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May 10, 2005

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

RE: Petition for Authority to recovery prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company; Docket No. 041291-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 McGlothlin

Joseph A. McGlothlin
Associate Public Counsel

JAM/dsb
Enclosures

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

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OFFICE OF PUBLIC COUNSEL'S POST HEARING STATEMENT

INTRODUCTION

This case presents two sharply contrasting views of the role that regulation should play in addressing the costs of restoring electric service following catastrophic hurricanes.

FPL contends the Commission's job is to place FPL in the position in which it would have been had the storms not occurred. To that end, FPL contends the fact it achieved high earnings in 2004 is irrelevant to the issue of "who should pay." Further, FPL proposes simply to charge all capital costs and all O&M costs of restoration activities to the storm damage reserve without first filtering them to remove normal levels of expense. FPL intimates that, unless the Commission embraces its dollar-for-dollar "indemnification" approach, FPL will place profits before service if and when faced with the need to restore its system in the future.

OPC believes that for regulation to attempt to immunize FPL's earnings completely against the impact of severe storms would be higher inequitable and inappropriate, but that the Commission should ensure the utility has an opportunity to earn a fair and reasonable return despite the extreme circumstances and high costs occasioned by the hurricanes. OPC's view (and that of aligned intervenors) is that the storm damage reserve should be "reserved" for the incremental, extraordinary costs of repair activities. Efforts should be made to maintain a

relationship that aligns rate base with the vintage of plant additions and to avoid duplicating, through a surcharge, cost recovery already accomplished through base rates.

Which view better balances the interests of the utility and those of its customers? In the arguments that follow, OPC will demonstrate that its position reflects the fundamental risk that FPL's investors necessarily accept, principles of accounting, and basic tenets of regulation.

STATEMENT OF BASIC POSITION

In the articulation of its position, OPC cannot improve on the policy that the Commission formulated in 1993. Reject FPL's latest attempt to require customers to indemnify FPL dollar-for-dollar for all storm-related restoration costs. Consider all relevant circumstances, including FPL's earnings. Fashion a case-specific result that takes into account the risks that FPL's investors are paid to accept, but also gives FPL an opportunity to earn a reasonable return despite the impacts of the catastrophic storms.

OVERVIEW AND SUMMARY OF ARGUMENT

FPL has overstated costs to be charged to the storm damage reserve. The storm damage reserve should be limited to those extraordinary costs that are incremental to the expenditures the utility would make if there had been no storms. Instead, FPL has booked to the storm reserve all costs of the restoration efforts, including costs that should be capitalized and other costs that it has already collected through base rates. FPL bases its proposal on its "1993 study." There, FPL justified booking all costs to the reserve on the grounds that the method was consistent with the manner in which "replacement cost insurance" claims are processed. FPL asserted that an accounting methodology based on the insurance practice would obviate the necessity of maintaining separate accounting records for insurance and regulatory purposes. However, FPL currently has no such insurance on either transmission or distribution facilities. When the

"replacement cost" bill is presented to customers instead of an insurance company, the approach results in "double recovery" of O&M costs and costs of removal that have already been collected through base rates, as well as the inappropriate expensing of plant items that should be capitalized and depreciated over their useful lives.

FPL should absorb a portion of the storm related costs through earnings. The central issue in this case is not whether FPL will be permitted to recover the 2004 storm-related costs reflected in the negative balance of the storm reserve. Instead, the issue is whether the Commission will require FPL to recover some of those costs by applying earnings to eliminate a portion of the negative balance in the storm reserve rather than eliminating it exclusively with incremental revenues collected from customers through a new surcharge to base rates. In either event, FPL will have fully "recovered its costs."

By attempting to collect 100% of the costs through a surcharge, thereby insulating its earnings from the effect of the storms, FPL has failed to adhere to the terms of a 2002 stipulation, which requires FPL to absorb expenses associated with storm damages until its return on equity is reduced to 10% before it seeks to increase rates. A reference in the 2002 stipulation to FPL's ability to petition the Commission for recovery of storm costs does not alter this conclusion, because under applicable rules of construction the reference cannot be divorced from the separate, *unqualified* provision that requires FPL to absorb unusual costs until its ROE has fallen to 10%.

However, even if the Commission decides the terms of the stipulation do not require this result, the 10% ROE criterion nonetheless is an appropriate basis on which to measure the amount of 2004 storm related costs for which FPL should be responsible. 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 FPL to absorb storm-related costs to the extent required to reduce its ROE to 10% based on 2004 results. Based on available information for 2004, the Commission should require FPL to absorb approximately $207 million through retail earnings rather than through a surcharge to base rates.

Without conceding such concerns are warranted, to allay any concerns expressed by FPL regarding the impact on financial indicators if it were to expense this amount in one year, OPC does not object to a provision in the final order permitting FPL to defer and amortize the expense over a period of two or three years, provided that FPL does not attempt to incorporate the unamortized costs into a calculation of revenue requirements to be borne by customers during that time frame.

ISSUES AND POSITIONS:

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. 930045-EI on the decisions to be made in this docket?

OPC: *The study and order are not legally dispositive. FPL bases its opposition to many of OPC's adjustments solely on the ground that FPL's treatment is

consistent with this 1993 study and Order No. PSC-95-0264-FOF-EI. Yet, in the order the Commission said only that FPL study was "adequate." Moreover, FPL no longer has transmission and distribution insurance, meaning the circumstances cited by FPL have changed.*

ARGUMENT

In the Prehearing Order, FPL's positions on several adjustments proposed by OPC were stated virtually identically. For example, in response to Issue 5, FPL states:

> FPL has booked payroll costs to the Storm Damage Reserve consistent with the methodology in the study filed on October 1, 1993 in Docket No. 930405-EI and approved by the Commission in Order No. PSC-95-0264-FOF-EI, issued February 27, 1995. No adjustment is necessary.

In other words, FPL relied- not on the merits of the particular situation – but on its position that the item was beyond the reach of parties and the Commission as a matter of law.

FPL is mistaken. In Order No. PSC-95-0264-FOF-EI, the Commission found only that the study was "adequate." In the same breath, the Commission referred to the possibility of convening rulemaking proceedings for the purpose of developing uniform standards for storm accounting to be applicable to all utilities. (Id at pp. 5, 6). FPL observes that the Commission did not initiate rulemaking and infers the Commission saw no need to do so. FPL's conclusion is illogical. The perceived need is apparent in the tepid reception the Commission gave FPL's study and its simultaneous reference to potential rulemaking. That no rulemaking occurred signifies only that the need recognized by the Commission remains unfulfilled.

That FPL followed its 1993 methodology during intervening years without controversy does not alter this conclusion. Simply put, those occasions were not sufficiently material to attract attention. The issue remained latent during that period of time.

Even if the Commission were to regard Order PSC-95-0264-FOF-EI, as a form of approval, changes in circumstances remove this case from the reach of the order. In the 1993 study, FPL justified its so-called "total restoration cost" approach on its expectation that FPL would continue to have in place commercial insurance on its transmission and distribution facilities. In the study, FPL stated:

> Use of the actual restoration cost approach is consistent with replacement cost insurance and avoids the cumbersome (and potentially arbitrary) accounting for storm restoration utilizing two different methodologies.
> (Exhibit 24 at page 9 of 51)

The principal thrust, then, of FPL's vaunted study was the proposition that the adoption of the "total restoration cost" methodology would avoid the necessity of maintaining two sets of "storm accounting books" – one for insurance claims, another for regulatory purposes. During cross-examination, FPL witness Davis acknowledged this was the advantage described in the section quoted above. (TR-158)

Aside from a distorted cost comparison of methodologies, the flaws of which will be discussed in the Argument on Issue 2, this was the *only* "advantage" that FPL cited in the study. However, as the Commission is well aware, FPL today has no insurance on its transmission and distribution facilities, which constitute the bulk of its storm-vulnerable assets.[1] This significant change of circumstances would enable the Commission to consider whether the "total restoration cost" methodology should be used in this case, regardless of the extent of its approval in Order No. PSC-95-0264-FOF-EI.

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?

[1] FPL has insurance on substation facilities. (TR-234)

OPC: *No. FPL's proposed methodology would lead to double recovery of costs covered by base rates and would distort the relationship between installed plant and depreciation accounts.*

ARGUMENT

Based on the record of this case, the Commission should reject FPL's "total restoration cost" method of accounting for the storm-related costs.

