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Sent: Monday, July 18, 2005 3:29 PM
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Subject: Electronic Filing for Docket No. 041291-EI/FPL's Response in Opposition to OPC's Motion to Exclude

Attachments: FPL's Response to OPC Motion to Exclude.doc; Exhibit 1.doc; Exhibit 2.doc



FPL's Exhibit 1.doc Exhibit 2.doc
se to OPC M (38 KB) (47 KB)

a. Person Responsible for this electronic filing:

R. Wade Litchfield, Attorney
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, FL 33408
(561) 691-7201

b. Docket No. 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.

c. Document being filed on behalf of Florida Power & Light Company.

d. There are a total of 13 pages.

e. The document attached for electronic filing is Florida Power & Light Company's Response in Opposition to OPC's Motion to Exclude.

(See attached file: FPL's Response to OPC Motion to Exclude.doc) (See attached file: Exhibit 1.doc) (See attached file: Exhibit 2.doc)

Thank you for your attention and cooperation to this request.

Nanci NeSmith
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Response
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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for authority to recover)
prudently incurred storm restoration costs)
related to 2004 storm season that exceed)
storm reserve balance, by Florida Power &)
Light Company.)
_____)

Docket No: 041291-EI

Filed: July 18, 2005

**FLORIDA POWER & LIGHT COMPANY’S RESPONSE IN OPPOSITION TO OPC’S
MOTION TO EXCLUDE**

NOW, BEFORE THIS COMMISSION, through undersigned counsel, comes Florida Power & Light Company (“FPL” or the “Company”), and pursuant to Rule 28-106.204(1) and 28-106.202, Florida Administrative Code, files this Response in Opposition to the Office of Public Counsel’s (“OPC’s”) Motion to Exclude Extra-Record Communication (“Motion to Exclude”), and in support states:

1. On July 15, 2005, OPC filed its Motion to Exclude asking the Commission to refuse to consider Staff’s proposed adjustment to its Staff Recommendation in the above-referenced docket to clarify the accounting associated with capitalizing \$58 million of storm restoration costs instead of charging those costs to the storm damage reserve. OPC asserts that the Commission should refuse to consider any oral modification by Staff to the Recommendation because of the question raised by FPL.

2. OPC’s Motion to Exclude attempts to place an imprimatur of impropriety on an appropriate and necessary inquiry from FPL. There is no legal basis for OPC’s Motion to Exclude, and OPC cites no basis. There is no statute or rule that prohibits FPL, OPC, or any other party to the docket from bringing to Staff’s attention an accounting treatment in a staff

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recommendation that inadvertently results in a computation error in proposing total system adjustments. Staff Recommendation at p. 52. See Section 350.042(1), Fla. Stat. (“The provisions of this subsection [titled ex parte communications] shall not apply to commission staff.”) It would be a disservice to the regulatory process to prohibit parties from seeking clarification from Staff regarding Staff’s intent in a Staff Recommendation, especially where a correction or clarification, if warranted, can be made before the Commission votes on the Recommendation. Such a clarification is fully supported by the record.

3. It is axiomatic that debits and credits in accounting must be equal. FPL’s inquiry involved nothing more than a clarification of how the \$21.7 million amount that is labeled contribution in aid of construction is to be treated under the Staff Recommendation. FPL’s accounting treatment of capital costs incurred in connection with storm restoration efforts was discussed at length in the record. Tr. 112-117 (pp. 24-29 K. Michael Davis Rebuttal Testimony) (Exhibit 1 to this Response), 145-146, 203-205 (Exhibit 2 to this Response). That accounting methodology has been in place since the Commission entered Order No. PSC-95-0264-FOF-EI, in Docket No. 930405-EI. Specifically, FPL charges all costs including capital to the Storm Damage Reserve. Once all capital charges are identified FPL utilizes offsetting accounts to balance the results back to Net Book (Plant in Service less accumulated depreciation) prior to the storm. In this case FPL recorded \$58 million dollars of additions to plant in service. In order to ensure that gross plant remains the same, \$21.7 million of CIAC was used to offset the \$58 million of additions charged reducing it to the pre-storm amount. Mr. Davis explained this in response to questioning from OPC’s counsel. 145-146, 203-205 (Exhibit 2). Because Staff has recommended that all capital be charged to rate base there is no need for any adjustment to the \$58 million; therefore, the \$21.7 million adjustment is unnecessary and duplicative. Also, an

adjustment that removes the additional \$21.7 million from the deficit balance to the storm damage reserve, results in a credit entry for which a debit entry must be specified or the books would not balance. To this end, FPL sought clarification from the Staff.

4. OPC has no additional need to rebut or cross-examine witnesses on this issue. Having decided to recommend that FPL capitalize certain costs instead of charging them against the storm damage reserve, it becomes simply a matter of Staff determining whether, as a matter of accounting arithmetic, to remove the \$21.7 million from its recommended adjustment or to propose an alternate accounting treatment. Again, it is axiomatic that debits must equal credits.

5. OPC further suggests that FPL failed to carry its burden of proof on this point. In fact, FPL proposed maintaining the existing methodology that it believes was approved by the Commission in 1995 in its Order No. PSC-95-0264-FOF-EI, in Docket No. 930405-EI. Instead, Staff has recommended that FPL should book as capital costs the normal cost of replacement in the amount of \$58 million and not to charge those against the storm damage reserve. FPL's request has nothing to do with meeting a burden of proof, but rather understanding the specific accounting treatment associated with Staff's recommendation.

WHEREFORE, for the above and foregoing reasons, Florida Power & Light Company respectfully requests that the Commission deny OPC's Motion to Exclude.

Respectfully submitted,

By: s/ R. Wade Litchfield
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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Post-Hearing Brief, has been furnished electronically and by United States Mail this 18th day of July, 2005, to the following:

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