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May 10, 2005

BY HAND DELIVERY

Blanca Bayo, Director
Division of the Commission Clerk
and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Petition of Florida Power & Light Company for Approval of Storm Cost Recovery Charges, Docket No. 041291-EI

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of the Florida Retail Federation's Post-Hearing Brief and Statement of Issues and Positions in the above-styled docket. Also enclosed is a 3.5" diskette with the FRF's Petition to Intervene in WORD format. I will appreciate your confirming receipt of this filing by stamping the attached copy thereof and returning same to my attention.

As always, my thanks to you and to your professional Staff for their kind and courteous assistance. If you have any questions, please give me a call at (850)681-0311.

Cordially yours,

Robert Scheffel Wright

Enclosures

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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: MAY 10, 2005

THE FLORIDA RETAIL FEDERATION'S POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS

The Florida Retail Federation ("FRF"), pursuant to Rule 28-106.215, Florida Administrative Code ("F.A.C."), Order No. PSC-04-1150-PHO-EI, and Order No. PSC-05-0420-PHO-EI, hereby files its Post-Hearing Brief and Statement of Issues and Positions.[1]

INTRODUCTION AND SUMMARY

The fundamental issue in this case is whether Florida Power & Light Company ("FPL") needs any rate relief in order (1) to adequately address the costs incurred by FPL to restore electric service following the hurricanes that struck Florida in 2004 while (2) charging its customers rates that are, considered in their

[1] The following abbreviations are used in this brief. The Florida Public Service Commission is referred to as the "Commission" or the "PSC." The Florida Retail Federation is referred to as the "FRF." Florida Power & Light Company is referred to as "FPL." The Office of Public Counsel is referred to as "OPC" or the "Citizens." The Florida Industrial Power Users Group is referred to as "FIPUG." Citations to the hearing transcript are in the format [Witness Name, TR abc], where abc indicates the page number cited to. Citations to hearing exhibits are in the format [EXH jkl, xyz], where jkl indicates the exhibit number and xyz indicates the page number of the exhibit cited to, if applicable.

totality, fair, just, and reasonable, as required by Chapter 366, Florida Statutes.[2] FPL's interests in this proceeding are represented by the company itself. The interests of FPL's captive customers are represented by the Office of Public Counsel, representing the Citizens of the State of Florida; by the FRF, representing a large number of FPL's commercial customers, including several of the largest customers on FPL's system; by FIPUG, representing a number of FPL's industrial customers; and by the AARP, representing the interests of its many members who receive retail service from FPL. Collectively, these representatives of FPL's customers are referred to herein as the "Consumer-Intervenors."

The Consumer-Intervenors believe and agree that FPL is entitled to charge rates that are, considered in their totality, fair, just, and reasonable. The Consumer-Intervenors believe, however, that the Storm Restoration Surcharges ("Storm Surcharges" or "Surcharges") proposed by FPL are, when piled on top of FPL's existing base rates, unfair, unjust, and unreasonable. The combination of FPL's base rates and FPL's proposed Storm Surcharges would require FPL's captive customers to bear <u>all</u> of the costs of storm restoration and <u>still</u> provide FPL with a rate of return on equity of approximately <u>12.7 percent</u> for 2004. The combination of FPL's base rates and FPL's proposed Storm Surcharges would also

[2] All citations to the Florida Statutes in this brief are to the 2004 edition thereof.

impose rates that include charging twice for the exact same labor services and other costs; such rates are not fair, just, and reasonable. These results, and thus FPL's proposed Storm Surcharges, are unfair, unjust, and unreasonable, as well as directly contrary to the principles that the Commission has articulated and consistently followed.

FPL, on the other hand, would violate and ignore the Stipulation and Settlement that FPL entered into in resolving its 2001-2002 general rate proceeding,[3] and would have the Commission abandon the principles that it has articulated with respect to storm damage costs and associated ratemaking.[4] Order 93-0918 makes clear that:

1. It is "inappropriate to transfer all risk of storm loss directly to ratepayers."

2. "The Commission has never required ratepayers to indemnify utilities from storm damage."

3. Ratemaking proposals related to storm damage costs should "take into account the utility's earnings or achieved rate of return. If the company was already earning an adequate return on equity, its storm-related expenses

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[3] In Re: Review of the Retail Rates of Florida Power & Light Company, Docket No. 001148-EI, "Order Approving Stipulation, Authorizing Midcourse Correction, and Requiring Rate Reductions, Order No. PSC-02-0501-AS-EI (Fla. Pub. Serv. Comm'n, April 11, 2002) (hereinafter the "2002 FPL Stipulation," the "2002 Stipulation," or "Stipulation").

[4] In Re: Petition to Implement a Self-Insurance Mechanism for Storm Damage by Florida Power & Light Company, FPSC Docket No. 930405-EI, "Order Authorizing Self-Insurance and Re-Establishing Annual Funding of Storm Damage Reserve," Order No. PSC-93-0918-FOF-EI at 5 (Fla. Pub. Serv. Comm'n, June 17, 1993). This order is herein referred to as "Order 93-0918."

could be amortized in whole or in part over five years."

4. "Storm repair expense is not the type of expenditure that the Commission traditionally earmarked for recovery through an ongoing cost recovery clause."