FPL says the method is modeled after replacement cost insurance. However, when insurance was in effect, the "replacement cost bill" was presented to an insurance company that (a) had been charging premiums for the "replacement" of risk and liability and (b) had not already prepaid some of the costs for which it was being billed.

The latter consideration demonstrates vividly why the "replacement cost insurance" approach does not translate well to "self-insurance." The term "self-insurance" is itself something of a misnomer; the insurance function is being imposed upon rate-paying customers. Those rates compensate the utility for a base level of costs which the utility would incur in the absence of storms. By failing to take into account this base level, FPL's approach would require customers to pay some costs twice.

The simplest example is an FPL lineman and his truck. OPC's principal argument is that base rates pay the basic salary and vehicle expense for that employee and his vehicle. FPL believes those exact costs should be charged to customers again via a storm surcharge. OPC's principle of charging only the incremental, extraordinary costs of the restoration would avoid this and similar "double recovery" abuses.

Another shortcoming of FPL's approach relates to capital costs. FPL proposes to restore rate base to its pre-storm level by charging all capital costs to the storm damage reserve. This approach would require customers to pay, in two or three years, the costs of assets that will be in

service for 30 years or more. The FPL proposal distorts rate base and depreciation rates in a convoluted methodology that seeks to make brand new investment look like 20 year old plant. (TR-407-408) This FPL approach is detrimental to ratepayers and beneficial to stockholders.

In its 1993 study FPL asserted its "total restoration approach" was less expensive than the incremental approach. **FPL put its thumb on the scale.** When purporting to quantify its proposition FPL treated "lost revenues" as a "cost" of the incremental accounting approach. "Lost revenues," like uncollectible expenses, are not costs incurred during the process of restoring service. Nor were "lost revenues" covered by the commercial insurance that FPL's program is intended to replace. (TR-160) When the bogus "lost revenues" penalty was removed, the incremental methodology was less costly than FPL's accounting method. (TR-160) Further, consistent with its other self-serving methodologies, FPL totally ignored the potential for revenue gains due to increased construction activities relating to storm restoration.

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?

OPC: *They appear to be consistent, although it is worth noting that portions of the 1993 study reflect the expectation that accounting entries would involve payments by insurance companies, not customers.*

ARGUMENT

In its 1993 study FPL advocated the "total restoration cost" approach, which OPC assumes is the subject of this issue. OPC notes that FPL accomplishes its "total restoration cost" accounting, in part, by first identifying the "normal" cost of the replacement plant and the "normal" cost of removal expense and recording those amounts in plant in service and accumulated depreciation, respectively – just as OPC would have it do. FPL then records to

plant in service and accumulated depreciation entries it labels "contribution in aid of construction" that are designed to reduce those accounts to pre-storm levels. FPL "pays" for these adjusting entries by charging the amounts of the "contributions in aid of construction" to the storm damage reserve, thereby increasing the extent to which the balance becomes negative as a result of the 2004 restoration activities. This accounting treatment is inconsistent with portions of the 1993 study in the following significant respect. There, FPL assumed the reduction of accounts to "prestorm levels" would be paid by insurance proceeds, not "CIAC" charged to the storm damage reserve.

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?

OPC: *No. Consistent with the principle that FPL should charge to the storm damage reserve only incremental and extraordinary costs, the Commission should require FPL to remove $10.9 million of non-management employee labor payroll expense from the amount charged to the storm reserve because it is already included in the budgeted amounts supported by base rates.*

ARGUMENT

At the heart of this issue is FPL's demand that customers pay twice for the same work. As witness Majoros testified:

> [b]y moving all O&M 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, effectively requires customers to pay twice for the same costs. I refer to the practice as "double dipping."

(TR 396). Witness Majoros states that moving all costs relating to the storms and charging those costs to the reserve, would fail to recognize that FPL's basic rates include recovery of normal costs -- such as base salaries. (TR 397). In response to Interrogatory No. 27, FPL made clear its disagreement with the proposition that all base salaries should be excluded from the storm costs.

FPL's proposal would collect twice; once through base rates and again through the proposed base rate surcharge. As witness Majoros testified, this practice is not fair to ratepayers. It would unjustly enrich FPL's management and shareholders. (TR 397)

FPL attempts to justify charging its base salaries to the storm account by claiming that it has catch-up and backfill work. Witness Davis stated that if the Company were denied recovery for the regular payroll associated with personnel working on storm restoration, it might make financial sense to utilize contractors to perform the restoration work rather than incurring the additional overtime and other costs for backfill and catch up work. (TR 106) Witness Davis stated that if FPL were not able to collect for these regular salaries, it would have to assess the effect of using those contractors for restoration versus the avoidance of additional cost burden to the Company and its shareholders. In other words, if FPL thought it might have to bear the costs of the regular salaries, it might shift all those costs to outside contractors to avoid the possibility of the Company or its shareholders bearing any those costs.

Witness Davis claims that it is untenable to require the Company to have to think about cost effectiveness and restoration of service at the same time. (TR 105) He claims that FPL had not made a cost assessment analysis because it relied on its 1993 study as the "rule" for accounting for costs in this case. (TR 105-106) In addition, witness Davis claims that if witness Majoros is correct that charging base salaries to the storm accounts is "paying twice" the effect of any change should be prospective because FPL relied on its 1993 study for the appropriate accounting methodology. (TR 106-107)

Mr. Davis' arguments hold no merit. The fact that there may be catch-up and backfill work to be done by employees once they conclude working on the storms does not justify making customers pay twice for those employees' regular salaries for their normal eight hour

work day. Nor does the fact FPL would have allocated some of its work force differently justify allowing FPL to "double dip" now. Further, the burden would be on FPL to prove any catch-up work and backfill costs are properly chargeable to the storm account. As acknowledged by witness Davis, FPL's base rates are designed based on normal costs and included in those normal costs are regular salaries. (TR 107)

Witness Davis claimed that if one is to determine whether there was any "double dipping" one would have to ask whether total avoided base rate costs are greater base rate revenue losses. (TR 107) But this argument again misses the basic point of "double dipping" that customers are paying twice for the same regular salary, once through base rates and again in a storm surcharge. Since the storm account was designed to compensate the Company for costs to restore service to the customers, and lost revenue is not a cost of restoring service, this could not legitimately be charged to the storm account.

While FPL should be focusing on restoring power in the safest and most efficient manner, it also has a duty to ensure that the costs it incurs are prudent and cost effective to the customers under the given circumstances. Cost shifting to essentially collect twice for the same eight hours worth of work is neither cost effective for the customer nor prudent. While FPL's "double dipping" approach based on its 1993 study may be appropriate for tax or insurance purposes, it is absolutely wrong when seeking a rate increase from customers as testified to by witness Majoros. (TR 398) In fact, the Commission Staff Auditor agreed that it is Commission policy not to allow "double dipping" and that the "double dipping" cost should be disallowed. (TR 494) As part of Audit Disclosure No. 6, the Auditor noted several items included in base rates for which FPL was seeking recovery in its storm request. She identified $27 million in

regular salaries as of December 31, 2004 which were part of base rates which FPL sought to charge to the storm account. (TR 492)

The Commission should remove the cost of non-management employee labor payroll expense from the amount charged to the storm reserve because it is already included in the budgeted amounts supported by base rates. To do otherwise would have customers paying twice for the same costs for non-management employee labor regular salaries. The total amount charged by FPL to the storm account for regular salaries is $32 million, a portion of which is non-management employee regular salaries. (TR 403) Witness Davis' argument that a portion of normal salaries is charged through the clauses and capital is irrelevant to this argument. (TR 107) First, the amount of regular salaries charged to the clauses is unaffected by the storm proceeding; FPL can still seek recovery of those salaries through the clauses if appropriate. Second, FPL is seeking recovery of all of its capital cost through the storm account, so again the amount of labor costs which would be charged to capital is being charged to the storm accounts under FPL's proposal. (TR 399) The $32 million related to regular salaries, including $10.9 attributable to non-management employee labor cost should be excluded from amounts charged to the storm damage reserve.

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?

OPC: *No. **The Commission should disallow $21.1 million of** managerial payroll expense from the amount that FPL charged to the storm reserve.*

ARGUMENT

As noted in the previous issue, payroll expenses associated with the managerial employee's regular salaries should be disallowed. As witness Majoros testified:

> FPL proposes to charge the full labor costs associated with storm recovery efforts to the Storm Damage Reserve. This includes normal salaries, which are included in the Company's annual budget. The ratepayers are paying for these salaries through base rate.

