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April 26, 2005

Ms. Blanca S. Bayó, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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RE: 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.; Docket No. 041272-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of Office of Public Counsel's Post Hearing Brief for filing in the above-referenced docket.

Also enclosed is a 3.5 inch diskette containing Office of Public Counsel's Post Hearing Brief in Microsoft Word format. Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Joe A. McGlothlin

Joseph A. McGlothlin
Associate Public Counsel

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Enclosures

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BEFORE THE PUBLIC SERVICE COMMISSION

In re: 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.	DOCKET NO. 041272-EI FILED: April 26, 2005

OFFICE OF PUBLIC COUNSEL'S POST HEARING BRIEF

INTRODUCTION

In this case, the Commission is called upon to answer three important questions.

The first is: What is the proper function of an electric utility's storm damage reserve? OPC's answer, to be developed in this brief, is that the utility should employ the reserve to defray only the incremental and extraordinary costs of restoring service following severe storm damage.

The next question is: What is the impact of PEF's 2002 rate case stipulation on its request? OPC's answer is: A deal is a deal. Based on the plain, unambiguous language of the stipulation, PEF must absorb storm costs through earnings until its earned ROE is reduced to 10%. The Commission should see through PEF's attempt to create a new "cost recovery clause" as an escape hatch. Similarly, it must not entertain a new gloss that impermissibly conflicts with the plain language of the stipulation.

The third question is: What is the proper role of regulation when severe storm damage causes an electric utility to incur high costs? PEF's position is that the Commission should make the utility "whole," while ignoring its earnings. By contrast, for the reasons stated in this brief, OPC believes the Commission must take a more balanced approach. The proper role is one that recognizes the risks that investors are paid to accept and one that focuses on the Commission's primary obligation, which is to provide - - not a guarantee that PEF will be insulated from all

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risks - - but an opportunity to earn a fair and reasonable return, even in a year of calamitous storms.

II. <u>ISSUES AND POSITIONS</u>

STATEMENT OF BASIC POSITION

After removing from PEF's proposal all "double recoveries," order PEF to use earnings above 10% ROE to pay down deferred storm costs. PEF's 2002 stipulation means what it clearly says. Rule 25-6.0143, F.A.C., permitting PEF to defer storm costs temporarily pending review/disposition was not intended to insulate the company from all risks. The 10% ROE measure will enforce PEF's obligations, while permitting PEF to earn a reasonable return despite the 2004 hurricanes. OPC's adjustments reduce the surcharge amount to $115 million.

DISCUSSION OF BASIC POSITION

Progress Energy has failed to adhere to the terms of a 2002 stipulation in which it agreed to refrain from seeking increases in base rates unless increased expenses caused its return on equity to drop below 10%. PEF's current, post-hurricane request for a "storm cost recovery clause" is a transparent and disingenuous effort to avoid its obligations under the stipulation. Further, as the 10% ROE threshold of the stipulation is a more than reasonable return on investment under current economic conditions, no grounds exist which would justify modifying or supplanting the stipulation pursuant to "public interest" considerations. The Commission should reject PEF's proposal out of hand and enforce the terms of the stipulation.

Even if there were no binding stipulation, the Commission should require PEF's shareholders to share the risk and burden of the extraordinary storm damage expenses with ratepayers. Ratepayers compensate investors for the risks of their investment by providing, through the rates they pay, a return that is commensurate with those risks. It would be inequitable and unfair to require customers to compensate investors fully for assuming business risks, which in Florida include the potential for hurricane damage, and then place on customers 100% of the burden of storm damages through an approach that insulates investors from the risk they are paid to accept. Again, a return on equity of 10% is more than adequate to provide a reasonable return on shareholders' investment under prevailing economic conditions.

Accordingly, then, whether to enforce the 2002 stipulation or whether -- independent of the stipulation -- to allocate storm costs fairly and equitably between ratepayers and stockholders, the Commission should require PEF to absorb storm-related costs to the extent required to reduce its ROE to 10%. Based on available information for 2004, the Commission should disallow approximately $108 million of jurisdictional expense from PEF's storm recovery request in order to accomplish this result.

With respect to the identification and quantification of storm-related costs that are eligible to be charged to the storm damage reserve, PEF should book to the storm reserve only those extraordinary costs that are incremental to the expenditures the utility would make if there had been no storms. Instead, through its proposed storm surcharge Progress Energy has charged customers for expenses that are currently recovered through base rates. This "double dipping" practice resulted in O&M expenses lower than budgeted levels, and increases in reported net income, during the periods when PEF was repairing its system and restoring service. Unless the Commission adjusts PEF's proposal by denying recovery for such items as basic labor salaries, management salaries, vehicle expense and tree-trimming expenses, to name just a few, then PEF effectively would require ratepayers to pay twice for the same expense.

<u>ISSUE 1</u>: WITHDRAWN

ISSUE 2: **Has PEF quantified the appropriate amount of non-management employee labor payroll expense that should be charged to the storm reserve? If not, what adjustments should be made?**

OPC: *No. PEF has charged basic levels of non-management employee labor expense that customers paid for through base rates. By charging these expenses to the storm reserve, PEF is attempting to "double dip" by requiring customers to pay for them twice. To prevent this "double dipping," the Commission should only allow PEF to charge extraordinary expenses, incremental to base levels, to the storm reserve. Thus, $5.46 million of the amount PEF charged to the storm reserve should be disallowed.*

ARGUMENT

The crux of this issue is that PEF's proposal has customers paying twice for their non-managerial employees' regular salaries for a regular eight-hour work day. There is no disagreement that PEF is charging a portion of its employee's regular salaries to the storm reserve fund. By moving all expenses associated with the storm repair effort to the storm reserve, without taking into account the normal level of expenditures funded by base rates that customers pay, PEF effectively requires customers to pay twice for the same costs. (TR 679) This practice is referred to as "double dipping." (TR 679)

PEF witness Wimberly agreed that one definition for "double dipping" is collecting twice for the same work. (TR 568-569) Witness Wimberly even agreed that an example of "double dipping" would be collecting from the customers once through base rates and again through the storm fund for the same eight-hour day's worth of work. (TR 569) As noted by Commission Staff Auditor Jocelyn Stephens, the Commission has a policy against allowing double dipping. (H.E. 51 at p. 38) Witness Stephens agreed that if a company was receiving payment for an activity through base rates and also wanted to charge customers again for the same activity through the storm-cost recovery clause, in her opinion, it would be considered double dipping and would be disallowed. (H.E. 51 at p. 38)

PEF attempts to justify this "double dipping" by claiming that it is only charging the regular salaries of those employees working directly on storm-related matters. PEF claims that this is appropriate for several reasons. First, PEF asserts that this is consistent with the way replacement insurance works and is set forth in its study. This argument will be refuted in detail in OPC's argument under Issue 26. OPC adopts that argument and incorporates it by reference here. Second, PEF claims that the "double dipping" is justified because employees must do the work postponed because of the hurricanes at a later time and this "catch-up" work costs money. This line of reasoning implies that "double-dipping," is justified if PEF did not ask for the cost associated "catch-up" work.