Contrary to these principles, FPL seeks to charge rates that require its captive customers to bear effectively all of the risks and all of costs incurred due to the 2004 storms while preserving for itself a rate of return on equity ("ROE") of approximately 12.7 percent, approximately 270 basis points above the ROE that FPL agreed to in the Stipulation and similarly far above any reasonable ROE under current market conditions. By any reasonable definition of the word, FPL is thus asking the Commission to force FPL's customers to indemnify it against storm losses. In staking out this position, FPL is further acting directly contrary to the Commission's principles articulated in 1993, because FPL's "proposal does not take into account the utility's earnings or achieved rate of return." Order 93-0918 at 5. Here, FPL is already earning an adequate -- indeed, a generous and more-than-adequate -- return on equity, and would continue to do so if any Storm Surcharges were set, as advocated by the Consumer-Intervenors, such that FPL's return on equity for 2004 (and 2005) were maintained at 10%. In other words, FPL's proposals, and its theory of the case, nominally grounding on purported consistency with earlier-approved accounting methods, are simply and effectively this: The utility gets to keep all the money, and the customers have to bear all the

costs. In contrast, the Consumer-Intervenors' theory of the case is fair and principled and offers to **appropriately share the risks** and the costs of the 2004 storms on a reasonable and principled basis that is, in fact, generous toward FPL's shareholders.

The Commission should, indeed must, reject FPL's unconscionable, overreaching ploy and instead follow its statutory mandate to ensure fair, just, and reasonable rates, and also follow its previously articulated principles, and thereby ensure that the rates charged by FPL are, considered in their totality, fair, just and reasonable.

DISCUSSION AND ARGUMENT

Through its petition, FPL seeks to put the entire burden of storm-related expenses onto its customers, over and above base rates, thereby completely insulating itself - and its earnings - from the risks and impacts associated with the 2004 storms. FPL's proposal seeks to hold FPL harmless from any damages related to the storms, while increasing costs to residents and businesses in FPL's service territory that have already absorbed storm damage costs of their own. FPL's proposal seeks 100% cost recovery from consumers, with no contribution from FPL, while the company maintains and retains extraordinary profits. The FRF agrees that FPL is entitled to charge rates that recover the reasonably and prudently incurred costs of restoring service following storms, so long as those rates are, considered in their totality along with all of FPL's other rates, fair, just, and reasonable. FPL's proposals here, however, would result in the totality **of FPL's rates being unfairly,** unjustly, and unreasonably high, **with the result that FPL's** customers would bear 100% of the cost impact and 100% of the risk of the storms while FPL's shareholders would bear none.

The Commission must ensure that FPL's rates, considered in their totality, are fair, just, and reasonable. In this instance, this requires that the Commission take FPL's earnings and achieved rate of return on equity into account and, accordingly, that the Commission set any Storm Surcharges that it approves so as to allow

FPL to earn a 10% after-tax ROE for 2004 and 2005, either (a) as required by the Stipulation or, (b) alternately, as a generous rate of return under current market conditions. This overarching principle - that the Commission must ensure that FPL's rates are fair, just, and reasonable - further requires that the Commission not allow any "double-dipping," i.e., any double-recovery for the exact same costs. If, taking these principles and considerations into account, the Commission determines that some amount of storm-related costs should be borne by FPL's customers, then a surcharge to base rates, with interest at the commercial paper rate, would be appropriate for such recovery.

I. THE COMMISSION MUST ENSURE THAT FPL'S RATES, CONSIDERED IN THEIR TOTALITY, ARE FAIR, JUST, AND REASONABLE.

A. The Commission Must Ensure That FPL's Rates, Considered In Their Totality, Are Fair, Just, and Reasonable.

The Commission's overarching statutory mandate is to regulate utilities in the public interest and to ensure that utilities' rates are fair, just, and reasonable. Fla. Stat. §§ 366.01, 366.05(1), 366.06(1)&(2), and 366.07. Clearly, the totality of a utility's rates are always at issue. A utility must not be allowed to set up "special" rates, like FPL's proposed Storm Surcharges here, that would insulate it from risk and that would, when piled on top of the utility's other rates, result in rates that are unfair, unjust, and unreasonable, yet that is exactly the ploy attempted here by FPL. By requesting

full recovery through its proposed guaranteed cost recovery clause mechanism, FPL is seeking to evade any responsibility for costs that it otherwise would have to bear under the Stipulation and Settlement, and that it would otherwise have to bear by application of principles articulated by the Commission more than 10 years ago, by attempting to place those expenses outside of base rates.

In the 1993 FPL storm cost proceedings, the Commission specifically recognized the appropriateness of considering FPL's base rates in deciding whether to approve a storm cost recovery surcharge proposed by FPL. The Commission first observed that "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." Order 93-0918 at 4. The Commission then declined "to authorize the implementation of [FPL's proposed] Storm Loss Recovery Mechanism, in addition to the base rates in effect at the time, for the recovery" of storm-related costs. Order 93-0918 at 5 (emphasis supplied). Thus, it is clear that the Commission recognizes the correctness of taking the utility's existing base rates into account in determining whether to approve any storm surcharge. FPL is asking the Commission to ignore its base rates and to depart from the Commission's previously articulated principles, and the Commission must reject these overreaching efforts by FPL.

