BEFORE THE 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 ORDER NO. PSC-05-0937-FOF-EI ISSUED: September 21, 2005

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

APPEARANCES:

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On behalf of Florida Power & Light Company (FPL or the Company)

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On behalf of Florida Retail Federation (FRF)

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On behalf of Thomas and Genevieve E. Twomey (Twomeys) and AARP

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On behalf of the Florida Public Service Commission (Staff).

FINAL ORDER APPROVING STORM COST RECOVERY SURCHARGE

BY THE COMMISSION:

I. BACKGROUND

On November 4, 2004, Florida Power & Light Company ("FPL" or "Company") filed a petition seeking authority to recover prudently incurred restoration costs, in excess of its storm reserve balance, related to the three major hurricanes that struck its service territory in 2004. In its petition, FPL asserted that as a result of Hurricanes Charley, Frances, and Jeanne, FPL estimated its extraordinary storm-related costs to be approximately $710 million, net of insurance proceeds, which would result in a deficit of approximately $356 million in its storm reserve fund at the end of December 2004. FPL proposed to recover $354 million of this estimated deficit through a monthly surcharge to apply to customer bills over a 24-month recovery period. According to FPL's petition, the amount that was in its storm reserve as of December 31, 2004 was approximately $354 million.

On November 19, 2004, FPL filed a petition seeking approval to implement its proposed surcharge on a preliminary basis, subject to refund, pending our final order in this docket. Along with its petition, FPL filed a tariff sheet reflecting its proposed surcharge by rate class. By Order No. PSC-05-0187-PCO-EI, issued February 17, 2005, we granted FPL's request to implement its proposed surcharge on a preliminary basis, and the preliminary surcharge became effective, subject to refund, for meter readings taken on or after February 17, 2005.

By Order No. PSC-05-0283-PCO-EI, issued March 16, 2005, we granted FPL leave to amend its original petition to reflect an updated estimate of the storm-related costs contained in its original petition. In its amended petition, filed February 4, 2005, FPL updated its estimate of extraordinary storm related costs to approximately $890 million, net of insurance proceeds, which would result in a deficit of approximately $536 million in its storm reserve fund at the end of December 2004. By its amended petition, FPL proposes to recover $533 million of this estimated deficit through a monthly surcharge to apply to customer bills based on a 36-month recovery period.

On April 6 and April 11-13, 2005, we held customer service hearings in Ft. Myers, Port Charlotte, Daytona Beach, Melbourne, Stuart, and West Palm Beach. On April 20 and 21, 2005, we conducted a technical hearing on FPL's amended petition. The Office of Public Counsel ("OPC"), Florida Industrial Power Users Group ("FIPUG"), Florida Retail Federation ("FRF"), Thomas P. and Genevieve E. Twomey ("Twomeys"), and AARP participated as Intervenors in

the proceeding. Following the hearing, each party filed a post-hearing brief and/or statement of issues and positions.

By this Order, as discussed in greater detail below, we approve FPL's amended petition to recover, through a monthly surcharge applied to customers' bills over a 36-month period, its prudently incurred restoration costs in excess of its storm reserve balance related to the hurricanes that struck its service territory in 2004. However, in determining which costs were appropriately charged to FPL's storm reserve, we do not accept the methodology used by FPL. Instead, we use a "modified incremental cost approach" that addresses both capital items and income statement items, as discussed below. We find that the costs charged to FPL's storm reserve under this approach are reasonable and prudent expenditures and are appropriately recovered through this surcharge.

We have jurisdiction over this matter pursuant to Chapter 366, Florida Statutes, including but not limited to Sections 366.04, 366.05 and 366.06, Florida Statutes.

II. APPROPRIATE CHARGES TO STORM RESERVE

A. Methodology for Booking Costs to Storm Reserve

By Order No. PSC-93-0918-FOF-EI, issued June 17, 1993, in Docket No. 930405-EI, In re: Petition to implement a self-insurance mechanism for storm damage to transmission and distribution system and to resume and increase annual contribution to storm and property insurance reserve fund by Florida Power and Light Company ("1993 Order"), this Commission authorized FPL "to implement a self insurance approach for the costs of repairing and restoring its transmission and distribution systems in the event of hurricane, storm damage or other natural disaster" through annual contributions to its Storm and Property Insurance Reserve Fund ("storm reserve"). In addition, the Commission required FPL to prepare and submit a study addressing primarily two matters: (1) the appropriate amount to be contributed annually to its storm reserve; and (2) the types of costs that FPL intended to charge to its storm reserve.