PEF is attempting to obfuscate the issue of "double dipping" by bring up the issue of its so called "catch-up" work. Witness Wimberly claims that for work related to the hurricane, the costs related to that work is automatically extraordinary and chargeable to the storm accounts. (TR 564) However, when asked whether PEF accounts for an average, normal eight-hour day of work in its monthly budget, PEF witness Wimberly agreed that it did. (TR 565) Witness Wimberly brought up "catch-up" work in an attempt to justify charging the average, normal eight hour work day to the storm account. (TR 565)

However, witness Wimberly attempts to distinguish PEF's practice from "double dipping" based on the "type" of work done during the eight-hour work day rather than on the concept of the eight-hour work day. This argument is a red herring. As noted in the testimony, PEF budgets for an eight-hour work day for its full-time employees irrespective of the "type" of work that employee is doing on any given day. (TR 565-566) Thus, this attempt at a distinction based on the "type" of work done, does not erase the fact that PEF is attempting to collect twice for the same eight hours' worth of work. PEF's budget includes an eight-hour work day for its full-time employees. (TR 565) PEF budgeted for those full-time employees' regular salaries during the months of the hurricanes. PEF bases its budget on its base rates. Simply put, PEF is attempting to collect twice for the average, normal salaries based on an eight-hour work day which is included in there monthly budgets and paid for by the customers through base rates. (TR 687) Thus, consistent with Commission's policy to prevent "double dipping," the Commission should allow PEF to charge only extraordinary expenses, incremental to base levels for non-management employee labor payroll expenses, to the storm reserve. The $5.46 million of the regular pay for the Bargaining Units and Non-Exempt employees charged by PEF to the storm reserve should be disallowed.

ISSUE 3: **Has PEF properly treated payroll expense associated with managerial employees when determining the costs that should be charged to the storm reserve? If not, what adjustments should be made?**

OPC: * No. No part of the payroll associated with exempt management employees should be charged to the storm reserve. The Commission should remove $6.40 million from the amount PEF seeks to recover from customers.*

ARGUMENT

As with the previous issue, the heart of this issue is that PEF's proposal would require customers to pay twice for PEF's managerial employees' regular salaries. There is no disagreement that PEF is charging a portion of its management employee's regular salaries to the storm reserve fund. By moving all expenses associated with the storm repair effort to the storm reserve, without taking into account the normal level of expenditures funded by base rates that customers pay, PEF effectively requires customers to pay twice for the same costs. (TR 679) This practice is referred to as "double dipping." (TR 679)

As noted above, PEF witness Wimberly agreed that one definition for "double dipping" is collecting twice for the same work, an example of which is collecting from the customers once through base rates and again through the storm fund for the same eight-hour day's worth of work. (TR 568-569) As noted by Commission Staff Auditor Jocelyn Stephens, the Commission has a policy against allowing "double dipping" and "double dipping" should be disallowed. (H.E. 51 at p. 38)

PEF attempts to justify this "double dipping" by claiming that it is only charging the regular salaries of those employees working directly on storm related matters. PEF claims that the "double dipping" is justified because they had to put off work because of the hurricanes until a later time and this "catch-up" work costs money. However, PEF is attempting to confuse the issue of "double dipping" by using "catch-up" work as a justification for allowing it to "double dip."

Witness Wimberly asserts that for work related to the hurricane, the costs related to that work is automatically extraordinary and chargeable to the storm accounts. (TR 564) However, witness Wimberly agreed when asked that PEF accounts for an average, normal eight-hour day of work in its monthly budget. (TR 565) Witness Wimberly attempts to distinguish PEF's practice from "double dipping" based on the "type" of work done by the employee during their eight-hour work day. This argument is a red herring. As noted in the testimony, PEF budgets for an eight-hour work day for its full-time employees irrespective of the "type" of work that employee is doing on any given day. (TR 565-566) Thus, this attempt at a distinction based on the "type" of work done, does not erase the fact that PEF is attempting to collect twice for the same eight-hour's worth of work day.

PEF is attempting to collect twice for their management employee's average, normal salaries based on an eight-hour work day which is included in their monthly budgets and paid for by the customers through base rates. (TR 85, 687) Thus, consistent with Commission's policy to prevent "double dipping," the Commission should allow PEF to charge only extraordinary expenses, incremental to base levels for management employee labor payroll expenses, to the storm reserve. The $6.4 million of the regular pay for the Exempt Management employees charged by PEF to the storm reserve should be disallowed.

<u>ISSUE 4</u>: **At what point in time should PEF stop charging costs related to the 2004 storm season to the storm damage reserve?**

<u>OPC</u>: *PEF should stop charging 2004 hurricane-related costs to the storm account when foreign utilities have left, PEF employees have returned to regular hours and the work is being performed by PEF employees and the contractors whom PEF engages on a routine, ongoing basis. Based on the record that date should be July 1, 2005.*

ARGUMENT

There must be a point in time at which the storm account is no longer charged for hurricane-related items. Otherwise, this Commission opens the door for the possibility of unrelated costs being charged to the storm accounts.