B. FPL's Customers Have Compensated FPL's Shareholders Generously For Taking Risks And Would Continue To Compensate Them Generously If, As Advocated By The FRF And Other Consumer-Intervenors, FPL's Surcharges Were Set So As To Provide A 10% After-Tax Rate Of Return On Equity.

FPL's customers have compensated, and, under any scenario advocated by the FRF and the other Consumer-Intervenors in this case, would continue to compensate FPL's shareholders generously for assuming risks attendant to the ownership and operation of the utility. Rothschild, TR 263-65. Mr. Rothschild demonstrated that compensation for risk can be measured by the difference between allowed or achieved rate of return on equity ("ROE") as compared to a fully guaranteed, risk-free return. TR 264-65. For the risk-free return, Mr. Rothschild uses the fully guaranteed return on long-term U.S. Treasury bonds, which for the time periods relevant here is approximately 4.58% to 4.85%.[5] TR 264. The FRF advocates that the Commission set FPL's Storm Surcharges (if any) such that, when FPL's earnings from its base rates are appropriately taken into account, FPL will still earn a 10.0% after-tax ROE for 2004 and 2005.[6]

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[5] The 4.85% value may have been a typographical error in Mr. Rothschild's testimony. TR 280-81. The only impact of this is that, if the correct value for the risk-free rate of return is 4.58%, FPL's customers are paying even more to FPL as a risk premium than indicated by the above discussion. This has no impact on the recommendation that any surcharges approved by the Commission be set so as to provide FPL with an after-tax ROE of 10.0%.

[6] Other Consumer-Intervenors advocate different treatments for 2005. However, all of the Consumer-Intervenors advocate this treatment for 2004.

In 2003, FPL earned an achieved FPSC-adjusted ROE of 13.58%. EXH 43, 27 of 73. In 2004, FPL earned an achieved FPSC-adjusted ROE of 12.68%. EXH 43, 51 of 73. In dollars, this means that FPL's customers paid FPL's shareholders about $462 million, after-tax, as a "risk premium," i.e., compensation above a risk-free return, in 2003. ((1358 - 485 basis points) @ $53.1 million per 100 basis points (1% of FPL's adjusted retail equity of $5.3 Billion, EXH 43, 41 of 73, is $53.1 million) equals $462.7 million.) Appropriately grossing this amount up for income taxes, see Rothschild at TR 279, means that FPL's customers paid in approximately $740 million (using a typical revenue expansion factor of 1.6) in "risk premium" compensation to FPL's shareholders above a risk-free return in 2003. And, it is important to note, the Consumer-Intervenors have no quarrel with that result for 2003. FPL's ability to earn above-normal returns was part of the deal embodied in the Stipulation; however, now that a downside risk has materialized, where FPL's customers have compensated and continue to compensate FPL handsomely and generously for taking such risks, FPL wants to evade the deal and force its captive customers, with the Commission's blessing, to bear all such risk. The Commission must not allow this.

Further, if FPL has its way with its customers in this proceeding, FPL's customers will pay FPL's shareholders nearly the same amount, approximately $436 million, after-tax, as risk compensation for 2004. ((1268 - 485 basis points) x $55.7 million

per 100 basis points (based on FPL's adjusted retail equity of $5.57 Billion for 2004, EXH 43, 65 of 73) equals $436.1 million.) Grossed up for income taxes, and absent Commission action to remedy this excessive earnings injustice, this means that FPL's customers will have paid in about $698 million above a risk-free return to FPL's shareholders for 2004. The FRF believes that it is reasonable to expect at least a similar result for 2005, unless the Commission adjusts FPL's Storm Surcharges appropriately. Such returns are excessive, unfair, and unreasonable because they would unfairly and inequitably insulate FPL from cost risks associated with the 2004 storms, and would unfairly and inappropriately transfer such risks to FPL's customers.

Even at a 10% ROE, as required by the 2002 FPL Stipulation and as advocated here by the FRF and by the other Consumer-Intervenors, **FPL's customers will still pay** FPL's shareholders for 2004 **more than $280 million in after-tax compensation above the risk-free rate of return**.[7] **On a pre-tax basis, this would** correspond to about $459 million in risk compensation paid in by FPL's customers. While it is presently impossible to know what

[7] (1268 - 485 basis points) x $55.7 million per 100 basis points (based on FPL's adjusted retail equity of $5.57 Billion for 2004, EXH 43, 65 of 73) equals $286.9 million.

FPL's actual earnings will be for 2005, the FRF[8] submits that this same principled approach should be applied to 2005 earnings as well: the Stipulation still applies, and 10% is a "comfortably high" after-tax ROE for 2005 as well. Rothschild, TR 281. Placing on FPL's shareholders that portion of the storm costs that reduces FPL's "return on equity down to 10.0% to reduce the negative storm reserve balance is fully consistent with the nature of risk and investment, as well as applicable principles of regulation." Rothschild, TR 262. Indeed, a 10% after-tax ROE is more than double the risk-free rate of return in today's financial market climate. Rothschild, TR 264.

This is generous compensation for taking risks. It still provides FPL with the ROE that it agreed to as a "floor" in the 2002 Stipulation. If the Stipulation is deemed not to apply in this way (which would be incorrect in the view of the FRF and the other Consumer-Intervenors[9]), it still provides FPL with a generous after-tax rate of return relative to current market conditions, in which after-tax returns for utilities and general stocks are generally in the range of 9.3% to a bit more than 10%.