In response to the 1993 Order, FPL filed its study on October 1, 1993 ("1993 Study" or "Study"). With respect to the appropriate annual contribution to the storm reserve, the 1993 Study recommended a $7.1 million annual accrual. With respect to the types of costs to be charged to the storm reserve, the 1993 Study described three alternative approaches for determining the amounts to be charged to the storm reserve and recommended use of an approach identified as the Actual Restoration Cost Approach.

In Order No. PSC-95-0264-FOF-EI, issued February 27, 1995, in Docket No. 930405-EI ("1995 Order"), this Commission addressed the 1993 Study. The 1995 Order was entitled "Notice of Proposed Agency Action Approving Storm Damage Study and Adjustments to Self Insurance Mechanism." With respect to the Study, the Commission stated at page 4 of the Order, in relevant part:

> FPL's study provided sufficient analysis to indicate the appropriate annual amount that should be contributed to the storm reserve fund at this time.
>
> In addition, the study addressed the issues raised in the [1993 Order] concerning the types of expenses that would be charged to the reserve. However, we have the authority to review any expenses charged to the reserve for reasonableness and prudence. FPL states that it would use the Actual Restoration Cost Approach for determining the appropriate amounts to be charged to the reserve. This methodology is consistent with the manner in which replacement cost insurance works.

While the Commission found the study sufficient to indicate the appropriate annual amount to be contributed to FPL's storm reserve, it ultimately did not approve the $7.1 million annual accrual proposed in the study, but instead approved an annual accrual amount of $10.1 million arrived at through subsequent discussions between FPL and our staff. With respect to the types of costs to be charged to the storm reserve, the Commission made no express findings concerning the appropriateness or reasonableness of the methodology proposed in the Study. The Commission stated that it was "considering the appropriateness of opening a rulemaking proceeding to establish uniform guidelines for determining when the storm reserve should be charged and what costs should be charged to it."

The Commission stated its conclusions concerning the 1993 Study in an ordering paragraph at the conclusion of the Order, which stated:

> ORDERED that the storm damage study submitted by Florida Power & Light Company is hereby found to be adequate.

A threshold issue in this case is whether this Commission, by its 1995 Order, approved the methodology proposed in FPL's 1993 Study concerning the types of costs to be charged to the storm reserve and, in turn, whether our decisions in this docket are limited to determining whether FPL complied with that methodology. FPL argues that the Commission, in its 1995 Order, approved use of the Actual Restoration Cost Approach recommended in the Study and cannot now apply a new standard retroactively. Each of the Intervenors takes the position that the Study and the 1995 Order are not legally dispositive of our decisions in this docket concerning what costs are appropriately charged to the storm reserve.

In support of its position, FPL emphasizes the title of the 1995 Order, "Notice of Proposed Agency Action Approving Storm Damage Study and Adjustments to Self Insurance Mechanism." Based on the title of the 1995 Order, FPL asserts that the Commission approved the 1993 Study, thus necessarily approving FPL's recommendation that the Actual Restoration Cost Approach be used for charging costs to the storm reserve. FPL also cites to a passage in the Order that it believes shows the Commission's intent to approve the categories of costs that should be charged to the storm reserve. That passage reads:

> In addition, the study addressed the issues raised in the [1993 Order] concerning the types of expenses that would be charged to the reserve. However, we have the authority to review any expenses charged to the reserve for reasonableness and prudence. FPL states that it would use the Actual Restoration Cost Approach for determining the appropriate amounts to be charged to the reserve.

FPL asserts that the Commission, by that language, retained only the authority to review the reasonableness and prudence of specific charges that FPL may make in the categories listed in the Study. FPL states that it has consistently applied the Actual Restoration Cost Approach in accounting for the costs of eight storms between 1993 and 2003, without challenge from the Commission or any party. Finally, FPL asserts that none of the Intervenors have provided evidence demonstrating that circumstances have changed warranting a departure from the Actual Restoration Cost Approach.

In support of its position, OPC emphasizes that the Commission, in its 1995 Order, found only that the Study was "adequate" and referred to the possibility of convening rulemaking proceedings to develop uniform standards for storm accounting applicable to all utilities. OPC dismisses FPL's conclusion that the lack of a rulemaking proceeding to date signifies the Commission's support for the Actual Restoration Cost Approach, instead arguing that the lack of a rulemaking proceeding signifies only that the need recognized by the Commission remains unfulfilled. OPC states that its position is not altered by the fact that FPL used this methodology between 1993 and 2003 without controversy; OPC asserts that those occasions were simply not sufficiently material to attract attention, and that the issue remained latent during that period.