As Witness Majoros states, PEF plans to charge hurricane-related work still remaining after the storms have passed and operations have returned to normal to the storm reserve. (TR 689). This is the hurricane-related work that was identified during the "sweeps," but not yet completed. The Company estimated that this hurricane-related work would be completed during the first quarter of 2005. (TR 689) Ideally the point in time at which no more costs would be charged to the storm accounts would occur as witness Majoros testified: "[o]nce normal operations have resumed, outside contractors have been sent home, and employees are back to working a normal workweek, any remaining storm-related activities should be performed in the normal course of business and should not be booked to the storm account." (TR 690)

However, this point in time has been difficult to identify. PEF witness Rogers testified that the majority of the crews assigned to transmission are still working ten hour days, five to six days a week. (TR 188-189) She indicated that for the most part they still are working those hours in Florida to do the catch-up work and also to finish the restoration work. (TR 188) PEF witness McDonald was unable to identify whether the crews for distribution had returned to a normal work week. (TR 143-144) However, PEF witness Lyash testified that the restoration work would be completed by the 2nd quarter 2005. (TR 75)

Using the conservative date provided by the company for identifying when hurricane-related restoration work would be complete, PEF should not be permitted to charge any costs to the storm account after July 1, 2005. As noted above, PEF conducted "sweeps" of its systems to identify the hurricane-related work that needed to be completed. In addition, only the hurricane-related restoration work which was identified in those final sweeps should be permitted to be charged to the storm account.

ISSUE 5: **Has PEF charged to the storm reserve appropriate amounts relating to employee training for storm restoration work? If not, what adjustments should be made?**

OPC: *Yes. PEF witnesses testified PEF has not charge the storm account for employee training. Employee training, including that related to storm restoration work, is a basic function that PEF must provide. Related expenses are not extraordinary, and should not be charged to the storm damage reserve. *

ARGUMENT

OPC believes that employee training, including training related to storm restoration work, is part of the normal operations of the Company and as such should not be charged to the storm reserve account. Since PEF conducts employee training for storm preparedness each year, these costs are part of the annual budget and included in base rates.

PEF witness McDonald testified that, since PEF employees' assigned roles under the storm plan may differ from their daily responsibilities under normal operation conditions, they must be trained. (TR 117). He further testified that this training is normally completed in the second quarter of each year throughout the system and within each of the functional areas of responsibilities. Witness McDonald states that to further ensure PEF's storm preparedness, it conducts storm readiness drills in order to test the effectiveness of the training and the employees' abilities to execute their assigned storm roles. This drilling is completed in the month of May. Further, PEF participates annually to ensure that its storm restoration plan is coordinated with the state-wide storm preparedness. It participates in the state Emergency Operations Centers (EOC) coordinated storm drill conducted each May in Tallahassee. (TR 117)

PEF witness Rogers testified that the Transmission Department's Storm Plan consists of four components: 1) Pre-Season Activities; 2) Pre-Storm Activities; 3) Damage Assessment and Repair; and 4) Recovery Follow-up Activities. She stated that the Pre-Season Activities include the necessary arrangements prior to the severe storm and hurricane seasons to ensure that the Company is prepared. (TR 164, 165) Witness Rogers agreed that since Pre-Season Activities occur on a yearly basis the costs associated with the Pre-Season Activities are included in the annual budget. (TR 187)

PEF witnesses McDonald and Rogers testified that PEF has not charged pre-season hurricane costs to the storm account. (TR 142, 187) OPC agrees with PEF's practice that no pre-hurricane season activities, including the costs associated annual pre-season hurricane employee training, should be charged to the storm account.

<u>ISSUE 6</u>: Has PEF properly quantified the costs of tree trimming that should be charged to the storm reserve? If not, what adjustments should be made?

OPC: *No. PEF should be allowed to charge only the incremental cost of tree trimming above its normal, budgeted levels for year end 2004. PEF's variance was a positive $1.4 million, meaning PEF charged a portion of the normal budgeted amount to the storm reserve. The Commission should disallow the $1.4 million amount.*

ARGUMENT

PEF should be allowed to charge only the incremental cost of tree trimming above its normal, budgeted levels for the year end 2004. By moving all expenses associated with the storm repair effort to the storm reserve, without taking into account the normal level of expenditures funded by base rates that customers pay, PEF effectively requires customers to pay twice for the same costs. (TR 679) This practice is referred to as "double dipping." (TR 679) Base rates support a budgeted level of O&M expense. (TR 679)

The Company provided several presentations and other documents which compared budgeted expenses with actual expenses, or compared current expenses with the previous year. Many of these indicated that O&M expenses were under budget for the months during and following the hurricanes including tree trimming expenses. (TR 679, 688) These documents actually indicate that this favorability of actual to budget is due to costs shifting to the storm reserve. (TR 679) As Witness Majoros acknowledged, the reason for proposing an adjustment for tree trimming is to try and eliminate from the charges to the Storm Damage Reserve the normal tree trimming expenses. (TR 731)

Witness Wimberly stated that the tree trimming budget for December 2004 showed that it was $1.4 million favorable for the year end. (TR 547) Although witness Majoros testified that there should be a $3.9 million adjustment based on the budget variance for tree trimming as of October 2004, he acknowledged that the adjustment should be changed based on Mr.

Wimberly's testimony. (TR 547, 688, 731) Witness Majoros' adjustment was based on the amount that the budget exceeded the actual costs. (TR 731)

PEF's variance was a positive $1.4 million, meaning PEF charged a portion of the normal budgeted amount to the storm reserve. The Commission should disallow the $1.4 million amount.

ISSUE 7: **Has PEF properly quantified the costs of company-owned fleet vehicles that should be charged to the storm reserve? If not, what adjustments should be made?**

OPC: *No. PEF has charged vehicle depreciation expense and base levels of vehicle operating expense to the storm damage reserve which are covered by base revenues. To include them in the storm reserve would allow PEF to "double dip." The Commission should limit recovery of vehicle-related costs to the incremental fuel costs associated with extra shifts. It should adjust the amount that PEF seeks to recover by $3.04 million.*

ARGUMENT

PEF has not properly quantified the costs of the company-owned fleet vehicles that should be charged to the storm reserve. PEF is seeking to charge vehicle depreciation expense and base levels of operating costs to the storm reserve. By moving all expenses associated with the storm repair effort to the storm reserve, without taking into account the normal level of expenditures funded by base rates that customers pay, PEF effectively requires customers to pay twice for the same costs. (TR 679) This practice is referred to as "double dipping." (TR 679) Base rates support a budgeted level of O&M expense. (TR 679)

Witness Majoros testified that PEF provided an itemization of the $3,393,913 in company-owned vehicle related expenses included in its claim in its response to Staff's 1st Set of Interrogatories, Question No. 12. He testified that related expenses included $909,000 for depreciation, $702,000 for fuel, $1.16 million in maintenance and $222,000 in overhead.