(TR 403) Mr. Majoros further stated that customers should not be required to pay for these regular salaries twice. (TR 403). Requiring customers to pay twice for the same costs by moving all O&M expenses associated with the storm repair effort to the storm reserve without taking into account the normal level of expenditures funded by base rates paid by customers is "double dipping." (TR 396) As acknowledged by witness Majoros, it may be appropriate to use a "replacement cost" approach for calculating tax losses and insurance claims, but it is absolutely wrong when seeking a rate increase for customers. Again, the Commission should implement strict accounting procedures for FPL to follow to eliminate the increased rates that result when customer are required to pay twice for the same expense. (TR 398)

FPL readily admits that it charged an employee's basic wages plus any overtime to the storm fund if the employee worked on the storms. (TR 106, 399) However, no basic FPL salary should be charged to the storm fund. (TR 399) To allow FPL to collect twice, once through base rates and again through the storm surcharge, is unfair to ratepayers and would unjustly enrich FPL's management and shareholders.

Witness Davis relied heavily on his assertion that the Commission approved the accounting methodology set forth in FPL's 1993 study. Witness Davis' reliance on FPL's accounting methodology as a justification for "double dipping" in the present case is misplaced and unwarranted. For the reason discussed in the issue specifically addressing the import of the 1993 study, it is clear that the Commission did not specifically approve FPL's accounting

methodology. See Order PSC-95-0264-FOF-EI, issued February 27, 1995, in Docket NO. 930405-EI at p. 5.

As noted in the previous issue, witness Davis also claimed that there are other costs, catch-up work, backfill work, and lost revenues, which he uses to excuse FPL's seeking to "double dip" in this instance. (TR 104 - 105, 107) While catch-up work and backfill work may be appropriately charged to the storm account if they are proven to be incremental costs of storm restoration, they do not excuse "double dipping." Lost revenue is not a cost of restoring service, so it is not a cost that legitimately could be charged to the storm damage reserve.

The total regular salaries FPL has charged to the storm account is $32 million, a portion of which is the regular salaries of managerial employees. Witness Davis' attempted to lessen the amount FPL identified as the amount it charged to the storm account by claiming that a portion of these salaries are charged to clauses and capital. These arguments are without merit because FPL still can charge the salaries attributable to the clause through the clause proceeding. FPL is charging all of its payroll/labor costs, even those generally associated with capital expenditures, to the storm account without differentiating between capital and O&M costs. (TR 399)

The $32 million related to regular salaries, including $21.1 attributable to management employee labor cost should be excluded from amounts charged to the storm damage reserve.

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

OPC: *FPL should stop charging amounts related to the 2004 storm season to the storm damage reserve after foreign utilities have departed, FPL employees are no longer working overtime hours, and the contractors that FPL employs routinely are working at a normal rate.*

ARGUMENT

The Commission needs to establish a point in time past which no costs can be charged to the storm damage reserve account. Witness Majoros believed that even after the storms had passed and operations had returned to normal, FPL plans to continue charging cost related to the hurricanes. (TR 404) As noted in witness Majoros' testimony, FPL proposed to charge all labor costs associated with repairs and replacements to the storm reserve. (See FPL response to OPC Interrogatory 35) Accordingly, there appears to be no point when FPL will finally stop charging costs to the storm account so long as it can assert that the costs are related to the hurricanes.

Optimally, FPL would stop charging items to the storm damage reserve account once normal operations have resumed, outside contractors have been sent home, and employees are back to working a normal workweek. (TR 405) Any remaining storm-related activities should be preformed in the normal course of business and should not be charged to the storm account. (TR 405) However, this point in time has been difficult to determine.

Witness Williams testified that FPL has concluded its first level sweeps. FPL conducts its first level sweeps immediately after hurricanes to ensure that no one is left without power. (TR 530) Witness Williams stated that FPL is still conducting its final sweeps. When asked whether it was difficult to identify whether damage is specifically related to the hurricanes, witness Williams indicated that she did not believe this was the case. (TR 531) She indicated that FPL has developed a 12 item checklist on the basis of its pre-storm findings versus post-storm findings. (TR 548) Witness Williams claimed that as FPL does its assessment on its systems it is only charging the repair costs for those 12 items on the checklist. (TR 548)

Ms. Williams testified that FPL has completed 100 percent of the assessment associated with FPL's overhead feeder system and 60 percent of the assessment of its lateral systems, but

has not completed the actual repairs in the field for the feeder and lateral systems. She further testified that the feeder assessment work would be done by the end of June, 2005, and the lateral system work will be completed by the end of July 2005. (TR 528-529) She also said that the distribution employees are no longer charging regular salaries to the storm account because they are doing catch-up work and normal work. (TR 532)

Based on witness Williams' testimony, the final date at which no further costs should be charged to the storm accounts is July 31, 2005. Additionally, since FPL's workers are doing catch-up and normal work, no overtime should be charged to the storm accounts from the date of the hearing. Regular salaries for FPL employees should not be charged to the storm accounts under any circumstances for the reasons articulated in the previous issues. Further, only the hurricane-related restoration work which is identified in the final sweeps using the 12 item checklist should be permitted to be charged to the storm account.

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?

OPC: *Employee training, including training for storm-related activities, is a normal function for which customers should not be required to bear charges through the storm damage reserve. FPL has not charged any training costs to the storm damage reserve in this case. OPC disputes a methodology that would allow such charges, but is not at issue with FPL as it applies to this case.*

COMMENTS

The primary objective of analyzing FPL's proposal is to ensure that only extraordinary expenditures (whether capital items or O&M expenses) that are incremental to those the utility would incur under normal circumstances are charged to the storm reserve. (TR 389) To ensure that only incremental costs are being charged to the storm account, OPC developed a set of Storm Damage Guidelines. (TR 390) Based on these guidelines, all employee training expenses should be eliminated from the storm damage reserve account. (TR 390) Employee

training, including training for storm-related activities, is a normal function for which customers should not be required to bear charges through the storm damage reserve.

As witness Whalin testified, FPL undergoes certain training activities each year to prepare for hurricane season. (TR 15-17) To test FPL's readiness, FPL conducts a hurricane "dry run" exercise each year before hurricane season. This annual training is conducted for many storm personnel each year, regardless of whether they are in a new role or a role which they have served many times. (TR 16) This full scale annual drill includes active participation from employees representing every business unit in the Company and activating involves the Company's storm activity center, General Office Command Center (GOCC). (TR 12, 17) Witness Davis testified that all the costs associated with annual planning activities and practicing for storm restoration are charged to normal operating expenses, not the Storm Damage Reserve. (TR 104)

It appears that FPL has not charged these annual employee training activities to the storm reserve. As noted above, OPC believes that it would not be appropriate to charge any annual training expenses to the storm accounts.

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?

OPC: *No. The Commission should disallow the difference between the amount budgeted for tree trimming and the amount FPL actually spent of tree trimming. Based on the 2004 budget, $1 million should be disallowed. However, based on the six months closest to the hurricanes $4.2 million should be disallowed.*

ARGUMENT

Tree trimming expense should be limited to the amounts which exceed FPL's normal expenses. (TR 404) Customers should not have to pay twice for the costs which are part of the

normal level of expenditures funded by base rates that customers pay. (TR 396) FPL's proposal that all costs relating to the storms be charged to the storm account fails to recognize that its base rates include recovery of normal costs. (TR 397)

Witness Davis argued that using FPL's budgets as a benchmark for reducing the amount charged to the storm account is inappropriate. He claimed that because a budget can vary over the year due to numerous reasons other than the hurricanes it is unfair to use the budget as a benchmark. (TR100) However, this position misses the basic point that OPC's guidelines are designed to ensure that only extraordinary expenses are booked to the storm accounts. (TR 389) Logically, the Company's budget provides a useful way to determine the amount the Company expects to spend for a specific activity during a given year based on revenues from base rates. Although the budget may change over time, as noted by a budget variance, the budget is still a reasonable method to determine which costs are incremental to those costs the utility would incur under normal circumstances in a particular category. (TR 100, 389)

Witness Davis testified that that the Company spent almost its entire tree trimming budget ($47.0 million vs. $46.0 million) for the 2004 time period. He agreed, however, that for the most recent six month period the difference between the budget and actual was closer to $4.2 million for the period August 2004 through January 2005. (TR 150, H.E. 36) Although witness Majoros was unable to quantify an adjustment by the time of the filing of his direct testimony, based on witness Davis' testimony and the 2004 budget the amount of adjustment should be $1 million. (H.E. 35) However, based on the most recent 6 months budgets the amount that should be adjusted is $4.2 million. Thus, the difference between the budgeted amount and the actual amount spent on tree trimming should be disallowed to avoid cost shifting and "double dipping."

