 1176 (1923); Minnesota Rate Cases, 230 U.S. 352, 434 (1913); Wilcox v. Consolidated Gas Co., 212 U.S. 19, 41 (1909); Smyth v. Ames, 169 U.S. 467, 547 (1898). Therefore, issues that would unlawfully place before the Commission the question of what portion of the cost-of-service associated with storm restoration should be paid by the Company should be rejected. Such issues include, but may not be limited to, the following:

Issue 20: In the event that the Commission determines the stipulation approved in Order No. PSC-02-0501-AS-EI does not affect the amount of costs that FPL can recover from ratepayers, should the responsibility for those costs be apportioned between FPL and retail ratepayers? If so, how should the costs be apportioned?

See FRF Petition to Intervene at ¶ 8, p. 9.

3. In addition, FPL disputes FRF's allegations with respect to the categories of costs charged to the Storm Damage Reserve and accounting for storm restoration costs. FPL has accounted for storm restoration costs in compliance with the 1993 study approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995 in Docket No. 930405-EI. Ten years after the Commission approved the 1993 Study, FRF would change the standards after the fact and impose a staggering financial burden on the Company. Further, FRF's allegation that FPL is "sheltering" its earnings and making money on storm events is simply not true. There is no profit to FPL from recovery of storm costs. FRF is in error regarding the categories of costs to exclude from recovery and accounting for storm restoration costs.

4. Further, in light of the Stipulation and Settlement and Commission precedent related to recovery of reasonable and prudent storm costs, FRF issues related to a general base rate proceeding are inappropriate for inclusion in this Docket and should be rejected. Such issues proposed by FRF are as follows:

New FRF Issue 32: If the Commission agrees that it is obliged to ensure that FPL's rates and charges, considered in their entirety and totality, are fair, just, reasonable, and not unduly discriminatory, how should it implement this principle in relation to FPL's proposed Storm Charges and in relation to FPL's base rates, whether in this proceeding or in Docket No. 050045-EI, In Re: Petition for a Rate Increase by Florida Power & Light Company?

- a. Is the Commission obliged to ensure that FPL's rates and charges, considered in their entirety and totality, are fair, just, reasonable, and not unduly discriminatory?

See FRF Petition to Intervene, p. 11. The apparent intent of New FRF Issue 32 and FRF's new legal issue is to transform the storm cost recovery proceeding into a base rate proceeding. FRF is fully aware that the Stipulation and Settlement establishes a regulatory mechanism that constitutes the "appropriate and exclusive mechanism to address earnings levels" and expressly contemplates that FPL would have the opportunity to recover expenditures incurred in the event of an extraordinary storm season.

5. In addition to the objections to issues stated above, FPL notes that it has previously raised objections to several of the issues on FRF's issues list and FPL reserves the right to raise additional objections to the issues as presented by FRF. At a minimum, FPL notes that it disagrees with FRF's proposed rewording of Issue 2 related to the appropriate methodology for booking costs to the Storm Damage reserve. Also, FPL observes that the language in Issue 15 as framed by FRF has since been updated by FPL. Finally, FPL has objected to Issue No 24 on FRF's list as inappropriate for FPL. No testimony has been filed addressing the issue of normalizing tax impacts.

6. **FRF and counsel should take the case as they find it.**

WHEREFORE, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission reject certain of the alleged issues contained in FRF's Petition to Intervene and that their intervention be subject to the conditions set forth above and

such other conditions as the Commission may deem appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by electronic mail and United States Mail this 24th day of March, 2005, to the following:

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