Witness Majoros stated that although company vehicles have been used in the storm recovery effort, these vehicles have already been included in the annual budget. (TR 687) The depreciation of the vehicles would be the same, regardless of whether they are used for storm damage recovery or used in the regular course of business. (TR 687,688) The same is essentially true for vehicle overhead, etc. He indicated that all operating costs, repair and maintenance of the company's fleet should be eliminated from recovery claim. (TR 688)

Witness Majoros testified that the only extraordinary cost that the company has incurred relating to storm recovery is the incremental cost of fuel, due to longer daily operations. As such, witness Majoros recommended in his testimony that PEF be allowed to recover one-half (1/2) of the fuel expense included in its storm damage claim, or $350,898. He states that this adjustment is based on the assumption that vehicles were in use 16 hours per day during storm restoration, rather than the normal 8 hours per day. (TR 688)

Other than a general objection to any of the adjustments proposed by the other parties, witness Portuondo did not address the proposed adjustment for the Company fleet vehicle expense. (TR 278) Apparently, witness Portuondo does not believe that the Commission should conduct a "rate-case" type inquiry of the Company's cost recovery proposal. (TR 278) It appears from witness Portuondo's testimony that he does not believe any level of scrutiny should be applied to the PEF's storm cost recovery request because PEF followed the methodology it proscribed in its Hurricane cost study. (TR 278) The issue of the applicability of PEF's storm study is addressed later.

Witness Wimberly only briefly addresses vehicle costs to the extent he makes the argument that they charged all direct costs related to the hurricanes to the storm reserve consistent with the policy as explained by witness Portuondo. (TR 540) He argues that witness

Majoros' testimony to reduce the fuel cost by half is based on the actual money spent on fuel during the hurricane restoration process, not the budget. He contends the actual costs for fuel during the hurricanes has nothing to do with the annual budget. (TR 546) But as acknowledged by witness Majoros, the reduction of the fuel costs to half was based on the fact the vehicles would have been used eight hours irrespective on the storms. Witness Wimberly's testimony does not refute that these vehicle would be used 8 hours per day irrespective of the storms.

There is no justification for including vehicle costs which are normal operating expenses in the storm reserve fund. The adjustment related to vehicle expense should be removal of $3,043,015 form the storm damage claim. (TR 688)

ISSUE 8: **Has PEF properly determined the costs of call center activities that should be charged to the storm damage reserve? If not, what adjustments should be made?**

OPC: *PEF should charge only extraordinary levels of call center expenses, incremental to normal levels, to the storm damage reserve account. OPC has not formulated a numerical adjustment at this time.*

ARGUMENT

PEF should charge only extraordinary levels of the call center expenses, incremental to the normal levels, to the storm damage account. By moving all expenses associated with the storm repair effort to the storm reserve, without taking into account the normal level of expenditures funded by base rates that customers pay, PEF effectively requires customers to pay twice for the same costs. (TR 679) This practice is referred to as "double dipping." (TR 679)

Since the Commission has no rule in place that governs what costs are appropriately charged to the storm account, it was necessary to develop principles to protect customers from "double dipping" and potential profiting from the storms. Therefore, the OPC developed its guidelines to provide direction for accounting for storm costs. (TR 674) The purpose of the

OPC guidelines is to ensure that only extraordinary expenses are booked to the storm account. (TR 672)

As part of the OPC guidelines, certain amounts should be excluded from being charged to the storm account. Based on the OPC guidelines, call center activities should be excluded except for non-budgeted overtime associated with the storm event. (TR 673) As witness Majoros testified, call center expenses for the storm recovery should be limited to the call overloads created by the storms. (TR 688)

To the extent that PEF is charging its normal budgeted amounts for the call center to the storm fund, this "double dipping" should be disallowed. OPC has not formulated a numerical adjustment at this time.

ISSUE 9: **Has PEF appropriately charged to the storm reserve any amounts related to advertising expense or public relations expense for the storms? If not, what adjustments should be made?**

OPC: *PEF has a basic obligation as a public utility to keep its customers informed, particularly during emergencies. Customers should not be required to pay a surcharge to receive the benefits of this basic function. All advertising and/or public relations expense that PEF charged to the storm reserve, amounting to $2,428,891, should be disallowed.*

ARGUMENT

PEF has inappropriately charged advertising expense and public relations expense for the storms to the storm reserve. Customers should not be required to pay a surcharge to receive the benefits of this basic function, keeping customers informed particularly during emergencies.

As part of the OPC guidelines, advertising expense should be excluded from being charged to the storm account. (TR 673) As noted in the previous issue, the purpose of the OPC guidelines is to ensure that only extraordinary expenses are booked to the storm account. (TR 672) Since the Commission has no rule in place that governs the matter, principles are necessary to protect customers from "double dipping" and potential profiting from the storms. Therefore, the OPC guidelines provide direction for accounting for storm costs. (TR 674) For purposes of the guidelines, advertising and public relations expenses are exclusions under the advertising expense category.

Witness Lyash testified that PEF's plan regarding communication encompassed proactive advertising and media communication of public awareness and safety messages before, during, and after the storm; working with the media to provide customers with estimated times of restoration; communicating directly with individual customers; and communicating with local, county, and state officials to keep them informed of its activities. (TR 68) As part of the communication efforts, witness Lyash refers to the increases related to the call center staff, the costs associated with this have been addressed in a previous issue. (TR 71) Witness Lyash testified that the total cost for communications related to the four storms was $3.6 million, including call center costs, and was included in its request. (TR 73)

OPC agrees that communication is an important function that must be done during an emergency. (TR 68) Ensuring public safety is part of the regulatory compact under which PEF is required to provide safe, reliable electric service within its territory. (TR 81) As part of the regulatory compact, PEF has been provided the opportunity to earn a fair return on its equity. (TR 82) Again, PEF's regulatory obligation requires it to restart service to customers as quickly and safely as possible after hurricanes. (TR 81) Part of restoring service safely is making sure customers have current information regarding the emergency. Witness Lyash agreed that it is part of the utility's basic regulatory obligation to keep PEF customers informed during emergencies such as tornados and hurricanes. (TR 87)

As noted above, PEF is already being provided the opportunity to earn a fair return on its equity through base rates for its safety obligation. So, customers should not have to pay any additional costs for communications. All advertising and/or public relations expense that PEF charged to the storm reserve, amounting to $2,428,891, should be disallowed.