OPC further argues that if we do regard its 1995 Order as a form of approval, changes in circumstances since the issuance of that order allow us to consider use of a different approach. OPC asserts that FPL, in the 1993 Study, justified its Actual Restoration Cost Approach, in part, on its expectation that it would continue to have in place commercial insurance on its transmission and distribution facilities. OPC notes that the Study 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.

OPC points out that FPL today has no insurance on its transmission and distribution facilities, which constitute the bulk of its storm-vulnerable assets. OPC contends that this change in circumstances allows us to consider using a different methodology.

We find that this Commission's 1995 Order was not intended to approve the methodology proposed in FPL's 1993 Study as the standard by which we must determine which costs are appropriately charged to FPL's storm reserve. In reaching this conclusion, we recognize that the title of the 1995 Order indicates that it "approved" the Study, but we believe that the body of the Order, and a review of other Commission orders, strongly suggest that such approval was not intended for the purpose asserted by FPL in this proceeding.

While the title of the 1995 Order indicates that it "approved" the 1993 Study, the Order does not expressly approve or otherwise state any intent to implement the specific recommendations contained in the Study. First, with respect to the appropriate annual contribution to the storm reserve, the Commission found the study sufficient to indicate the appropriate annual amount to be contributed to FPL's storm reserve but did not approve the $7.1 million annual accrual proposed in the study. Second, with respect to the types of costs to be charged to the storm reserve, the Commission did not expressly approve the methodology proposed in FPL's study and made no finding that the methodology was "reasonable" or "appropriate" or should otherwise be blessed as the continuing standard for charging costs to the storm reserve. Third, the Commission concluded the Order by finding only that the Study was "adequate." In this context, we conclude that the title of the Order was intended to express that the 1993 Study sufficiently satisfied the requirements of the Commission's 1993 Order requiring that the Study be conducted and submitted. Giving effect to the Order title as proposed by FPL would require going beyond the specific language and findings in the Order.

This view of the 1995 Order is consistent with Commission orders addressing the same issue with respect to other investor-owned electric utilities in Florida. In particular, in Order No. PSC-95-0255-FOF-EI ("TECO Order")[1], issued just four days prior to FPL's 1995 Order, the Commission addressed the same issue with respect to Tampa Electric Company ("TECO"). In that Order, which was also entitled "Notice of Proposed Agency Action Order Approving Storm Damage Study," the Commission specifically found that the replacement cost approach proposed in a study submitted by TECO was "a reasonable methodology for determining the appropriate amounts to be charged to the storm reserve." Further, as it did in FPL's 1995 Order, the Commission noted that TECO's proposed approach was consistent with the provisions of TECO's prior insurance coverage. Despite having made a specific finding that TECO's proposed approach was reasonable – a finding notably absent from the 1995 Order – the Commission went on to explain the extent of its authority to review costs charged to TECO's storm reserve:

> While we sympathize with Staff's concerns regarding the appropriateness of particular proposed expenses listed by TECO, it is our understanding that this list is merely setting forth examples of expenses that the utility may wish to charge against storm reserves. The list is a general guideline of categories to be recovered; it is neither all inclusive or exclusive. Because of the unpredictable nature of any given storm, it seems premature to make a determination of the prudency of any particular charge at this time. In the event of a storm, the utility will bear the burden of showing that specific charges against reserves are prudent and reasonable. . . . We retain the right to review the costs and disallow any that are found to be inappropriate.

Based on this Order, it appears to us that the Commission, by retaining the authority to review the prudence and reasonableness of costs charged to the storm reserve, also intended to

[1] Issued February 23, 1995, in Docket No. 930987-EI, In re: Investigation into Currently Authorized Return on Equity of Tampa Electric Company.

retain the authority to determine whether a particular *category* of costs was appropriately charged to the storm reserve. The Commission left the burden on the utility to show that specific charges against storm reserves are appropriate.

Our review of Commission orders related to other electric utilities shows that this Commission intended that each utility be held to the same standard. Most notably, in an order addressing a request by Gulf Power Company to amortize hurricane-related expenses to its storm reserve,[2] the Commission cites the TECO Order in the same breath as the 1995 Order as the standard for the Commission's review of costs charged to a utility's storm reserve.