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?

OPC: *No. FPL would have incurred the fixed costs and normal operating costs of its vehicles in any event. The amount charged to the storm reserve should be limited to one half the fuel cost charged to the storm, reflecting the additional shifts during which the vehicles were operated. The amount of $5.26 million should be disallowed.*

ARGUMENT

FPL seeks to recover $19.4 million in Vehicle & Fuel Expense related to the hurricanes. (TR 403) FPL was asked to provide a breakdown of all costs related to company-owned vehicles that FPL has booked, or proposes to book, to the storm reserve. In its response, FPL provided a breakdown of $8,088,117 in costs: $1.7 million for depreciation; $4.6 million in maintenance; $947,000 for fuel; and $842,000 in overhead/support. (TR 403) Witness Majoros testified that although FPL's vehicles have been used in the storm recovery effort, these vehicles have already been included in the annual budget. In its response, FPL identify the portion of the $8.1 million that FPL would have incurred in the normal course of business regardless of whether or not there were hurricane in 2004. (TR 403) That amount is $5,261,887 which is the amount included in the annual budget. Only $2.8 million of the vehicle costs are extraordinary in nature to avoid double recovery. Witness Majoros calculated that the remaining normally budgeted amount of $5,261,887 should be removed from the storm damage claim. (TR 404, H.E. 34 - Interrogatory No. 31)

Witness Davis acknowledged that FPL charged vehicle costs to the storm account, but disagreed that any portion of the amount sought should be excluded. He claimed that charging the costs is in accordance with the methodology set forth in its 1993 study. (TR 111) As stated before, the accounting methodology FPL set forth in its 1993 study was not approved by the

Commission. In fact, using FPL's actual restoration cost methodology would contravene the Commission's policy against "double dipping." In that regard, as part of Audit Disclosure No. 6, the Staff Auditor flagged several items included in base rates for which FPL was seeking recovery for in its storm request. One of the items was vehicle costs, which are normally part of base rates. (TR 492)

Witness Davis argued that witness Majoros ignored the fact that 47% of the annual vehicle costs usually are charged to capital. This argument is a red herring. FPL seeks to charge all capital costs associated with the storms to the storm accounts. FPL has failed to identify a split between capital costs associated with the storm and other O&M costs. (TR399)

Based on the testimony, FPL would have incurred the fixed costs and normal operating costs of its vehicles regardless of the 2004 hurricanes. The amount charged to the storm reserve should be limited to $2.8 million of extraordinary vehicle costs. The amount of $5,261,887 should be removed from the storm damage claim.

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?

OPC: *OPC recommends no adjustment because FPL charged no call center expenses to the reserve. OPC is not at issue with FPL with respect to call center activities.*

COMMENTS

In accordance with the OPC Storm Damage Reserve Guidelines, all call center activities should be excluded from the storm damage account except for non-budgeted overtime associated with the storm event. (TR 390-391) The reason for this exclusion is to ensure that only extraordinary expenditures (whether capital items or O&M expenses) that are incremental to those the utility would incur under normal circumstances are charged to the storm reserve. (TR

389) Thus, all call center expenses for the storm recovery should be limited to the call overloads created by the storms. (TR 404)

Witness Davis testified that the call center costs should be recoverable since only incremental costs were charged to the Storm Damage Reserve. He stated that the call center costs charged to the Storm Damage Reserve consisted of incremental costs of staffing this function and training employees, including a significant number of non-care center employees assigned to the care centers during the storm, on process changes and information relative to responding to customer inquiries in each of the specific restoration situations following the hurricanes. (TR 101) He further stated that the Company did not charge normal costs of operation for the Call Center to the Storm Damage Reserve. (TR 112) Based on witness Davis' testimony FPL properly determined the costs of call center activities that should be charged to the storm damage reserve, in that, FPL has charged only the incremental cost associated with the call center to the storm account.

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?

OPC: *No. FPL 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 FPL charged to the storm reserve, amounting to $1.7 million, should be disallowed.*

ARGUMENT

As part of OPC'S Storm Damage Guidelines, all advertising expense (which includes any public relations expenses) should be excluded from the amount charged to the storm account.

(TR 390) Customers should not be required to pay a surcharge to receive the benefits of the basic function of keeping customers informed -- particularly during emergencies.

The purpose of OPC's guidelines is to ensure that only extraordinary expenses are booked to the storm account. (TR 389) Since the Commission has no rule in place that governs the matter, principles are necessary to protect customers from "double dipping" and prevent utilities from profiting from the storms. OPC's guidelines provide direction for accounting for storm costs. (TR 391) Under the guidelines, advertising and public relations expenses are excluded from cost charged to the storm damage reserve under the advertising expense category.

As noted by witness Whalin, the Company provides information to the news media, customers and community leaders regarding storm preparation, what to do in the event of an outage, as well as public safety messages. (TR 18) Witness Davis testified that all capital costs and all O&M costs incurred in connection with the three named hurricanes which hit FPL's service territory in 2004, have been charged to the storm reserve. (TR 84) In response to Interrogatory No. 33, FPL noted that it spent $1,703,453.54 in advertising for the 2004 hurricane season. (H.E. 34- Interrogatory No. 33)

Communication is an important function that must be performed during an emergency. Ensuring public safety is part of the regulatory framework under which FPL is required to provide safe, reliable electric service within its territory. FPL is obligated to restore service to customers as quickly and safely as possible after hurricanes. Part of restoring service safely is making sure customers have current information regarding the emergency.

FPL's basic obligation is to keep its customers informed during emergencies and customers should not pay extra for safety related communications. All advertising and/or public

relations expense that PEF charged to the storm reserve, amounting to $1,703,453.54, should be removed.

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

OPC: *It is inappropriate to charge any portion of uncollectible expense to the storm damage reserve. It appears that FPL has not charged any uncollectible expense to the storm damage reserve. OPC is not at issue with FPL on the subject of uncollectible expense.*

COMMENTS

Under OPC's Storm Damage Guidelines, no uncollectible expenses should be booked to the storm reserve. (TR 390 - 391) The purpose of OPC's guidelines is to ensure that only extraordinary expenses are booked to the storm account. (TR 389) Since the Commission has no rule in place that governs the matter, principles are necessary to protect customers from "double dipping" and prevent utilities from profiting from the storms. OPC's guidelines provide direction for accounting for storm costs. (TR 391)

Witness Davis mentioned that the Company estimates that uncollectible accounts receivable increased nearly $6 million as collection efforts were suspended because the field collectors were mobilized for storm duty. (TR 109) However, in response to Interrogatory No 38, when asked if the Company included an "uncollectible expense" in the amounts that it booked or proposed to book to the storm reserve, FPL answered "No." (H.E. 34 – Interrogatory No. 38)

It is inappropriate to charge any portion of uncollectible expense to the storm damage reserve. Based on FPL response to Interrogatory No. 38, it appears that FPL has not charged any "uncollectible expense" to the storm reserve.

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?