ISSUE 10: **Has uncollectible expense been appropriately charged to the storm damage reserve? If not, what adjustments should be made?**

OPC: *The storm damage reserve is intended for the costs of repairing the physical system and restoring service. "Uncollectible expense" does not meet PEF's own definition of includible costs. The Commission should adjust PEF's request by $2.25 million to remove all uncollectible expense.*

ARGUMENT

The purpose of the storm damage reserve is to defray the extraordinary costs of repairing or replacing physical facilities and restoring service to customers. By contrast, uncollectible expense consists of the judgment that certain accounts payable will not be collected and should be written off. Even if there were no other basis for excluding them, such amounts are speculative (both as to whether the bills will be paid and, if they are not, whether they are unpaid because of the storms) and should be excluded for that reason alone. More fundamental, however, is the fact that the storm damage reserve was not intended to defray costs so foreign to the restoration effort.

PEF witness Portuondo describes the types of costs the company charges to the storm reserve as follows: "All actual repair activities and those activities directly associated with storm damage and restoration activities." (TR 331)

During cross-examination, OPC asked Mr. Portuondo to square the definition of includible costs within PEF's study with the nature of uncollectible expense. He couldn't:

Q. Now a bad debt writeoff, do I understand correctly that that's a situation in which a customer owes the company money, has not paid, and the decision is made to write it off?
A. Yes, sir.
Q. Would you agree with me that as defined, that is something other than services necessary to locate and repair or replace damaged property?
A. I would say yes and no. I would say yes, that is not an activity associated with uncollectible, and I would say no because it's an unfortunate outcome of redeploying one's workforce to address the immediate needs associated with the hurricanes that hit Florida. There were customers, of course, that still had power that would have otherwise have been disconnected for nonpay, that went on receiving service because we were having to address the immediate needs of our citizens in need. So that is the reason that that type of cost was included in our petition for self-insurance.
Q. But if I understand your answer, you do not contend that that's an example of a service necessary to locate and repair or replace damaged property; is that correct?
A. No, it is not. It's a consequence of having to perform those functions and not being able to perform the functions that those individual employees were normally assigned to do.

(TR 332,333)

Now and then, the Commission is presented with a straightforward issue and an easy call. This is one. Reduce PEF's request by $2.25 million to exclude all uncollectible expense. (H.E. 26 at p. 2, TR 558)

ISSUE 11: Should PEF be required to offset its storm damage recovery claim by revenues it has received from other utilities for providing assistance in their storm restoration activities? If so, what amount should be offset?

OPC: *No position.*

ARGUMENT

OPC has no position regarding whether PEF should be required to offset its storm damage recovery claim by revenues it has received from other utilities for providing assistance in their storm restoration activities.

ISSUE 12: Has PEF appropriately removed from the costs it seeks in its petition all costs that should be booked to the reserve for cost of removal expense as the cost of removing plant damaged during the storm? If not, what adjustments

should be made? (This issue was partially stipulated as a Category 1 Stipulation, Number 1)

OPC: *PEF understated the amount of cost of removal expense (COR) that should be charged to its cost of removal reserve. To reflect PEF's own analysis of COR embedded in its depreciation rates, the Commission should reduce PEF's request by $8 million.*

ARGUMENT

OPC gives credit to PEF for acknowledging, voluntarily, the proper way of accounting for capital costs and cost of removal. PEF's proposed approach led to a partial stipulation encompassing the conceptual methodology for accounting for each, leaving only the question of whether PEF quantified each properly.

With respect to capital costs, PEF proposed to place the normal amount it would have spent (labor, materials) to install a new replacement plant and charge to the storm damage reserve only the incremental, extraordinary premium occasioned by the storm events. (TR 315,316) This approach prevents the distortion associated with placing either all capital costs, or none of them, in rate base. (TR 317) During the hearing, PEF quantified this "normal" amount to be $48 million. While this is $6 million less than its original estimate of costs to be capitalized, OPC does not take issue with this value.

OPC does take issue with PEF's quantification of cost of removal. Cost of removal (COR) represents the cost of pulling a damaged item of plant prior to installing its replacement. Importantly, anticipated COR is built into the depreciation rate applicable to the facility. PEF collects COR from the time it places the facility in service. To charge COR to the storm damage reserve would require customers to pay COR twice – once through the depreciation embedded in base rates and again through the surcharge.

PEF does not disagree. The remaining issue is whether PEF properly implemented the concept.

PEF's own numbers demonstrate its quantification is suspect. PEF retired approximately $20 million of plant. The amount of COR must bear a reasonable relationship to the plant that was retired. PEF identified only about $1 million, or a mere 5-8% of the value of retirements. (TR 325)

At the time he prepared his prefiled testimony, witness Majoros had not been provided sufficient information with which to evaluate PEF's claimed COR. However, he later had access to PEF's most recent depreciation study, in which PEF calculated COR as a percentage of the plant to which it was related. PEF's own study showed the ratio of COR to retired plant is 40% or greater. (TR 737) Utilizing PEF's estimate of $20 million of retirements, witness Majoros concluded that COR should be in the range of $8 – 9 million. (TR 737-738) To reflect this calculation of COR, the Commission should reduce PEF's request by $8 million and direct PEF to charge this additional amount to its cost of removal reserve.

<u>ISSUE 13</u>: **STIPULATION – CATEGORY 1 STIPULATION, NUMBER 2**

<u>ISSUE 14</u>: **Taking into account any adjustments identified in the preceding issues, what is the appropriate amount of reasonable and prudently incurred storm-related costs to be charged against the storm damage reserve subject to true-up?**

<u>OPC</u>: *OPC's position is that the amount sought by PEF should be reduced by a minimum of $29 million as a result of the resolution of Issues 1-14. OPC does not agree that the adjustments from the resolution of Issues 1-14 necessarily represent that these costs are reasonable and prudent expenditures.*

ARGUMENT

While OPC has not challenged specific expenditures on the basis of reasonableness or prudence, neither is OPC in a position to agree that the balance net of adjustments made as a result of the resolution of Issues 1-14 necessarily represents reasonable and prudent expenditures. This issue is a fallout of the previous issues.

As noted before, it is OPC's position that all "double dipping" and potential for profiting from hurricanes should be eliminated. (TR 674) In an effort to eliminate these potential abuses of the storm reserve fund, OPC developed guidelines to address the appropriate types of costs which should and should not be charged to the storm account. (TR 672) The OPC guidelines are as follows:

<u>OPC Storm Damage Guidelines</u>

CAPITAL ADDITIONS:

A. All capital additions should be booked to plant in service at current book cost of materials and labor. Only additional, extraordinary capital-related expenses will be booked to the storm reserve.
B. All retirements resulting from 2004 storms should be booked based on existing, approved depreciation/retirement procedures.
C. The cost of removal expense related to the plant items that have been retired due to 2004 storm damage should be excluded from storm recovery expenses that are charged to the storm damage reserve account and should instead be charged to the reserve for accumulated cost of removal.