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[8] As noted above, all Consumer-Intervenors advocate this treatment for 2004, but other Consumer-Intervenors advocate different treatments for 2005.

[9] The issue of the application of the Stipulation and Settlement to this proceeding has been ably and thoroughly briefed by the Office of Public Counsel and the Florida Industrial Power Users Group, and the FRF adopts their arguments on this issue.

Rothschild, TR 263, 266-69. As Mr. Rothschild pointed out, "Even if there were no stipulation, or even if the Commission were to decide that the stipulation does not dictate the amount of storm losses that FPL must absorb, there would be a need to apportion the responsibility for the storm casualty losses between the company and ratepayers in a way that recognizes the risk that the company bears." TR 266. Note, too, that FPL, depending on the amortization schedule that it chose to adopt, could potentially have filed for a base rate increase before the expiration of the Stipulation if its ROE would have fallen below 10%. However, if it had done so, its ROE would have been subject to being reset, either to 10% per the Stipulation or based on current market conditions, and as demonstrated above, a 10% ROE "is more than reasonable in today's financial climate." Rothschild, TR 270.

FPL's position is simply, like the old college football cheer, even when the score is 70 to 3, "We want more!" In this instance, the FRF and other Consumer-Intervenors are proposing risk compensation or a "risk premium" - a return on equity above a risk-free return - to FPL's shareholders for 2004 of more than $280 million, after-tax, **over and above** a risk-free return on equity investment. The FRF believes that similar results will obtain for 2005, if the Commission follows the FRF's recommendation. In contrast, **FPL wants an additional $147 million per year** (approximate) after-tax, corresponding to an

additional $235 million pre-tax for 2004, and probably a similar amount for 2005. The Commission cannot countenance such blatant overreaching. The Commission must act to ensure that the totality of FPL's rates are fair, just, and reasonable. Allowing a 10% return on equity for 2004 and 2005 would accomplish that result, it would be fair to FPL within the terms of the 2002 Stipulation, it would be fair to FPL relative to current market conditions, it would provide for a principled sharing of the risks and costs associated with the 2004 hurricanes, and it would be fair to FPL's customers who are footing the bill. **Allowing** FPL to charge rates that provide FPL's shareholders with ROEs approaching 13 percent for 2004 (or even exceeding 13 percent, as in 2003), while "simultaneously requir[ing] FPL's ratepayers to bear all of the risk that they are paying [FPL's] investors to accept," Rothschild, TR 597, 615-16, would be unfair to the company's customers." Rothschild, TR 264.

C. The Commission Has Recognized And Approved Using Excess Earnings To Increase Storm Damage Accruals And To Reduce Negative Storm Damage Deficits.

In 1994 proceedings, Florida Power Corporation ("FPC") proposed to use excess earnings to, among other things, increase its storm reserve accrual; the Commission approved this proposal. In Re: Investigation Into Currently Authorized return on Equity and Earnings of Florida Power Corporation, PSC Docket No. 940621-EI, and In Re: Petition for Authorization to Implement a Self-Insurance Program for Storm Damage by Florida Power Corporation,

PSC Docket No. 930867-EI, "Notice of Proposed Agency Action Order Establishing Earnings Cap for 1994, Accelerating Amortization and Increasing Storm Damage Reserve," Order No. 94-0852 at 1-2 (Fla. Pub. Serv. Comm'n, July 13, 1994) ("Order 94-0852"). In the proceedings that led to the issuance of Order 94-0852, FPC proposed to use, and the Commission approved the use of, overearnings, determined relative to an earnings cap based on a 12.5% ROE, first to accelerate the "Sebring going concern value," and then to increase FPC's storm damage accrual. As Order 94-0852 stated, "[i]f the acceleration of the Sebring amortization is insufficient to reduce the 1994 achieved ROE to 12.5%, **additional storm damage expense will be recognized in order to achieve the 12.5% ROE**." Order 94-0852 at 2 (emphasis supplied).

Using excess earnings is the flip side of the same coin. If a utility - here, FPL - can use excess earnings to build the reserve by recognizing additional storm damage expense, it can use excess earnings to reduce a reserve deficit by recognizing additional storm damage expense. The Commission has recognized and approved exactly this treatment. In a similar situation, Gulf Power Company, due to two hurricanes (Erin and Opal) striking its service area in one season, experienced a negative storm reserve balance. In Re: Petition for Approval of Special Accounting Treatment of Expenditures Related to Hurricane Erin and Hurricane Opal by Gulf Power Company, "Notice of Proposed

Agency Action Order Granting Approval of Special Accounting Treatment of Expenditures Related to Hurricane Erin and Hurricane Opal," PSC Docket No. 951433-EI, Order NO. PSC-96-0023-FOF-EI at 5 (Fla. Pub. Serv. Comm'n, January 8, 1996). Although the amounts involved were significantly less for Gulf than for FPL here, the principle of using excess earnings (above a defined ROE threshold) is the same, and in the Gulf case, the Commission "ORDERED that Gulf shall be required to expense the approximately $9 million in damages attributable to Hurricane Opal against the accumulated provision account," i.e., the storm reserve, and further "ORDERED that Gulf apply any earnings for calendar year 1995 in excess of 12.75% return on equity to the accumulated depreciation account."