OPC: *Yes. FPL should be required to book the normal cost of replacements to plant in service and the normal cost of removal to the cost of removal reserve. The Commission should require FPL to charge $58 million to rate base for plant additions and charge $28 to $36 million to the cost of removal reserve. The Commission should reject FPL's proposal to charge $21.7 million of "CIAC" to the storm damage reserve.*

ARGUMENT

FPL proposes to charge all restoration costs that would otherwise be capitalized to the storm damage reserve. OPC contends the portion representing the amount FPL would spend to install to replacement plant items under normal circumstances should be recorded in plant in service and added to rate base. In this manner, the appropriate portion of capital costs would be recovered through the normal depreciation avenue. Further, OPC's approach would avoid the distortion of plant and depreciation accounts associated with FPL's extreme approach. (TR-407)

FPL identified $58 million of capital expenditures. To restore the plant in service account to its pre-storm level, FPL proposes to charge $21.7 million to the storm damage reserve as CIAC. The Commission should require FPL to reverse this entry and increase rate base by the $21.7 million. It is unclear what FPL proposes to eliminate as capital – related expense from the $890 million proposal. (TR-117) Based on the transcript, it appears that $58 million should be removed from the $890 million. OPC's approach would not impose any administrative difficulties on FPL. FPL witness Davis acknowledged that FPL already calculates the "normal" value prior to charging the entire amount to the storm damage reserve. (TR-203)

FPL's treatment of cost of removal is more egregious. FPL identified only $12 million of removal costs. This amounts to only 33% of the cost of the items replaced. (TR-161)

According to FPL's own depreciation study, the relationship should be close to a 1:1 ratio. (Exhibit 37) The Commission should require FPL to exclude $28 to $36 million from the amounts charged to the storm damage fund and charge that amount to the cost of removal reserve. (TR-435)

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?

OPC: *FPL should charge only the costs of the materials and supplies used during restoration activities to the storm reserve. It should not charge the costs of replenishing supplies and inventories to the reserve. To the extent the Company has charged normal, annual costs to the storm account, that amount should be eliminated from amounts charged to the storm damage reserve. The difference between budgeted and actual costs of $1.5 million should be removed.*

ARGUMENT

As noted previously, the OPC Storm Damage Guidelines were developed to ensure that only extraordinary expenditures are charged to the storm accounts. (TR 389) Since there is no specific rule in place that governs storm accounting, principles are necessary to protect customers from "double dipping" and to prevent utilities from profiting from the storms. OPC's guidelines provide direction for accounting for storm costs. (TR 391) Under OPC's Storm Damage Guidelines, only those costs of materials and supplies that exceed the material and supplies expense anticipated under normal operations should be charged to the storm reserve. (TR 390)

FPL's proposal to move all O&M expenses associated with the storm repair effort to the storm account without taking into account the normal level of expenditures results in "double dipping." (TR 396) This approach fails to recognize that FPL's basic rates includes recovery for

normal costs such as materials. (TR 397) This "double dipping" approach is unfair to ratepayers and would unjustly enrich FPL and its shareholders. (TR 397)

Witness Davis testified that the materials and supplies budget for Power Systems was almost spent in its entirety ($26.9 million vs. $25.4 million), yet incrementally more was spent on the storm restoration. (TR 101) He further claims that even under Witness Majoros' reasoning any adjustment would be insignificant because virtually the entire 2004 budget was spent without consideration of the amounts charged to the Storm Damage Reserve. (TR 112) Although witness Davis claims the amount between the budgeted amount and actual amount spent is insignificant, the amount totals $1.5 million. While this amount is not large in relation to the total dollar amount FPL is asking for in this docket, protecting the customers from potential "double dipping" by the Company under any circumstances is significant regardless of the dollar amounts involved. All dollars associated with this "double dipping" should be eliminated.

FPL should charge only the costs of the materials and supplies used during restoration activities to the storm reserve. It should not charge the costs of replenishing supplies and inventories to the reserve. Since there is a difference between the budgeted and actual costs for materials and supplies, the Company has not taken into account the normal, annual costs of replenishing materials and supplies. To the extent the Company has charged normal, annual costs to the storm account, that amount – or $1.5 million -- should be removed.

ISSUE 15: 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. Revenues lost by the Company due to the disruption of customer service during the 2004 storm season or the absence of customers after the storms;

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.

OPC: a. Lost revenues due to the impact of the 2004 storm season.

*No. The storm damage reserve should be limited to the incremental and extraordinary costs of restoring service and repairing the physical system. "Lost revenues" are not *costs* at all, and labeling them as such does not make them so.*

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);

Only if the Commission first requires FPL to remove regular payroll costs from the storm reserve should it consider this category of overtime. The burden is on FPL to demonstrate and document that there was such overtime, and that it was caused directly by loss of personnel to storm assignments.

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);

Only if the Commission first requires FPL to remove regular, normal payroll costs from the storm reserve should it consider a claim for "catch-up" work. Further, the burden is on FPL to demonstrate that (a) specific catch-up work exists after the modifications, replacements and improvements, and (b) such work cannot be performed, as a result of the budgeting and scheduling processes, by employees during regular hours or by contractors during the normal amount of budgeted contract work.

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

*Uncollectible accounts receivable, consisting of money owed to FPL that FPL decides to write off, are not *costs*, and labeling them as such does not make them so. Further, the amount of uncollectibles "directly related to the storms" would be

speculative. Finally, this item is duplicative of both "uncollectible expense" and "lost revenues," neither of which is properly charged to the storm damage reserve.*

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.

*See (c) above for OPC's position on item "e".

ARGUMENT

A. Lost Revenue

As noted previously, there is no specific rule in place that governs storm accounting, principles are necessary to protect customers from "double dipping" and potential profiting from the storms. (TR 391) OPC's Storm Damage Guidelines were developed to ensure that only extraordinary expenditures, whether capital items or O&M expense, are charged to the storm accounts. (TR 389) OPC's guidelines provide direction for accounting for storm costs. (TR 391) Under OPC Storm Damage Guidelines, no lost revenues should be booked to the storm reserve. (TR 391)

Witness Davis stated that the utility's revenue requirement is divided by a normal level of sales to set the base rates. He testified that during the hurricanes there were very significant outages during which sales and corresponding revenues were lost. Witness Davis acknowledges that hurricanes result in reductions of some base rate costs because those costs were charged to the storm accounts, but claims that there were also reductions of base rate revenues. Witness Davis stated that the Company estimates that its lost base rate revenues of approximately $38.2 million. (TR 107)

It is inappropriate to consider lost revenues in the manner in which witness Davis proposes for several reasons. Witness Majoros testified that the lost revenue figure did not offset

the O&M adjustments he recommended. (TR 472) The items that were identified as the basis of the adjustments were in the category of costs incurred for restoration activities. The storm reserve was designed to cover the costs associated with restoring service after hurricanes. Witness Majoros noted that lost revenues are not costs incurred to restore service. (TR 472) Additionally, it is improper to take into account estimated lost revenues without also taking into consideration any possible gains in revenues due the hurricanes. FPL did not even attempt to quantify the gains in revenue due to very significant post hurricane economic activities.

More importantly, once Return on Equity (ROE) is considered as part of the equation, the claimed loss of base rate revenues becomes moot. Had FPL's revenues been higher, its ROE would have been higher and the application of the 10% yardstick would have yielded a larger allocation of responsibility to FPL. Thus, the application of an ROE benchmark implicitly encompasses any loss of revenue.

B. Other Offsets (catch-up, backfill, and incremental contractor, etc.)

It is important to note that catch-up work was not included in FPL's previous insurance coverage. See, PSC-93-0915-FOF-EI, issued June 17, 1993 at p. 4. Catch-up, backfill, and incremental contractor work may be consistent with OPC guidelines if the catch-up, backfill, and incremental contractor work is an extraordinary expenditure that is incremental to those the utility would incur under normal circumstances. (TR 389) Additionally, any catch-up, backfill, and incremental contractor work should be a cost incurred to facilitate restoration activities. (TR 472) These criteria are also applicable to any outside professional services or temporary labor hired due to work postponed due to the storm restoration.

Witness Davis testified that the duties normally performed by staff personnel generally do not go away; they are merely deferred or performed by others during storm restoration. He

stated that both the backfill and catch up work necessary to ensure that these duties are caught up generally involve overtime or the use of contractors or temporary labor that is charge to normal operating expense not the Storm account. (TR 105) He claims that the Company spent incrementally $7.0 million on contractors and outside professional services and $9.0 million on overtime during the last two months of 2004. (TR 105)

A claim for "catch-up" work should be considered only if the Commission first requires FPL to remove regular, normal payroll costs from the storm reserve. Second, FPL has the burden to demonstrate that (a) specific catch-up work exists after the modifications, replacements and improvements, and (b) such work cannot be performed, as a result of the budgeting and scheduling processes, by employees during regular hours or by contractors during the normal amount of budgeted contract work. Also, the overtime caused by backfill work should be considered only if the Commission first requires FPL to remove regular payroll costs from the storm reserve. The burden is on FPL to demonstrate and document that there was such overtime, and that it was caused directly by loss of personnel to storm assignments.