OPERATING AND MAINTENCE EXPENSES:

D. All base salaries from all bargaining unit labor costs should be excluded from storm recovery expenses charged to the storm damage reserve account.
E. Only those costs of materials and supplies that exceed the material and supplies expense anticipated under normal operations should be charges to the storm reserve.
F. All insurance recoveries, less deductibles, should be eliminated from the storm recovery amounts.
G. The amount charged to the storm damage reserve account should exclude all expenses associated with the following activities:
   1. Operating expenses and overheads for company-owned vehicles.
   2. Storeroom expense.
   3. Advertising expense.
   4. Employee training expense.
   5. Management overheads except for overtime when working on storms.
   6. All other allocated expenses included in normal operations and existing budgets.

7. Labor costs associated with repairs and replacements that have been identified as job or work orders, but that have not yet been worked and that will be completed by existing, full time employees or regular, budgeted contract personnel.
8. Labor costs associated with any work or activity related to the storm other than the jobs or work orders identified in (7) above that will be completed by any employees as part of their regular job duties.
9. Call center activities should be excluded except for non-budgeted overtime associated with the storm event.
10. No uncollectible expenses or lost revenues should be booked to the storm reserve.
11. No expense associated with cash advances made to employees should be booked to the storm reserve.

(TR 673-674). The adjustments proposed by OPC in Issues 1-14 are consistent with these principles. In the absence of a rule on the issue of what cost are appropriately charged to the storm reserve, the Commission should adopt these guidelines. The Commission has already approved these guidelines in Order PSC-05-0250-PAA-EI, issued March 4, 2005, in Docket No. 050093-EI, consummating order PSC-05-0341-CO-EI, issued March 29, 2005.

Based on the OPC guidelines and for reasons articulated in Issues 1-14, the Commission should make adjustments to PEF's storm request. The amount sought by PEF should be reduced by a minimum of $29 million as a result of the resolution of Issues 1-14.

<u>ISSUE 15</u>: Does the stipulation of the parties that the Commission approved in order No. PSC-02-0655-AS-EI affect the amount or timing of storm-related costs that PEF can collect from customers? If so, what is the impact?

<u>OPC</u>: *Neither PEF's transparent effort to circumvent the 10% ROE provision of the stipulation (request for "cost recovery clause") nor PEF's later effort to rewrite its terms ("reduced revenues – only trigger") enables PEF to escape the clear, plain confines of the stipulation. Nor have circumstances changed in a way that would present a basis in which the Commission could modify PEF's obligation. A deal is a deal.*

ARGUMENT

In 2002 PEF, OPC and other parties entered a stipulation that the Commission approved as the basis for settling and concluding PEF's most recent base rate proceeding. PEF bargained for the replacement of an approved "range" of return by entering a stipulation with a sharing mechanism that gave PEF liberal potential on the "upside" to earn a profit. In return, PEF surrendered its right to ask for base rate increases during the term of the stipulation, with one exception. PEF bargained for, and received, a protective mechanism that would be triggered in the event its ROE fell below 10%. The operative language follows:

> 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.

(Order No. PSC-02-0655-AS-EI, issued May 14, 2002, in Dockets Nos., 000824-EI and 010001-EI.)

Pursuant to Rule 25-6.0143, F.A.C., (TR 220) PEF deferred its storm repair costs pending the Commission's disposition of this petition. Based on 2004 year end results, before expensing any of the deferred storm costs, PEF's earned return on equity was 12.48%. (TR 345) Under the terms of the stipulation, PEF must expense the portion of deferred storm costs necessary to reduce its ROE to 10% before increasing base rates. The adjustment amounts to approximately $108 million.

In an attempt to avoid this obligation, PEF has advanced two arguments. First, PEF couches its petition in terms of a request for a "storm cost recovery clause." (TR 222) Next, PEF asserts -- incredibly -- that the 10% trigger applies only to an unanticipated reduction in revenues, as opposed to an increase in costs. (TR 262) The Commission should see the arguments for what they are – transparent, disingenuous efforts to escape PEF's obligations under the stipulation.

A. The request for a "clause" is an effort to circumvent the stipulation.

In evaluating PEF's tack, the Commission should recall that it turned down a request for such a storm cost recovery clause in 1993. Order No. PSC-93-0918-FOF-EI, in Docket No. 930405-EI, issued on June 17, 1993. During the hearing, witness Portuondo sought to support the proposal for a "storm cost recovery clause" on the basis that PEF informed the Commission in 1993 that it would seek such a clause. (TR 344) This is a good example of trying to lift one's self by pulling on the straps of one's boots. More important is the fact that the Commission responded to PEF (that is, PEF's predecessor) by firmly stating it would not prejudge PEF's future filing:

> 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.

Order No. PSC-93-1522, cited at 93 F.P.S.C. 10:256. Of course, at the time PEF had not signed the 2002 stipulation.

During the hearing, PEF asked a succession of witnesses to agree that 2004 storms were "unprecedented," and "unpredictable." These questions were a bid by PEF to justify the creation of a new clause. PEF missed the mark. One of PEF's catch words was "irregular," which means "sporadic." In 1993 the Commission refused to adopt a similar clause in part because it regarded storm-related costs as "sporadic," and therefore unsuitable for a cost recovery mechanism. (TR 314-315), Order No. PSC-93-0918-FOF-EI, issued June 17, 1993, at page 5, Docket No. 930405.

More importantly, PEF had no storm cost recovery clause prior to the effectiveness of the stipulation; it had no storm clause at the time of the stipulation; it had no storm clause at the time of the 2004 storms; and it has none now. In 2002 storm costs were in base rates. No attempt to create a clause <u>now</u> can alter the fact that *at the time of the stipulation* the parties did not provide for storm cost treatment in any way other than through base rates.