Thus, using excess earnings, above a defined ROE threshold, to reduce a storm reserve deficit, is a Commission-recognized practice. The key issue in this case, then, is the reference point against which excess earnings are to be measured. As demonstrated above, a 10% after-tax ROE is fair to FPL within the terms of the 2002 Stipulation, and it is generous relative to current market conditions. Accordingly, sound and fair ratemaking allows for such use here, and a 10% after-tax ROE as the basis for determining excess earnings is demonstrably fair.

D. Rates That Include "Double-Dipping," i.e., Double Recovery For The Exact Same Costs, Are Not Fair, Just, And Reasonable, And Accordingly, Such Double-Dipping Should Be Disallowed.

As stated clearly above and in Chapter 366, Florida Statutes, the Commission must ensure that FPL's rates, considered in their totality, are fair, just, and reasonable. This overarching regulatory mandate requires not only that FPL's earnings and its achieved ROE be taken into account in determining any Storm Surcharges approved by the Commission, it further requires that the Commission not allow any "double-dipping," i.e., any double-recovery for the exact same costs. See Majoros, TR 390-91, 398-99, 422-23.

Moreover, consistent with this obviously sound policy, the Commission has clearly articulated its policy against such **double-recovery.** In a 2004 telecommunications case, the Commission disallowed BellSouth's proposed recovery of a substantial amount of claimed labor expenses because, at least in part, they represented "double cost recovery." In Re: Cost Recovery and Allocation Issues for Number Pooling Trials in Florida, "Final Order Approving Cost Recovery," PSC Docket No. 001503-TP, Order No. PSC-04-0882-FOF-TP at 42-43 (Fla. Pub. Serv. Comm'n, September 9, 2004). In that order, the Commission also explained that it had previously articulated its policy against double recovery in electric and water and wastewater cases. Id. For example, in a 1997 proceeding involving FPL's Environmental

Cost Recovery Surcharge, the Commission disallowed cost recovery of amounts that were already in base rates, as explained in the following passage:

> The amounts projected for this project should be adjusted downward by the level of ongoing O&M expense which FPL has historically experienced for substation transformer gasket replacement, substation soil contamination remediation, and the painting of substation transformers. The level of historical expenses for these ongoing O&M activities is assumed to be in base rates. Therefore, an adjustment of $700,295, for the 15-month period from July, 1997, to September 1998, is required to avoid double recovery.

In Re: Environmental Cost Recovery Clause, "Order Approving Projected Expenditures and True-Up Amounts for Environmental Cost Recovery Factors," PSC Docket No. 970007-EI, Order No. PSC-97-1047-FOF-EI at 5 (Fla. Pub. Serv. Comm'n, September 5, 1997) (emphasis supplied).

FPL's proposals here, however, would result in several such "double-dips" that the Commission should disallow, including approximately: $32 million in combined management and non-management employee labor payroll expense, Majoros, TR 403, EXH 34, Doc. 24; $4.2 million of claimed storm-related costs related to tree-trimming, TR 150, EXH 36; $28 million to $36 million in costs for facilities removal that have already been paid by FPL's customers, Majoros, TR 435; $1.5 million in claimed materials and supplies costs, TR 101; and $5.26 million of claimed vehicle fleet expenses (Majoros, TR 403). These "double-dips" total

approximately $70.96 million to $78.96 million.

II. FPL'S PROPOSALS ARE DIRECTLY CONTRARY TO THE REGULATORY AND RATEMAKING PRINCIPLES PREVIOUSLY ARTICULATED BY THE COMMISSION WITH REGARD TO STORM COSTS.

The Commission has previously articulated several principles with regard to risk allocation and ratemaking relative to storm costs. FPL's positions here are directly contrary to those principles, and FPL's positions should accordingly be rejected.

In the above-cited Order 93-0918, the Commission articulated several principles applicable here, including:

1. It is "inappropriate to transfer all risk of storm loss directly to ratepayers."

2. "The Commission has never required ratepayers to indemnify utilities from storm damage."

3. Ratemaking proposals related to storm damage costs should "take into account the utility's earnings or achieved rate of return. If the company was already earning an adequate return on equity, its storm-related expenses could be amortized in whole or in part over five years."

4. "Storm repair expense is not the type of expenditure that the Commission traditionally earmarked for recovery through an ongoing cost recovery clause."[10]

In stark contrast to these principles, FPL's proposed surcharges would transfer effectively all risks and all costs associated with the 2004 storms to FPL's captive customers, thereby preserving for FPL excessive rates of return on equity, approximately 12.7% (FPSC-adjusted, EXH 43, 51 of 73) for 2004.

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[10] Order No. PSC-93-0918-FOF-EI at 5.

This is directly contrary to the principles articulated by the Commission in Order 93-0918. Moreover, there is no basis for the PSC to be concerned that reducing FPL's ROE to 10% would adversely impact FPL's credit. Rothschild, TR 270.

