

ORIGINAL

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 Sent: Friday, July 15, 2005 5:00 PM  
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Attachments: MOTION TO EXCLUDE CONSIDERATION OF EXTRA.doc

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1. **Docket Number: 041291-EI In re: Petition for authority to recover prudently incurred storm restoration costs related to 2004 storm season that exceed storm reserve balance, by Florida Power & Light Company**
2. Attached for filing on behalf of Office of Public Counsel is OPC's Motion to Exclude Consideration of Extra-Record Communication.
3. There are a total of four (4) pages for filing.

Thank you.

Phyllis W. Davis

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DOCUMENT NUMBER-DATE  
 06798 JUL 15 05  
 FPSC-COMMISSION CLERK

ORIGINAL

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

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Docket No. 041291-EI

Filed: July 15, 2005

**OPC'S MOTION TO EXCLUDE CONSIDERATION OF  
ETXRA-RECORD COMMUNICATION**

The Florida Office of Public Counsel (OPC), through its undersigned attorneys, hereby files its objection to consideration of an extra-record communication by Florida Power & Light Company (FPL) to Staff regarding Staff's recommendation of July 7, 2005, and in support states:

1. This docket involves the petition of FPL for authority to recover, through a surcharge on current base rates, some \$536 million of costs claimed to be the deficit in its storm reserve associated with the repair and restoration efforts that followed the unprecedented 2004 hurricane season. The core issues of the docket include the Commission's consideration of the costs incurred by FPL and the manner in which FPL accounted for them. Throughout the case, the burden of proof has been on FPL.
2. FPL and other parties submitted testimony addressing FPL's petition. The testimony was the subject of an exhaustive evidentiary hearing on April 20 and 21, 2005. Following the hearing, all parties had the opportunity to submit written briefs. FPL submitted a brief, as did OPC and other parties.
3. On July 7, 2005, Staff submitted its written recommendation to the Commissioners. Issue No. 13 relates to FPL's treatment of capital-related costs.

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FPSC-COMMISSION CLERK

Based on its evaluation of the record of the hearing, during which FPL had the opportunity to present, explain, and defend the manner in which it accounted for the various categories of costs, Staff recommended an adjustment of \$91.9 million to the amount that FPL wished to charge to the storm reserve, to be accompanied by corresponding adjustments to plant and accumulated depreciation. The recommendation is on the agenda for the Commission meeting of July 19, 2005.

4. On Friday, July 15, 2005, Staff notified OPC of Staff's intent to amend its written recommendation orally when the Commission takes it up on July 19. Staff told OPC that FPL had telephoned Staff regarding Staff's treatment of the capital-related items. On the basis of the telephone call, Staff decided to modify the adjustments to the storm reserve and related adjustment to plant accounts that it recommended in its memorandum of July 7, 2005.

5. OPC objects to any consideration of the telephonic communication between FPL and Staff. Based on Staff's explanation, it appears the thrust of FPL's communication was -- not to point out an error in arithmetic within the recommendation—but to clarify and further explain the accounting treatment that FPL had afforded the costs. FPL had a full opportunity to develop this subject during the hearing and to address it in its post-hearing brief. The explanation of the manner in which FPL accounted for capital costs was a fundamental issue for which FPL had the burden of proof. It would be unfair to allow FPL an opportunity to, in effect, shore up the case it made at hearing through a post-hearing, post-brief, and post-*recommendation* telephone call, when OPC and other parties would have no opportunity to evaluate—much less cross-examine or rebut-- the source of the additional information. If after reviewing the

Commission's decision FPL believes the Commission has made a mistake, its recourse is to file a motion for reconsideration at that time. However, if the matter involves, not a mathematical error, but a failure to support its request, FPL must accept the results of having failed to meet its burden of proof. In either case, it would be procedurally unfair for the Commission to consider, through Staff's proposed oral modification, the extra-record information communicated by FPL.

WHEREFORE, OPC requests the Commission to exclude from consideration the extra-record communication by FPL to Staff regarding its recommendation of July 7, 2005.

Respectfully submitted,

Harold McLean  
Public Counsel

s/ Joseph A. McGlothlin  
Joseph A. McGlothlin  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Office of Public Counsel's Motion to Exclude Consideration of Extra-Record Communication, has been furnished by electronic mail and U.S. Mail on this 15<sup>th</sup> day of July, 2005 to the following:

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