Even as proposed by PEF, it is obvious that PEF's request is not a true "clause." A legitimate cost recovery clause is perpetual in nature. PEF's proposal would terminate after two years. A true clause is not confined to the cost of a specific event. PEF's proposal is to collect $252 million, which it quantifies as the cost of specific storm events, over a specific time frame. (TR 313)

B. PEF's new "construct" is foreign to the clear, unambiguous language of the stipulation.

It is axiomatic that the language of a document controls unless it is ambiguous. Only if the document is ambiguous can one look to parole evidence to resolve ambiguity. <u>Claughton Hotels, Inc. v. City of Miami</u>, 140 So. 2d 608 (Fla. 3d DCA, 1962); <u>Laboratory Corporation of America</u>, 829 So. 2d 311 (Fla. 3d DCA, 2002); <u>NCP Lake Power Inc v. Florida Power Corporation</u>, 781 So. 2d 531 (Fla. 5th DCA, 2001).

During the hearing, PEF witness Portuondo asserted that the parties to the stipulation intended the 10% return on equity threshold to apply only in the event PEF miscalculated *revenues*. Obviously, this would have been a tremendously important distinction – one that the parties would have taken care to articulate with precision within the stipulation. During cross-examination, OPC offered Mr. Portuondo an opportunity to identify the distinction in the stipulation:

> MR. MCGLOTHLIN: Commissioners, this the Stipulation and Settlement in 000824-EI that was attached to Order No. PSC-02655 in that docket. Because it is part of an order, I don't think we need to mark it as an exhibit, but I would just like to have the witness refer to it for purposes of a question.
> BY MR. MCGLOTHLIN:

Q. Do you have that before you, Mr. Portuondo?
A. Yes, I do.
Q. I direct you to page 16 of the order, numbered paragraph 7 of the stipulation. "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." Do you see that statement?
A. Yes, I do.
Q. Where does it say in this stipulation that this applies only to reductions that occur as a result of discrepancy in revenues as opposed to an increase in costs?
A. It does not. It addresses base rates.

(TR 294)

As Mr. Portuondo admitted during cross-examination, the stipulation does not contain any distinction between reductions in earnings caused by increased costs as opposed to reductions in earnings caused by lower revenues. In fact, the language of the stipulation does not imply or even remotely suggest the existence of such a distinction. PEF instead has come up with an after- the- fact "gloss" that *fights* the clear language of the stipulation. Mr. Portuondo's effort to effectively "rewrite" this paragraphs results in an impermissible construction.

It is important to bear in mind that in the stipulation, PEF acquired the benefit of increased room for additional earnings, because of the elimination of a cap on earned return on equity. Post-hurricane, PEF has the *benefit* of the 10% ROE trigger. By enforcing the stipulation, the Commission would enable PEF to realize a healthy return on equity even after experiencing a calamitous, multi-hurricane fall. Correctly viewed, the 10% ROE threshold is not a burden; it is a benefit.

Unfortunately, this is not the first time the Commission has been called on to enforce the terms of this very stipulation. In 2003, PEF sought to avoid a refund of $18 million by a separate strained interpretation. OPC moved to enforce the stipulation. The Commission ordered the refund. Order No. PSC-03-0876-FOF-EI, dated July 30, 2003. Here, PEF has tortured the stipulation even more severely in an effort to escape its obligation. The Commission should tell PEF – again – that a deal is a deal.

<u>ISSUE 16</u>: In the event that the Commission determines the stipulation approved in Order No. PSC-02-0655-AS-EI does not affect the amount of costs that PEF can recovery from ratepayers, should the responsibility for those costs be apportioned between PEF and retail ratepayers? If so, how should the costs be apportioned?

<u>OPC</u>: *Yes. Investors are paid to accept risks, including the risk of storm damage. To reward investors for assuming the risk and then insulates them of placing all of the risk on ratepayers would be inequitable. Under current economic conditions, 10% ROE is a reasonable and adequate return. Even without a stipulation, using 10% ROE criteria to measure shareholders' responsibility is reasonable.*

ARGUMENT

OPC witness James Rothschild testified regarding the fundamental risk/reward relationship to which PEF investors necessarily submit. Ratepayers compensate investors for the risks they take through the rates that PEF charges. "Accordingly, to provide the appropriate opportunity to earn a fair return, given a company's overall risk profile, *and* to simultaneously require ratepayers to bear all of the risk of the storm losses that they are paying investors to accept, would be unfair to the company's customers." (TR 597)

Ratepayers are in fact paying PEF's investors 5% or more above the "risk free" alternative of a long term treasury bond. (TR 598) As a result, ratepayers – not investors – are entitled to a measure of protection from the risk of storm damage losses. (TR 598)

The Commission recognized as much in 1993. In the order in which it rejected Florida Power & Light Company's request for an automatic "storm clause," the Commission said:

> FPL seeks approval for a Storm Loss Recovery Mechanism that would guarantee 100% recovery of expense from ratepayers, over and above the base rates in effect

> at the time of implementation. This would effectively transfer all risk associated with storm damage directly to ratepayers, and would completely insulate the utility from risk. We decline to approve such a mechanism at this time.
>
> 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.

Witness Rothschild established that the 10% ROE provided in the stipulation also is reasonable, even if the stipulation does not apply to PEF's request. Since the stipulation was signed, long term interest rates have fallen from 5.64% to 4.85%. (TR 602) Several electric utilities have been awarded returns on equity lower than 10%. (TR 600) The Social Security Administration forecasts that equity returns will average 6.50% plus inflation over the next 75 years. Currently this translates to an indicated return of 9.35% for the market as a whole. (TR 603) PEF's risk would be lower than this market average. (TR 647) Finally, 10% ROE is higher than the actual returns of most of the 23 electric utilities in Value Line's "Eastern" Group, indicating the "safety net" is adequate. (TR 600-601) Because the cost of capital has *fallen* since 2002, there is no basis on which the Commission can conclude, based on public policy consideration, that it should alter or ignore the terms of the stipulation.

ISSUE 17: What is the appropriate amount of storm-related costs to be recovered from the customers?

OPC: *Taking OPC's adjustments into account, the appropriate surcharge amount is $115 million.*

ISSUE 18: If recovery is allowed, what is the appropriate accounting treatment for the unamortized balance of the storm-related costs subject to future recovery?