FPL's proposals would, if approved, require FPL's customers to indemnify FPL's shareholders from storm damage costs. Such indemnification of FPL's shareholders by FPL's captive customers is also directly contrary to the principles articulated by the Commission in Order 93-0918. Consistent with and bolstering this principle, Mr. Rothschild explained and demonstrated that "[b]ecause ratepayers pay rates that compensate investors for all risks, including storm damage, it would be entirely inappropriate to shift the full risk of such costs to ratepayers," Rothschild, TR 263, and that "[b]ecause ratepayers are making such payments, it is they, and not the company, who should be protected from having to bear the entire risk of storm damage losses." TR 265. Moreover, requiring FPL's shareholders to share in the risk burden of storm costs by using earnings above a 10.0% ROE to replenish the storm reserve is fair, just, and reasonable because ratepayers are entitled to be shielded from risks by virtue of paying significant risk premiums to utility shareholders, and because investors understand that they are paid to take risks. Rothschild, TR 265.

It follows directly that FPL's shareholders should bear some risk of storm costs, and the issue before the Commission is thus,

"How much?" As answered by the FRF above, FPL should share down to the point at which its achieved ROEs for 2004 and 2005 are 10% after-tax.

In further stark contrast to these principles, FPL's proposals do not "take into account the utility's earnings or achieved rate of return," Order 93-0918 at 5, and similarly disregard the fact that FPL is here requesting a surcharge "that would guarantee 100% recovery of expense from ratepayers, over and above the base rates in effect at the time of implementation." Order 93-0918 at 4. In fact, FPL's strategy is to ignore those earnings, as excessive as they are relative to both the Stipulation and relative to today's financial climate, directly contrary to the PSC's principles. FPL further attempts to ignore that it is "already earning an adequate return on equity," such that at least a significant part of "its storm-related expenses could be amortized in whole or in part over five years." Even amortizing a substantial amount of FPL's storm costs over two years would preserve for FPL an after-tax ROE of 10% for both 2004 and 2005. Taking FPL's earnings into account is consistent with the PSC's principles, Order No. 93-0918 at 5, and FPL's proposals are thus inconsistent with the PSC's principles and should be rejected, or at least significantly modified as described above.

Finally, and obviously, FPL's proposal attempts to implement a surcharge for storm costs. While storm-related expenses would

typically be, and have historically been, recovered through changes in base rates, such base rate changes are limited due to the Stipulation and Settlement. In substance, the FRF would agree that FPL has the right to seek base rate relief to get its base rates to a level that would provide FPL with the opportunity to earn a rate of return on equity of 10.0%. Although FPL has not asked for this relief, as it should have, the FRF is agreeable to treating FPL's petition for its proposed Storm Surcharges as requesting such relief, and to the Commission addressing the issues in this docket. **Any approved Storm** Surcharges should cease to exist as soon as the allowed storm damage balance, adjusted so that the totality of FPL's rates provide for a 10% after-tax ROE for 2004 and 2005 and also adjusted to correct for inappropriate double-dipping, is recovered.

CONCLUSION

Ultimately, this is simply a case about FPL's rates. The Commission's statutory mandate is to ensure that FPL's rates, considered in their totality, are fair, just, and reasonable. In this situation, this requires that FPL's earnings and its achieved rate of return on equity be taken into account and, accordingly, that any Storm Surcharge approved by the Commission allow FPL to earn a 10% after-tax ROE for 2004 and 2005, whether as required by the Stipulation or, alternately, as a generous

rate of return under current market conditions. This overarching principle - i.e., that a utility's total rates must be fair, just, and reasonable - further requires that the Commission not allow any "double-dipping," i.e., any double-recovery for the exact same costs.

STATEMENT OF ISSUES AND POSITIONS:

The following are the FRF's positions on the issues set forth in the Prehearing Order, Order No. PSC-05-0420-PHO-EI.

ISSUE 1: What is the legal effect, if any, of FPL's 1993 storm cost study and Order No. PSC-95-0264-FOF-EI entered in Docket No. 930405-EI on the decisions to be made in this docket?

FRF: *The 1993 study and Order No. PSC-95-0264-FOF-EI are not dispositive of the issues regarding the manner in which FPL should account for the storm-related costs in this proceeding. In addition, the Order did not prejudge cost recovery from FPL's ratepayers under the storm damage reserve.*

ISSUE 2: Is the methodology in Order No. PSC-95-0264-FOF-EI, issued in Docket No. 930405-EI, for booking costs to the Storm Damage Reserve the appropriate methodology to be used in this docket? If not, what is the appropriate methodology?

FRF: *No. FPL's storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.*

ISSUE 3: Were the costs that FPL has booked to the Storm Damage Reserve consistent with the methodology in the study filed on October 1, 1993, by the Company in Docket No. 930405-EI?

FRF: *Yes, but the costs thus booked are not appropriate for determining the level or amount of costs to be charged to the storm reserve in these proceedings.*

ISSUE 4: Has FPL 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?

FRF: *No; FPL has not appropriately quantified such costs. FPL's claimed storm-related costs, including non-management

employee labor payroll expense, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. To correct FPL's inappropriate claims for employee expense, a total of $32 million (for both managerial and non-managerial payroll expense) of the amount FPL charged to the storm reserve should be disallowed.*

ISSUE 5: Has FPL 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?