However, in this case FPL failed to provide sufficient information or carry its burden to demonstrate that the catch-up and backfill amounts are related to the hurricanes, met these criteria and, thus, are appropriate to be charged to the storm fund. The only information provided to attempt to establish these costs are related to the hurricanes is the timeframe in which these costs were incurred. The information that these costs were incurred in the last two months in 2004 is insufficient to establish that these costs were hurricane-related and met the necessary criteria. As FPL's witness Williams agreed, FPL should provide whatever information is necessary to determine whether the recovery is correct or not. (TR 528)

Witness Davis did not testify that costs related to contractors, outside professional service and overtime was incremental to those the utility would incur under normal circumstances. It is a glaring omission. FPL has failed to demonstrate that these catch-up and backfill work costs are beyond regularly budgeted amounts. Accordingly, FPL has failed to demonstrate that costs beyond regularly budgeted amounts will be expended to complete any "catch-up" work.

c. Uncollectibles

As noted previously in Issue 12, under OPC's Storm Damage Guidelines, no uncollectible expenses should be booked to the storm reserve. (TR 390 - 391) The purpose of OPC's guidelines is to ensure that only extraordinary expenses are booked to the storm account. (TR 389) Since the Commission has no rule in place that governs the matter, principles are necessary to protect customers from "double dipping" and prevent utilities from profiting from the storms. OPC's guidelines provide direction for accounting for storm costs. (TR 391)

Further, uncollectible accounts receivable, consisting of money owed to FPL that FPL decides to write off, are not *costs*, and labeling them as such does not make them so. Further, the amount of uncollectibles "directly related to the storms" would be speculative. Finally, this item is duplicative of both "uncollectible expense" and "lost revenues," neither of which is properly charged to the storm damage reserve.

ISSUE 16: 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?

OPC: *OPC's position is that the amount sought by FPL should be reduced by a minimum of $42 million (O&M) and $108 million (capital) or a total of $150 million as a result of the resolution of Issues 1-15. OPC does not agree that the adjustments from the resolution of Issues 1-15 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 4-15 necessarily represents reasonable and prudent expenditures. This issue is a fallout of the previous Issue 4-15. Since the resolution of Issues 1-3 determines how any adjustments are made in Issues 4-15, this issue is a fallout of those issues as well. For the reasons articulated in the previous issues, FPL's 1993 study has no legal effect on the accounting methodology to be used in this proceeding. Nor is the actual restoration methodology proposed by FPL in the 1993 study appropriate to account for the costs to the storm reserve in a customer paid self-insurance model.

As noted before, it is OPC's position that all "double dipping" and potential for profiting from hurricanes should be eliminated. (TR 391) 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 389-391) The OPC guidelines are as follows:

OPC Storm Damage Guidelines

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 390-391). The specific adjustments proposed by OPC in Issues 4-14 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 OPC's guidelines, and for the reasons articulated in Issues 1-15, the Commission should make adjustments to FPL's storm request. The amount sought by FPL should be reduced by a minimum of $150 million as a result of the resolution of Issues 1-15.

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

OPC: *It is inappropriate to consider a blanket request for a single overall finding. Further, the Commission should preserve the right of any party to challenge the reasonableness and/or prudence of any expenditure during the true-up phase of the proceeding.*

ARGUMENT

According to FPL, final accounting entries related to storm cost accounting were not made until March 30, 2005. It is clear from reading her audit report that the Staff Auditor was unable, due to the status of matters, to perform a detailed review of FPL's restoration activities. The Commission should preserve parties' ability to challenge individual expenditures.

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

OPC: *The issue implies that FPL is assuming a burden to meet the objective of safe and rapid restoration of service that it would not otherwise undertake. The notion is nonsensical. It is in FPL's interest as it is in customers' interests when FPL endeavors to restore service rapidly and safely. Further, FPL has a regulatory obligation to provide safe and reliable electric service, including restoration of service after hurricanes or tropical storms.*

ARGUMENT

The issue as framed implies that FPL is assuming a burden to meet the objective of safe and rapid restoration of service that it would not otherwise undertake. The notion is nonsensical for several reasons.

First, the only way FPL makes money is by selling electricity. When customers have no electric service, FPL receives no revenues. Therefore, it is as much in FPL's interest as it is in customers' interests when FPL endeavors to restore service rapidly and safely. In other words,

FPL has strong economic self-interest in restoring service to its customers. The longer customers are without power, the longer FPL receives no revenue from those customers.

Second, FPL is a regulated investor-owed electric utility (IOU) with monopoly service within its territory within the meaning and intent of Chapter 366. As an IOU, FPL has an obligation to provide reasonably sufficient, adequate, and efficient electric service to the customers within its territory. See, Section 366.03, Florida Statutes. In return for its ability to provide a monopoly service, FPL is ensured fair, just, and reasonable rates and the opportunity to earn a fair return on its investment as determined by the Commission. See, Section 366.041, Florida Statutes.

Ensuring public safety is part of that regulatory compact under which FPL is obligated to provide safe, reliable electric service within its territory. FPL's regulatory obligation requires FPL to restore service to customers as quickly and safely as possible following hurricanes.

In addition, FPL is compensated for its regulatory obligation through the rates and charges established by the Commission. As the Commission recognized in its earlier order, the risk of damage due to hurricanes and tropical storms is a normal business risk in Florida. PSC-93-0918-FOF-EI at p. 5. In stating that such hurricane events should not require the Company to earn less than a fair rate of return, the Commission recognizes that the costs of hurricane events are traditionally part of establishing rates and charges. Id. Thus, the risk of hurricanes is factored into the established rates and if the Company were at risk of earning less that a fair rate of return, it could petition the Commission. Id.

In other words, the assumption that FPL accepted voluntarily a burden of providing safe and rapid restoration of service that it would not otherwise undertake is nonsensical. FPL has been compensated through its rates to provide safe, efficient restoration of service after storms.

In addition, FPL has a regulatory and statutory obligation to provide safe and rapid restoration of electric service following tropical storms and hurricanes.

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?

OPC: *Yes. The stipulation requires FPL to absorb storm-related expenses through earnings until its ROE is reduced to 10% before modifying rates. This equates to $270,512,000 that FPL should be required to absorb through earnings.*

ARGUMENT

In 2002, FPL and parties to its revenue requirements proceeding entered a stipulation that the Commission approved in Order No. PSC-02-0501-AS-EI.

In the stipulation, FPL gained an opportunity to earn a higher return than would be permitted by an "authorized return" approach. In exchange, it voluntarily surrendered its ability to seek base rate increases during the term of the stipulation. In this case FPL proposes – and the Commission has authorized on a provisional basis – specific adders to individual base rate tariffs. At issue here is FPL's claim that a provision recognizing its withdrawal of a request to increase its annual accrual for storm costs, which referred to its ability to file a petition for recovery of storm costs, amounts to an exception to the provision that states FPL may seek such an increase in base rates only after its return on equity has fallen below 10%. The operative language is as follows:

Paragraph 8

> If FPL's retail base rate earnings fall below a 10% ROE as reported on an FPSC adjusted or pro-forma basis on an FPL monthly earnings surveillance report during the term of this Stipulation and Settlement, FPL may petition the FPSC to amend its base rates notwithstanding the provisions of Section 5. Parties to this Stipulation and Settlement 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 FPL's base rates.

Paragraph 13

FPL will withdraw its request for an increase in the annual accrual to the Company's Storm Damage Reserve. In the event that there are insufficient funds in the Storm Damage Reserve and through insurance, FPL may petition the FPSC for recovery of prudently incurred costs not recovered from those sources. The fact that insufficient funds have been accumulated in the Storm Damage Reserve to cover costs associated with a storm event or events shall not be evidence of imprudence or the basis of a disallowance. Parties to this Stipulation and Settlement are not precluded from participating in such a proceeding.