OPC: *The unamortized balance approved for recovery from customers should be reported as a regulatory asset and maintained in a separate subaccount.*

ISSUE 19: **What is the appropriate methodology to calculate the interest charged on the amount of storm-related costs permitted to be recovered from customers? (This issue was partially stipulated as a Category 1 Stipulation, Number 3)**

OPC: *OPC adopts FIPUG's position.*

ARGUMENT

Each month, PEF should calculate interest on outstanding net-of-tax balance of the storm damage account, which shall be the outstanding balance of the storm damage account less 38.575% taxes, consistent with the testimony and exhibits of Sheree L. Brown. (H.E. 39, TR 771)

ISSUE 20: **What mechanism should be used to collect the amount of the storm-related costs authorized for recovery?**

OPC: *The mechanism must be a temporary surcharge applied to PEF's individual base rates. PEF's proposed alternative of a "cost recovery clause" is an effort to circumvent its obligation under the 2002 stipulation.*

ARGUMENT

OPC adopts and incorporates by reference the argument provided in response to Issue 15, insofar as it addresses PEF's efforts to create a "storm cost recovery clause" and thereby avoid the 10% ROE threshold applicable to increases in base rates under the 2002 stipulation.

Any amount authorized for recovery should be collected by means of a temporary surcharge to base rates. As indicated in previous issues, storm costs recovery is treated as a component of base rates. The accrual for storm costs recovery is part of the base rate calculation and is collected from base rates. Thus, any amount to be collected from customers to cover the deficit in the amount collected by the accrual should be a temporary surcharge to base rates.

Should the Commission authorizes PEF to collect from customers for storm recovery, within 90 days of the Commission's vote, PEF should submit a final report detailing its actual costs and the amount collect by the application of the surcharge. To the extent charges vary from the estimated costs approved in the Commission's Order, PEF should identify such variances by costs category, provide an explanation for the variance, and provide documentation regarding the variance.

Within 60 days of receipt of said report, the parties should be required to identify any costs they assert to be unreasonable or imprudent. The Commission should conduct appropriate proceedings on any disputes raised by said objections, and thereafter order PEF to "true up" the amounts to be collected to match the amounts finally determined to be recoverable from customers.

ISSUE 21: **STIPULATION – CATEGORY 2 STIPULATION, NUMBER 1**

ISSUE 22: **What is the proper rate design to be used for PEF to recover storm-related costs?**

OPC: *No position.*

ISSUE 26: **What are the effects, if any, of the study that PEF (then Florida Power) submitted to the Commission in Docket No. 930867-EI on February 28, 1994 and Order No. PSC-94-0852-FOF-EI, issued in Docket Nos. 940621-EI and 930867-EI on July 13, 1994 on the manner in which PEF may account for storm-related costs in this proceeding?**

OPC: ***PEF's 1994 study is not legally dispositive of the accounting issues in this docket. In the order that closed PEF's self-insurance docket, the Commission did not address, much less approve, PEF's proposed accounting methodology. Moreover, PEF's sole justification of the study was based on the administrative complication of using separate accounting for insurance and regulatory purposes. PEF has no T&D insurance; because of changed circumstances, PEF's sole justification is no longer operative.***

ARGUMENT

In Docket No. 930867-EI, the Commission directed PEF to submit a study addressing the types of costs that it proposed to charge to the storm damage reserve. After PEF submitted its study, the Commission took no action in the docket in which it required the study. In 1994, PEF proposed to increase its annual accrual. In Order No. PSC-94-0852-FOF-EI, entered in Docket No. 940621-EI, the Commission stated:

> FPC has also offered to permanently increase its annual storm damage accrual from $3,000,000 to $6,000,000, effective January 1, 1994. The appropriate storm damage accrual level is currently under review in Docket No. 930867-EI. A study has been submitted in that docket and our review of that study indicates that an increase above the current $3,000,000 annual accrual is needed. Accordingly, we find that FPC's proposal to permanently increase its storm damage accrual is reasonable and hereby approve the proposal.

It is obvious that in this order the Commission did not address, much less approve, the kinds of costs to be charged to the storm damage reserve.

A separate basis exists for concluding the 1994 study is not dispositive of the choice of accounting methodology. In this study, PEF justified the choice of the "replacement cost" methodology with this statement:

> However, the Company believes its insurance program will continue to be a combination of traditional insurance coverage along with some level of self insurance. Any requirement to use an approach other than replacement cost would place undue administrative burden on the Company which would presumably occur at a time when Company efforts would need to be dedicated to restoration of service and related activities. (H.E. 42 at p. 9)

The <u>only</u> support provided by PEF lies in the claim that maintaining two sets of books – one for insurance claims and another for regulatory purposes – would amount to administrative burdens. During the hearing, Mr. Portuondo agreed with this assessment of the study. (TR 336-338). He also confirmed that PEF currently has no commercial insurance on transmission and distribution assets. (TR 338) With respect to those categories of plant, the premise of the study is wholly invalid.

During the hearing, PEF also imported into the record the 1993 study performed by Florida Power & Light Company in support of its separate application for a self-insurance program. It is readily apparent that PEF's purpose was to attempt to bolster its own half-hearted study. However, like the PEF study, the principal justification offered by FPL also was to avoid the burdens associated with employing two separate accounting methodologies. (H.E. 43, at p. 8) Elsewhere in its study FPL purported to claim its "total restoration cost" was less expensive than the "incremental" methodology. However, this assertion was entirely dependent on treating "lost revenues" as a "cost." Once "lost revenues" are removed from the equation, the same exercise shows FPL's method to be more expensive than the incremental approach. (H.E. 43, at attachment 1, p. 1 of 6)

ISSUE 27: **Should the docket be closed?**

OPC: *No. The docket should remain open to enable parties and the Commission to ensure that PEF collects the appropriate amount.*

ARGUMENT

If the Commission permits PEF to collect any amount from the customers via any mechanism this docket should remain open to ensure that the correct amount is collected. Specifically, this docket should remain open until any final true-up is completed. As noted in Issue 20, it is OPC's position that there needs to be a final true-up to determine the final amount to be charged to customers.

Given the unique and complex nature of this proceeding, even if recovery mechanism were deemed to be a "clause" as opposed to a "surcharge" (as OPC believes is appropriate), it would be in the interest of administrative economy to keep this docket open and address any true-up in the context of this docket. The complex issues raised in this proceeding do not need to be combined with the annual fuel clause proceeding with its myriad of complex issues.

There is no question that some true-up procedure will be necessary, so this docket should remain open to address that process. In addition, the docket should remain open to ensure that the appropriate amount is collected from customers.

CONCLUSION

For the reasons stated in this brief, the Commission should reduce PEF's claimed surcharge amount from $252 million to $115 million.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Post Hearing Brief has been furnished to the following individuals by electronic mail and U.S. Mail on this 26th day of April, 2005.

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