FRF: *No; FPL has not appropriately quantified such costs. FPL's claimed storm-related costs, including managerial employee payroll expense, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. To correct FPL's inappropriate claims for employee expense, a total of $32 million (for both managerial and non-managerial payroll expense) of the amount FPL charged to the storm reserve should be disallowed.*

ISSUE 6: At what point in time should FPL stop charging costs related to the 2004 storm season to the storm damage reserve?

FRF: *FPL should stop charging such costs to the storm damage reserve effective January 1, 2005, or at the conclusion of storm restoration activities, whichever occurred first.*

ISSUE 7: Has FPL charged to the storm reserve appropriate amounts relating to employee training for storm restoration work? If not, what adjustments should be made?

FRF: *No; FPL has not appropriately quantified such costs. Employee training is a basic function, and accordingly, the costs for such training are not appropriately charged to the storm damage reserve and not appropriately recovered through any storm surcharge.*

ISSUE 8: Has FPL properly quantified the costs of tree trimming that should be charged to the storm reserve? If not,

what adjustments should be made?

FRF: *No; FPL has not appropriately quantified such costs. The Commission should disallow $4.2 million of FPL's claimed storm-related costs related to tree-trimming.*

ISSUE 9: Has FPL properly quantified the costs of company-owned fleet vehicles that should be charged to the storm reserve? If not, what adjustments should be made?

FRF: *No. Through its claimed storm-related costs, FPL is attempting to require its customers to pay twice for basic levels of vehicle fleet expenses. The Commission should disallow $5.26 million of the amount that FPL seeks to recover through its proposed surcharges.*

ISSUE 10: Has FPL properly determined the costs of call center activities that should be charged to the storm damage reserve? If not, what adjustments should be made?

FRF: *No; FPL has not appropriately determined and quantified such costs. FPL's claimed storm-related costs should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred.*

ISSUE 11: Has FPL 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?

FRF: *No. FPL has a basic obligation to keep its customers informed, particularly during emergencies. The Commission should disallow $1.7 million of advertising and public relations expense that FPL charged to the storm reserve. (EXH 34, Int. No. 33)*

ISSUE 12: Has uncollectible expense been appropriately charged to the storm damage reserve? If not, what adjustments should be made?

FRF: *No. Uncollectible expense is not properly charged to the storm damage reserve because it is foreign to the restoration effort. No uncollectible expense should be

allowed for recovery through this proceeding.*

ISSUE 13: Of the costs that FPL has charged or proposes to charge to the storm reserve, should any portion(s) instead be booked as capital costs associated with its retirement (including cost of removal) and replacement of plant items affected by the 2004 storms? If so, what adjustments should be made?

FRF: *Yes. FPL should book to Plant In Service the amounts that it would normally spend on plant and charge the excess to the storm reserve. FPL's proposal to charge $27 million to the storm reserve as CIAC should be disallowed. Additionally, FPL's allowed storm costs should be offset by approximately $28 million to $36 million of removal costs for which FPL's customers have already paid through the depreciation charges embedded in base rates.*

ISSUE 14: Has FPL appropriately quantified the costs of materials and supplies used during storm restoration that should be charged to the storm reserve? If not, what adjustments should be made?

FRF: *No; FPL has not appropriately quantified such costs. FPL's claimed storm-related costs, including materials and supplies costs, should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. The Commission should disallow $1.5 million of claimed materials and supplies costs.*

ISSUE 15: Taking into account any adjustments identified in the preceding issues, what is the appropriate amount of storm-related costs to be charged against the storm damage reserve?

FRF: *Based on the foregoing issues, FPL's claimed storm-related costs to be charged against the storm damage reserve should be reduced by $99.66 million to $107.66 million.*

ISSUE 16: If the Commission does not apply the methodology applied by FPL for charging expenses to the storm reserve pursuant to the study filed on October 1, 1993 by the Company and addressed by the Commission in Order

No. PSC-95-0264-FOF-EI in Docket No. 930405-EI, in this docket, should the Commission take into account:

a. Lost revenues due to the impact of the 2004 storm season; or

b. Overtime incurred by Company personnel in work areas not directly affected by the storm due to loss of some personnel to storm assignments (backfill work);

c. Costs associated with work which must be postponed due to the urgency of the storm restoration and accomplished after the restoration was completed (catch-up work);

d. Uncollectible accounts receivable write-offs directly related to the storms; and

e. Incremental contractor, outside professional services and temporary labor costs due to work postponed due to the urgency of the storm restoration and accomplished after the restoration was completed.

FRF: *Agree with the Office of Public Counsel.*

ISSUE 17: Were the costs FPL has booked to the storm reserve reasonable and prudently incurred?

FRF: *Agree with the Office of Public Counsel.*

ISSUE 18: Is FPL's objective of safe and rapid restoration of electric service following tropical storms and hurricanes appropriate?

FRF: *The FRF objects to this issue because the FRF believes that nothing less than "safe and rapid restoration of electric service" following storms is required by Chapter 366, and accordingly, this issue appears to be framed to give FPL credit for actions that it is already obliged to take pursuant to its statutory obligation to serve.*

ISSUE 19: Does the stipulation of the parties that the Commission approved in Order No. PSC-02-0501-AS-EI affect the

amount or timing of storm-related costs that FPL can collect from customers through the proposed surcharge? If so, what is the impact?