In conclusion, we find that the 1995 Order was not intended to approve the methodology proposed in FPL's 1993 Study as the standard by which we must determine which costs are appropriately charged to FPL's storm reserve. This finding leaves us to answer the question of whether the methodology proposed in FPL's 1993 Study or some other methodology is most appropriate for determining which costs should be booked to the storm reserve. As discussed below, we believe that a modified incremental cost approach is the appropriate methodology to be used in this docket for booking costs to the storm reserve.

In FPL's 1993 Study, FPL presented three methods to determine the amount of storm-related costs to be charged to the storm reserve. The first method was the Actual Restoration Cost Approach discussed above. Actual restoration costs were defined as those direct and indirect costs incurred to safely restore customer service or to return plant and equipment to its original pre-storm operating condition. The result of the Actual Restoration Cost Approach is to restore the plant in service and accumulated depreciation accounts to their pre-storm balances. To accomplish this, all storm-related restoration costs, both O&M and capital, are charged to the storm reserve. Essentially, this approach mimics the replacement cost insurance that FPL had prior to Hurricane Andrew in 1992. This is the approach that FPL utilized in charging costs to the storm reserve since 1993 and is the approach advocated by FPL in this docket.

The second method presented by FPL in its 1993 Study is the Actual Restoration Cost Approach with Net Book Value Adjustment. Under this approach, the actual restoration costs charged to the storm reserve are reduced by capitalizing the normal replacement cost of replaced facilities less the net book value of the retired assets.

The third method presented by FPL in its 1993 Study is the Incremental Cost Approach. Using this approach, the actual restoration costs are reduced by non-incremental, or normal, O&M expenses. According to FPL, however, the actual restoration costs would be increased to recover incremental indirect costs such as lost revenue. As envisioned by FPL, no costs would be capitalized to rate base under this approach. Rather, all capital costs are charged to the storm reserve.

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[2] Order No. PSC-96-0023-FOF-EI, issued January 8, 1996, in Docket No. 951433-EI, In re: Petition for Approval of Special Accounting Treatment of Expenditures Related to Hurricane Erin and Hurricane Opal by Gulf Power Company.

Neither the second or third method included in FPL's 1993 Study was advocated by any party in this docket. However, a fourth method was advocated by OPC. OPC witness Majoros presented a method identified as the "OPC Storm Damage Guidelines." In general, the OPC guidelines are a combination of FPL's Actual Restoration Cost Approach with Net Book Value Adjustment and the Incremental Cost Approach methodologies. On the capital side, the OPC guidelines capitalize normal replacement cost of plant and account for retirements and the cost of removal. Only the incremental or extraordinary costs are charged to the storm reserve under this method. For O&M expenses, the OPC guidelines only allow incremental O&M expenses to be charged against the storm reserve. However, the OPC guidelines prohibit the consideration of any lost revenue or uncollectible expenses.

In general, we agree with witness Majoros that only extraordinary costs should be charged to the storm reserve. This includes both capitalizing the normal replacement cost of plant and allowing only incremental O&M expenses to be charged against the storm reserve. However, we believe that the OPC guidelines are too restrictive in certain areas such as lost revenue and uncollectible expenses. Therefore, we find that a modified incremental cost approach that addresses both capital items and income statement items is the appropriate methodology to be used for booking costs to the storm damage reserve in this docket. Under this approach, we find that adjustments to the amounts booked by FPL to its storm reserve are in order. These adjustments are set forth in detail below.

B. Adjustments to Amounts Booked to Storm Reserve

Non-Management Employee Labor Expense

Consistent with the Actual Restoration Cost Approach it advocated in this docket, FPL charged $45,389,456 of non-management employee labor expense to its storm reserve. Storm-related payroll costs -- regular, overtime, and temporary relieving pay -- are specifically identified as chargeable to the storm reserve under the Actual Restoration Cost Approach.

FPL states that OPC's incremental approach to payroll costs would introduce undesirable incentives. In meeting the objective of safe and rapid restoration, FPL states that it mobilizes virtually the entire organization in the restoration effort in one way or another. FPL also states that the normal work of those who are assigned directly to storm support is either performed by others "doubling down," or is done later, usually with overtime. According to FPL, if regular base compensation is not allowed to be charged against the storm reserve, the incentive is not to utilize available FPL resources but instead to leave them to perform their regular work and increase the utilization of contractors and "foreign" utilities. FPL further states that this would not only slow overall restoration efforts (since FPL resources can be mobilized more quickly than third parties can be brought in), but would also be more costly for customers because the unit costs of outside resources is significantly higher, on average, than FPL's costs.