Like any contractual document, the interpretation of the 2002 stipulation among FPL, OPC, and others is governed by principles of construction recognized in law. The principles of construction applicable here include:

1. It is necessary to construe the entire document, not separate portions read in isolation. Specialized Machinery Transport, Inc. v. Westphal, 872 So.2d 424 (Fla. 5th DCA, 2004); Kipp v. Kipp, 844 So.2d 691 (Fla. 4th DCA 2003).
2. The language used in a contract is the best possible evidence of intent and meaning. Such intent, when expressed, is controlling g regardless of the intention existing in the minds of the parties. Bill Heard Chevrolet v. Wilson, 877 So.2d 15 (Fla. 5th DCA 2004), reh. den. July 12, 2004.
3. The interpretation must be reasonable, not unreasonable. Golf Scoring Systems Unlimited, Inc. v. Remedio, 877 So.2d 827 (Fla. 4th DCA, 2004).
4. If provisions of the document conflict, it is necessary to construe the document in a manner that harmonizes or reconciles them. Fayad v. Clarendon National Insurance Company, 857 So.2d 293 (Fla. 3d DCA, 2003).
5. It is necessary to select an interpretation that gives effect to all provisions, as opposed to one that negates some of the provisions. Paladyne Corporation v. Weindruch, 867 So.2d 630 (Fla. 5th DCA 2004).
6. If a term is inserted for the benefit of one of the parties, any ambiguity is construed more strongly against that party. Vargas v. Schweitzer-Ramras, 878 So.2d 415 (Fla. 3d DCA 2004), reh. den. Aug 4, 2004
7. Only if a document is ambiguous within its four corners can extrinsic or "parol" evidence be considered to gauge intent. A difference between the interpretation called for by the content of the document and that supported by parol evidence does not create an ambiguity. Lambert v. Berkley South Condominium Association, Inc., 680 So.2d 588 (Fla. 4th DCA 1996).

The application of these principles to the 2002 stipulation yields the conclusion that the 10% ROE threshold applies to FPL's petition. Basically, FPL wants to treat Paragraph 13 in isolation, a clear violation of fundamental principles. Paragraphs 8 and 13 must be harmonized in a way that gives effect to both. The way to harmonize them is to subject any petition filed under Paragraph 13 to the requirements of Paragraph 8. By contrast, FPL wants to negate a provision (Paragraph 8) that by its plain terms and language is applicable without limitation – another violation of the principles of construction.

The interpretation must be reasonable. In this regard, it is unreasonable to assume that intervenors – having agreed to allow FPL to increase its achieved return on equity without reference to a maximum authorized return – would agree to weaken the principal *quid pro quo*, a limitation on FPL's ability to increase base rates during the term of the stipulation, by exempting a reduction in earnings caused by storm-related costs from the operation of the threshold.

The best evidence of intent is the language employed by the parties. FPL contends that Paragraph 13 has the effect of rendering Paragraph 8 inapplicable when it files such a petition. FPL's problem, simply put, is that the stipulation doesn't say that. FPL witness Dewhurst observed that neither of the provisions refers to the other. (TR-699) *Exactly OPC's point!* It would have been an easy matter for the parties to include in Paragraph 8 language establishing that the 10% ROE criterion is inapplicable to petitions brought under Paragraph 13; or to state in Paragraph 13 that FPL's right to file a petition is unaffected by Paragraph 8; or both. Although it was available, such language was not used, compelling the application of the principle that requires they both be given effect. The construction that satisfies this requirement is that FPL may file a petition to recover storm-related costs, but any such petition is subject to the requirement of Paragraph 8.

FPL witness Dewhurst complained that this interpretation would render Paragraph 13 meaningless. OPC submits the principal focus of Paragraph 13 was the recognition of FPL's withdrawal of its proposal to increase the annual accrual to the storm reserve, and the assurance that any negative balance resulting from the continued application of the lower accrual would not form the basis for a finding of imprudence.

Mr. Dewhurst also claimed that Paragraph 13 was added to offset a base rate reduction of $250 million annually that FPL could not otherwise have afforded. (TR-697) However, on cross-examination Mr. Dewhurst acknowledged that intervenors at the time were advocating base rate reductions of $500 million or more. (TR-731) The $250 million reduction built into the stipulation eliminated FPL's exposure to a larger reduction. (TR-732) In addition, the stipulation provided FPL with the discretion to reduce depreciation expense by $125 million per year. (TR-733) A reduction in depreciation expense offsets the impact of the base rate reduction on earnings. (TR-733) FPL exercised this discretion each year. (TR-733) The ability to cushion fully one-half of the impact of the $250 million base rate reduction through a modification to depreciation expense belies the notion that the $30 million additional storm accrual was somehow the item that enabled FPL to agree to the terms of the stipulation – particularly in light of pending demands for far larger reductions, and in light of FPL's healthy ROE in the years that followed.

Mr. Dewhurst also quoted an exchange between Commissioner Baez and FPL's Paul Evanson that occurred during the Commission's meeting to consider the stipulation as "proof" that the stipulation was intended to provide FPL with the ability to collect storm-related costs without limitation. (TR-698) All that he succeeded in demonstrating was that in 2002 FPL was

continuing its efforts to overturn the Commission's rejection of its 1993 effort to require customers to indemnify FPL for all storm costs, regardless of FPL's profitability.

Specifically, Mr. Evanson (and through him, Mr. Dewhurst) asserted the Commission thought highly of the "logic" of FPL's 1993 proposal. (TR-698) In point of fact, in its decision the Commission criticized FPL for failing to take earnings into account; found fault with FPL's effort to place all storm-related risk on customers; noted that it had never required customers to indemnify the utility for storm costs; and observed that storm-related costs, because of their sporadic nature, are not suited for the type of cost recovery approach that FPL proposed. Order No. PSC-93-0918-FOF-EI, at pp. 4-6. Mr. Evanson's characterization was an exercise in revisionist history, as is Mr. Dewhurst's attempt to rely on the exchange.

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?

OPC: *Yes. Investors are paid to take risks. It would be unfair to compensate investors for the risks they take, then insulate them from those risks by placing 100% of the 2004 storm costs on customers.*

ARGUMENT

FPL's demand for dollar-for-dollar recovery appears to be based on the proposition that any other approach would prevent it from recovering its storm costs. The argument proceeds in turn from the fact that base rates included less storm repair costs than FPL experienced. FPL wants to ignore all other considerations and focus only on a comparison of the assumption in base rates and the costs actually incurred.

FPL's argument is preposterous. The formulation of base rates involves a myriad of assumptions regarding typical or expected levels of costs, few of which may prove to be

precisely accurate over time. Once base rates are set, the question becomes one of whether, on an overall basis, rates generate revenues sufficient to cover expenses and provide a reasonable return. Two of the witnesses who attempted to support FPL's position ultimately acknowledged this relationship. Dr. Avera described the return component as a "residual," indicating clearly the money that remains after costs have been paid. (Ex. 47 at p. 8) FPL Controller Moray Dewhurst acknowledged that a utility that places a power plant into service between rate cases, thereby incurring the costs of owning and operating the plant without a corresponding increase in base rates, nonetheless recovers those costs if it earns a fair rate of return. (TR-758)

At the outset, then, the Commission must reject the badly flawed notion that FPL will not recover its storm repair costs unless the Commission endures its "dollar-for-dollar" approach. That red herring only gets in the way of a consideration of the merits of the issue.

The merits include this question: On whom should the risk of storm repair costs fall, and to what extent? OPC submits the answer is that the Commission must look first to FPL's investors, but only to the extent FPL can pay a portion of the storm costs and still realize a fair and reasonable return on its equity investment. Under prevailing circumstances, 10% ROE serves as an appropriate allocator of risk.