FRF: *Yes. Consistent with the Commission's mandate to ensure fair, just, and reasonable rates and express recognition that storm surcharge proposals should be considered in relation to existing base rates, the 2002 Stipulation requires that FPL defray storm-related costs from earnings to the point that its ROE has fallen to 10%. Any recovery by FPL via surcharges should be reduced by approximately $147 million after-tax ($235 million pre-tax) for 2004 and a determinable, likely-similar amount for 2005.*

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?

FRF: *Yes. Consistent with the Commission's overriding mandate to ensure that the totality of FPL's rates are fair, just, and reasonable, the Commission should apportion cost responsibility by limiting FPL's storm cost recovery to only the amount of such costs that would remain after disallowing double-counted and overstated costs and after applying excess FPL earnings to reduce the storm reserve to the point that FPL's after-tax return on equity for 2004 and 2005 is 10%.*

ISSUE 21: What is the appropriate amount of storm-related costs to be recovered from the customers?

FRF: *The amount appropriately recoverable from FPL's customers is defined by FPL's claim, $890 million, less $99.66 million to $107.66 million in double-counted or overstated costs, less $235 million pre-tax for 2004, less FPL's earnings constituting an after-tax ROE greater than 10% for 2005. For example, if FPL's 2005 earnings exceeded those necessary to provide an after-tax 10% ROE by $150 million ($240 million pre-tax), the amount recoverable through surcharges would be approximately $310 million to $315 million.*

ISSUE 22: If recovery is allowed, what is the appropriate

accounting treatment for the unamortized balance of the storm-related costs subject to future recovery?

FRF: *The storm damage account should be credited each month with the actual costs recovered from ratepayers.*

ISSUE 23: Should FPL be authorized to accrue and collect interest on the amount of storm-related costs permitted to be recovered from customers? If so, how should it be calculated?

FRF: *Yes, to the extent that any amounts are approved for recovery from FPL's customers. Interest should be calculated as follows: each month, FPL should calculate interest at the commercial paper rate on the 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.*

ISSUE 24: Should FPL be required to normalize the tax impacts associated with 2004 tax losses that will be recovered over time through year end 2007? If so, what adjustment should be made?

FRF: *This issue has been withdrawn.*

ISSUE 25: If the Commission approves recovery of any storm-related costs, how should they be allocated to the rate classes?

FRF: *Agree with the Commission Staff's position as articulated in the Prehearing Order.*

ISSUE 26: If the Commission approves recovery of any storm-related costs, what is the appropriate recovery period?

FRF: *No more than 3 years. If the Commission approves a total amount for cost recovery that can be recovered in 2 years or less at FPL's proposed surcharge rates, then those rates should be adjusted downward to provide for recovery over a 2-year period.*

ISSUE 27: If the Commission approves a storm cost recovery surcharge, should the approved surcharge factors be adjusted annually to reflect actual sales and revenues?

FRF: *Only if necessary to ensure that the totality of FPL's rates are fair, just, and reasonable.*

ISSUE 28: If the Commission approves a mechanism for the recovery of storm-related costs from the ratepayers, on what date should it become effective?

FRF: *Any mechanism that the Commission approves for recovery of storm-related costs through retail rates should become effective 30 days following the date of the Commission's vote in this docket. Recovery should then begin with the first billing cycle of the following month.*

ISSUE 29: What is the appropriate disposition of the revenue collected as an interim storm cost recovery surcharge?

FRF: *Such revenues should be applied as a direct credit, including accrued interest at the commercial paper rate, against the total amount that the Commission determines to allow FPL to recover through Storm Surcharges on a going-forward basis. If the amount of revenues collected via the "interim" surcharge exceeds the total amount authorized for recovery by the Commission, the difference should be refunded to customers as soon as practicable.*

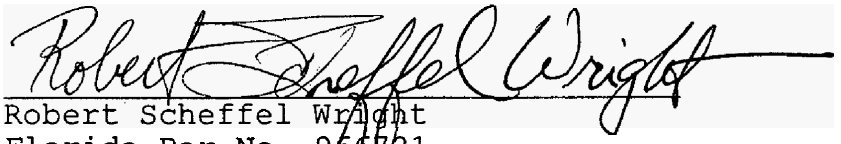
ISSUE 30: Would revenues collected through the proposed surcharge be included for purposes of performing any potential retail base rate revenue refund calculation under the Stipulation and Settlement approved by Commission Order PSC-02-0501-AS-EI in Docket 001148-EI?

FRF: *The FRF does not agree that this is properly an issue to be decided in the Storm Surcharge case; there is no limitation in the Stipulation and Settlement on revenues to be included in determining any refund. If this issue is included in this case, the FRF takes the position that there would be no effect in 2004, but for 2005, the total of base rates plus any Storm Surcharge revenues should be included in determining any base rate refund.*

ISSUE 31: Should the docket be closed?

FRF: *No. The docket should remain open to ensure that FPL collects the appropriate amount of costs, as determined by the Commission, including an appropriate credit against claimed 2004 storm costs for 2005 earnings above a 10% ROE (as well as an appropriate credit against 2004 storm costs for 2004 earnings above a 10% ROE).*

Respectfully submitted this 10th day of May, 2005.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by U.S. Mail, hand delivery (*) or facsimile and U.S. Mail (**) on this ___ day of May, 2005,on the following:

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