OPC asserts that FPL's approach requires that customers pay twice for the same work, a result he refers to as "double dipping." Witness Majoros testified that 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 that customers pay, effectively requires

customers to pay twice for the same costs. Witness Majoros stated that charging those costs to the storm reserve would fail to recognize that FPL's basic rates include recovery of normal cost, such as base salaries. He stated that FPL's proposal would collect twice; once through base rates and again through the proposed base rate surcharge. Witness Majoros concluded that this practice is not fair to ratepayers and that it would unjustly enrich FPL's management and shareholders.

According to OPC, FPL attempts to justify charging its base salaries to the storm reserve by claiming that it has catch-up and backfill work. OPC states that 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 that FPL would have allocated some of its work force differently justify allowing FPL to "double dip" now. Further, OPC states that the burden is on FPL to prove that any catch-up work and backfill costs are properly chargeable to the storm reserve.

OPC states that FPL 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 than base rate revenue losses. OPC contends that this argument misses the basic point that customers are paying twice for the same regular salary, once through base rates and again in a storm surcharge. OPC asserts that since the storm reserve was designed to compensate FPL 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.

OPC emphasizes that 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 customers under the given circumstances. OPC states that cost shifting to essentially collect twice for the same eight hours worth of work is neither cost effective for the customer nor prudent. OPC witness Majoros stated that while FPL's approach based on its 1993 study may be appropriate for tax or insurance purposes, it is wrong when seeking a rate increase from customers. He further stated that our staff auditor agreed that it is this Commission's policy not to allow "double dipping" and that this cost should be disallowed.

OPC concludes that we 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.

We agree with OPC witness Majoros that by moving all O&M expenses associated with the storm repair to the storm reserve, without taking into account the normal level of expenditures funded by base rates that customers pay, requires customers to pay twice for the same costs. We believe that FPL has not demonstrated that the non-management employee labor expense it charged to the storm reserve is not already being recovered in its base rates. We note that the issue of booking lost revenues to the storm reserve is addressed separately in this Order. In conclusion, we find that FPL's non-management employee labor expense charged to the storm

reserve shall be adjusted as follows to reflect only the incremental costs above its budgeted levels for the year end 2004:

Non-Management Employee Labor Expense	
FPL Charge to Storm Reserve	$45,389,456
Commission-Approved Charge	$34,489,456
Adjustment	$(10,900,000)

Managerial Employee Payroll Expense

Consistent with the Actual Restoration Cost Approach it advocated in this docket, FPL charged $62,196,295 of managerial employee payroll expense to its storm reserve. Storm-related payroll costs -- regular, overtime, and temporary relieving pay -- are specifically identified as chargeable to the storm reserve under the Actual Restoration Cost Approach.

OPC asserted that $21.1 million attributable to management employee labor cost should be excluded from amounts charged to the storm reserve. FPL stated that OPC gives no rationale for their position, but FPL assumes that it is based on the use of OPC's "incremental" approach. FPL also stated that there is no record support for the amount of OPC's proposed management payroll adjustment. As it argued with respect to non-management employee labor expense, FPL stated that OPC's incremental approach to payroll costs would introduce undesirable incentives. Lastly, FPL asserted that even if OPC witness Majoros' adjustment was appropriate, he has overstated it substantially because he failed to take into account the approximately 6% of regular payroll that is charged to adjustment clauses and approximately 22% that is charged to capital on an annual basis.

OPC witness Majoros testified that FPL proposes to charge the full labor costs associated with storm recovery efforts to the storm reserve. This includes normal salaries, which are included in the Company's annual budget. He stated that the ratepayers are paying for these salaries through base rates. Witness Majoros further stated that customers should not be required to pay for these regular salaries twice. Witness Majoros stated that it may be appropriate to use a "replacement cost" approach for calculating tax losses and insurance claims, but it is wrong when seeking a rate increase for customers. He contends that this Commission should implement strict accounting procedures for FPL to follow to eliminate the increased rates that result when customers are required to pay twice for the same expense.

OPC noted that witness Davis 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. OPC stated that 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."

Witness Majoros testified that FPL witness Davis' claim that a portion of these salaries are charged to cost recovery clauses and capital is not relevant because FPL can still charge the salaries attributable to the clause through the clause proceeding. He also testified that 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. In conclusion, OPC stated that $21.1 million attributable to management employee labor cost should be excluded from amounts charged to the storm reserve.