OPC witness James Rothschild testified that it is appropriate to require FPL to absorb a portion of the storm-related costs through earnings because FPL's customers pay its investors to accept the risk of storm loss. (TR-265) FPL is compensated for its entire risk profile, including the risk of storm repair costs. (TR-266) The payment is in the form of an opportunity to earn returns that are significantly above the risk free rate represented by a long term U.S. government bond. As a result of this relationship, FPL's *customers* -- not its investors – are entitled to a degree of protection by the Commission from the risk of storm repair costs. (TR-265) The

Commission observed as much when it rejected FPL's effort to steer all risk of storm repair costs to customers in 1993. (TR-265; see Order No. PSC-93-0918-FOF-EI, at pages 4-5)

Even if the Commission rules the 10% ROE of the stipulation is inapplicable, it nonetheless provides a fair yardstick with which to measure the responsibility of FPL's investors for the 2004 storm repair costs. Since the parties established 10% as the ROE trigger in 2002, long term interest rates have *decreased.* Since 2002, some electric companies have been awarded returns on equity of less than 10%. (TR-266-67) Both the decrease in long term rates that has occurred since 2002 and the Social Security Administration's projection of overall market returns support the conclusion that 10% ROE is a fair, and even generous, return under current economic conditions. (TR-266-69)

FPL attempted to alarm the Commission with predictions of dire reactions from rating agencies that would accompany anything other than the approval of its petition. The predictions are without basis. Rating agencies are concerned, first and foremost, with the utility's ability to generate income sufficient to "cover" its debt obligations. This ability is a function of both the achieved return on equity and the utility's capital structure; the greater the amount of equity in the capital structure, the lower its financial risk (i.e. the greater the income available with a given ROE to satisfy debt obligations). OPC witness James Rothschild testified that FPL's capital structure (55% equity), coupled with 10% ROE, will generate coverage ratios high enough to satisfy rating agencies. (TR-267-270)

Further, recent S&P reports reflect that its expectations of healthy performance are premised on recovery of a "majority" of storm costs. (Exhibit 48) Those reports also demonstrate that storm cost recovery is only one of many factors the agencies review – which include the higher risk and weaker capital structure of FPL's parent and affiliates. (TR-613-614)

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

OPC: *$113,000,000. The Commission should consider the availability of excess depreciation reserves to obviate some or all of the need to collect this amount from customers through a surcharge.*

ARGUMENT

In Docket 050188-EI, FPL filed a depreciation study in which FPL calculated a depreciation reserve excess of $1.2 billion. OPC witness Majoros recommended that the Commission consider using a portion of the depreciation reserve excess to satisfy the storm reserve deficiency. The Commission denied OPC's motion to consolidate this docket with the depreciation and revenue requirements proceedings, but made clear its view that it has the requisite authority to take any action with regard to the depreciation reserve that it deems appropriate in those dockets. In rebuttal testimony FPL witness Davis attempted to assail the notion that a large depreciation reserve excess could be employed in this manner. He claimed such an action would violate FERC rulings and SEC guidelines. He also claimed Mr. Majoros was introducing storm related costs into the depreciation mechanism.

All of Mr. Davis' efforts were – to be generous – unavailing. In the FERC order on which he relied, FERC stated its action was for its jurisdictional purposes only; FERC emphasized that the South Carolina state regulatory agency involved in the matter had authority to adopt the depreciation policy that was the subject of FERC's order for its state regulatory purposes. (TR-202) The SEC ruling involved Microsoft – hardly your garden variety regulated utility. The SEC's ruling was based on Microsoft's departure from GAAP. (TR-200) As Mr. Davis acknowledged, under FAS 71, the Commission can authorize FPL to depart from GAAP. (TR-201)

As for Mr. Davis' claim that OPC wants to pour storm costs into depreciation accounts, his underlying premise was, to use Mr. Majoros' term, "silly." Mr. Majoros recommended that a portion of the depreciation reserve excess be employed to offset the storm reserve deficiency. The resolution of the deficiency would be immediate. (TR-187) The remedial effect on the depreciation reserve would be immediate. There would be no "long term financing of storm costs;" only a decision to address a portion of the depreciation reserve excess over a time frame shorter than FPL's calculated remaining lives. In other contexts, the Commission has ordered reserve deficiencies to be remedied over short time frames. (TR-194-197) OPC's proposition, simply put, is that if the Commission determines FPL has an enormous depreciation reserve excess, the magnitude of that excess may well warrant a departure from business as usual. OPC continues to urge the Commission to keep its options open in that regard.

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?

OPC: *The negative balance should be maintained in a separate subaccount, so as to segregate it from the positive balance resulting from future accruals.*

ARGUMENT

Once the unamortized balance of the storm-related costs subject to future recovery is determined, that amount should be charged against the storm reserve. The Commission should determine negative balance created by the application of the 2004 storm costs to the storm reserve account. The Commission should then segregate the negative balance created by the 2004 storm costs and place those costs into a separate subaccount. This will ensure that any future accruals are not commingled with the 2004 storm costs. The commingling of future storm

costs with the 2004 storm costs could create problems in any final true-up proceedings and future audits.

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?

OPC: *To the extent that any amounts are approved for recovery from FPL's customers, FPL should be permitted to apply an interest factor, calculated as follows: Each month FPL should apply the 30 day commercial paper rate to 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.*

ARGUMENT

OPC believes that FPL should be allowed to accrue and collect interest on the amount of storm-related costs permitted to be recovered from customers. To the extent that any amounts are approved for recovery from FPL's customers, FPL should be permitted to apply an interest factor, calculated as follows: Each month FPL should apply the 30 day commercial paper rate to 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: WITHDRAWN

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

OPC: *OPC takes no position as to allocation of the additional base rate revenues generated by an approved surcharge. However, should the Commission decide to utilize FPL's excess depreciation to cover the 2004 storm expenses, rate class allocation is moot.*

ARGUMENT

FPL's proposal, as evidenced in its interim and proposed tariff sheets, is to apply specific adders to individual base rate tariffs. OPC takes no position as to how the resulting increase in

base rate revenues should be allocated among the rate classes. However, the Commission should consider addressing the 2004 storm costs at the time it remedies FPL's depreciation reserve excess. (TR 417)

ISSUE 26: What is the appropriate recovery period?

OPC: *The appropriate period is a function of the amount authorized to be recovered and the interest factor, as each has an impact on customers. The Commission should prescribe a period that takes both impacts into account.*

ARGUMENT

Based on FPL's latest petition, it seeks to recover the total amount over a three year period. The appropriate period is a function of the amount authorized to be recovered and the interest factor, as each has an impact on customers. The Commission should prescribe a period that takes both impacts into account.

Based on the total amount requested it appears that no more than three years is necessary for recovery. If the Commission approves an amount that can be recovery in a period of 2 years or less, then the proposed surcharge rates should be adjusted downward in accordance with recovery over a two year period.

However, as noted in the previous issue, OPC believes that the Commission should consider utilizing FPL's excess depreciation to cover the 2004 storm costs. (TR 417) If the Commission authorizes that use of the excess depreciation, then no surcharge is necessary.

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?

OPC: *Yes.*

ARGUMENT

OPC believes that if the Commission approves a base rate surcharge, then the surcharge factors should be adjusted annually to reflect actual sales and revenues. However, if the Commission decides to utilize FPL's excess depreciation for the 2004 storm costs, this issue becomes moot.

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?

OPC: *Thirty days after the Commission's vote, to be applied to bills during the following billing cycle.*

ARGUMENT

OPC believes that if the Commission approves a mechanism for recovery of storm-related costs from the ratepayers, it should become effective thirty days after the Commission's vote and applied to the bills during the following billing cycle. However, if the Commission decides to utilize FPL's excess depreciation for the 2004 storm costs, this issue becomes moot.

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

OPC: *If the Commission authorizes FPL to collect an amount that is less than that collected through the provisional measure or utilized the excess depreciation, the differential should be refunded to customers with interest. Otherwise the amount should be used as an offset to the total 2004 storm costs.*

ARGUMENT

If the Commission authorizes FPL to collect an amount that is less than that collected through the provisional measure, the differential should be refunded to customers with interest.

If the amount collected is less than the overall amount approved by the Commission, the funds collected under the interim provision should be used as an offset to the total overall amount.

If the Commission decides to utilize FPL's excess depreciation for the 2004 storm costs, then the amount collected through the interim procedure should be refunded to customers with interest.

ISSUE 30: Should the docket be closed?

OPC: *No. The docket should remain open pending verification of actual costs.*

ARGUMENT

As noted in previous issues, OPC believes that the Commission should consider utilizing FPL's $1.24 billion book depreciation reserve excess, as determined by FPL, to reduce whatever negative balance in the storm damage reserve is identified in this case. (TR 417) If the Commission decides to consider using the excess depreciation and wants to wait until the conclusion of the depreciation case, then this docket should remain open pending further proceedings.

If the Commission permits FPL to apply a surcharge to customers, 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.

CONCLUSION

The Commission should reject FPL's efforts to transfer – at the cost of distorted plant accounts and double impacts on customers – all restoration-related costs to the storm damage reserve. It should require FPL and its investors to bear a portion of the risks that customers pay them to accept, but should also afford FPL a reasonable return on its investment.

Respectfully submitted,

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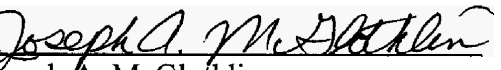

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Office of Public Counsel's Post Hearing Brief has been furnished by electronic mail and U.S. Mail on this 10th day of May, 2005, to the following:

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