

30 APR 2005

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

**DATE:** April 11, 2005

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

**FROM:** Division of Economic Regulation (Willis, Slemkewicz, Ballinger) <sup>JS</sup> <sup>TJB</sup>  
Office of the General Counsel (C. Keating, Fleming, Susan <sup>RLT</sup> <sup>JDS</sup>  
<sup>WAK</sup>

**RE:** Docket No. 041291-EI – 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. 050188-EI – 2005 comprehensive depreciation study by Florida Power & Light Company.

Docket No. 050045-EI – Petition for rate increase by Florida Power & Light Company.

**AGENDA:** 04/19/05 – Regular Agenda – Parties May Participate

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\GCL\GCO\WP\2004\041291\041291.RCM3.DOC

### Case Background

On November 4, 2004, Florida Power & Light Company (“FPL”) filed a petition seeking authority to recover prudently incurred restoration costs, in excess of its storm reserve balance, related to the hurricanes that struck its service territory in 2004. The petition was assigned Docket No. 041291-EI. By Order No. PSC-05-0283-PCO-EI, issued March 16, 2005, the Commission granted FPL leave to amend its original petition to reflect an updated estimate of the storm-related costs contained in its original petition. A formal administrative hearing on FPL’s petition, as amended, is scheduled for April 20 - 22, 2005.

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On March 17, 2005, FPL filed a depreciation study for the Commission's review that was assigned Docket No. 050188-EI. No hearing is currently contemplated for that docket.

On March 22, 2005, FPL filed an application for a base rate increase that was assigned Docket No. 050045-EI. A formal administrative hearing on the application is set for August 22 - 26 and August 31 - September 2, 2005.

On March 29, 2005, the Office of Public Counsel ("OPC") filed a Motion for Leave to File Supplemental Testimony in Docket No. 041291-EI to Address Implications of FPL's New Depreciation Study Showing \$1.24 Billion Surplus in FPL's Depreciation Reserve Accounts and Motion to Consolidate Storm Cost, Depreciation, and Revenue Requirements Dockets. On April 5, 2005, FPL filed a response in opposition to OPC's motion.

OPC's motion for leave to file supplemental testimony was granted at the Prehearing Conference held April 8, 2005, in Docket No. 041291-EI, with the understanding that the motion to consolidate would be addressed by the full Commission. This recommendation addresses OPC's motion to consolidate the storm cost recovery docket (Docket No. 041291-EI), the depreciation study docket (Docket No. 050188-EI), and the rate case (Docket No. 050045-EI).

The Commission has jurisdiction over this matter pursuant to Chapters 120 and 366, Florida Statutes.

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### Discussion of Issues

**Issue 1:** How should the Commission resolve OPC's motion to consolidate FPL's storm cost recovery docket, depreciation study docket, and rate case?

**Recommendation:** The Commission should consolidate FPL's depreciation study docket and rate case but should not consolidate FPL's storm cost recovery docket with those two dockets. (C. Keating, Fleming, Susac, Ballinger, Slemkewicz, Willis)

**Staff Analysis:** The standard for consolidation of administrative proceedings is set forth in Rule 28-106.108, Florida Administrative Code, which provides:

If there are separate matters which involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.

In its motion, OPC contends that by consolidating FPL's storm cost recovery docket, depreciation study docket, and rate case, the Commission will have more options to address a \$1.24 billion surplus in FPL's depreciation reserve as reported in FPL's depreciation study.

In response, FPL argues that OPC's motion does not meet the standard for consolidation. First, FPL asserts that the issues involved in the dockets are not similar enough to support consolidation. FPL states that the issues in the storm cost recovery docket are narrow and related only to recovery of storm restoration costs through a mechanism independent of base rates, while the issues in the rate case are vast and cover every aspect of FPL's base rates. Second, FPL asserts that consolidation would not promote the just, speedy, and inexpensive resolution of the storm cost recovery docket, but would instead create delay in resolution of that docket. FPL notes that, in the storm cost recovery docket, all testimony has been filed, almost all discovery has been completed, and only two weeks remain prior to the scheduled hearing. Third, FPL asserts that consolidation would unjustly allow certain parties in the storm cost recovery docket the opportunity to seek extension of the discovery deadline and testimony due dates to accommodate their interests after failing to advance those interests within the existing procedural schedule. Finally, FPL asserts that consolidation would unduly prejudice FPL by delaying resolution of the storm cost recovery despite prior Commission orders indicating that the Commission would act expeditiously to address deficits in the company's storm reserve. FPL states that consolidation would delay a decision on its request for storm cost recovery until nearly the end of the 2005 hurricane season and would leave a cloud over FPL's financial picture in the eyes of the investment community.

While staff believes that the Commission has the discretion to consolidate all three dockets at issue, staff recommends that only the depreciation study docket and the rate case docket be consolidated. Staff does not believe that consolidation of the storm cost recovery dockets with these dockets is warranted.

Consolidation of the depreciation study docket and the rate case will ensure that the Commission's findings on appropriate depreciation rates can be incorporated into the rates

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established in the rate case. Currently, the depreciation study docket is scheduled to be addressed without a hearing as a proposed agency action at an agenda conference shortly before the rate case hearing begins. If the Commission's proposed agency action concerning the appropriate revised depreciation rates is protested, a final decision might not be rendered in sufficient time to incorporate the revisions into the rate case. As a result, both the annual depreciation expense and the accumulated depreciation reserve could be misstated for the purpose of setting future base rates. This situation can be avoided if the depreciation study docket and the rate case docket are consolidated to allow both dockets to proceed on the same hearing track.

Staff sees no reason to consolidate the storm cost recovery docket with the depreciation study docket and the rate case. Through the supplemental testimony allowed in the storm cost recovery docket, the Commission can consider what impact, if any, FPL's depreciation reserve surplus should have on FPL's storm reserve deficit. With consolidation of the depreciation study docket and the rate case, the Commission will also be able to consider different alternatives for the disposition of the depreciation reserve surplus. Thus, consolidating the storm cost recovery docket with the other two dockets provides the Commission with no additional flexibility. Because the storm cost recovery docket is already scheduled for hearing beginning on April 20, 2005, staff believes it would be more expeditious to proceed to hearing as scheduled to address the specific storm-related issues rather than incorporate those issues into the much broader rate case.

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**Issue 2:** Should these dockets be closed?

**Recommendation:** No. These dockets should remain open. (C. Keating, Fleming, Susac)

**Staff Analysis:** These dockets should remain open and proceed to hearing.