We agree with witness Majoros that moving all O&M expenses associated with the storm repair to the storm reserve, without taking into account the normal level of expenditures funded by base rates that customers pay, requires customers to pay twice for the same costs. We believe that FPL has not demonstrated that the managerial employee expense it charged to the storm reserve is not already being recovered in its base rates. We note that the appropriateness of lost revenues and catch-up work is addressed separately in this Order. In conclusion, we find that FPL's managerial employee labor expense charged to the storm reserve shall be adjusted as follows to reflect only the incremental costs above its budgeted levels for the year end 2004:

Managerial Employee Payroll Expense	
FPL Charge to Storm Reserve	$62,196,295
Commission-Approved Charge	$41,096,295
Adjustment	$(21,100,000)

Costs of Employee Training for Storm Restoration Work

FPL witness Davis testified that restoration activities are performed in accordance with detailed plans and procedures, which are practiced before hurricane season. FPL witness Whalin described these activities in detail. Witness Davis also testified that all of the costs associated with these training activities are charged to normal operating costs, not to the storm reserve. None of the parties rebutted this testimony.

In its brief, OPC states that it appears that the utility has not charged any of the annual employee training activities to the storm reserve, and reiterates its belief that it would not be appropriate to do so. FRF has stated in its position that FPL has not properly quantified the costs of training charged to the storm reserve; however, neither FRF nor any other party has stated an amount by which the reserve should be adjusted for training costs.

Based on FPL's un-rebutted testimony, it appears that no employee training costs for storm restoration work which are part of normal activities have been charged to the storm reserve. Accordingly, we find that no adjustment is necessary.

Tree Trimming Costs

OPC witness Majoros testified that "tree trimming expense should be limited to the amounts which exceed FPL's normal expenses. I do not have enough information to make an adjustment for tree trimming expense at this time." The record indicates that total tree trimming expense charged to the storm reserve was $89,435,466. Budgeted tree trimming expense for 2004 was shown as $47 million, and actual expense was shown as $46 million. The record also provides monthly detail of FPL's budgeted and actual tree trimming expenses for January 2004 through January 2005.

During cross examination, FPL witness Davis acknowledged that the comparison of the budgeted verses actual amounts indicated that, for the six month period from August 2004 through January 2005, the budgeted amount exceeded actual expenditures by approximately $4.2 million. In its brief, OPC states that, based on Mr. Davis' testimony and the favorable variance in the 2004 budget, tree trimming expense charged to the storm damage reserve should be reduced by $1 million. Further, OPC states that, based on the favorable budget variance during the six month period from August 2004 through January 2005, the adjustment should be $4.2 million dollars.

In its brief, FPL states that it disagrees with OPC's proposal to adjust tree trimming expenses to the extent that they cause the utility to exceed its budget for that activity. FPL states, however, that if OPC's approach were used, the amount of the adjustment should be limited to the $1 million variance from the annual budget. In its brief, FPL argues that "comparing only segments of an annual budget improperly ignores any cyclical or variable impacts reflected in the full budget cycle." FPL also notes that in arriving at other proposed adjustments, OPC witness Majoros compared salaries and vehicle expenses to annual budgeted amounts.

We recognize that FPL's budgeted tree trimming expense for the period January 2004 through July 2004 was approximately $26.6 million, while its actual recorded expenses were approximately $28.8 million. We believe that this unfavorable variance of $2.2 million for the period preceding the hurricanes supports FPL's argument that events other than the storm restoration effort could impact a budget variance. Based on our analysis of the evidence in the record, we find it reasonable to use the annual budget variance as the appropriate adjustment to remove non-incremental costs from the amount charged to the storm reserve. Therefore, we find that tree trimming expenses booked to FPL's storm reserve shall be reduced by $1 million, as follows:

Tree Trimming Costs	
FPL Charge to Storm Reserve	$89,435,466
Commission-Approved Charge	$88,435,466
Adjustment	$ (1,000,000)

Company-Owned Fleet Vehicles Costs

OPC states that vehicle costs charged to the storm reserve should be limited to one half of the fuel costs charged to the storm reserve. OPC also states that an adjustment in the amount of $5.26 million should be made to FPL's charge to the storm reserve. Based on the information in the record, these statements appear to be inconsistent. The record reflects that FPL charged total vehicle costs of $8,088,177, including fuel costs of $947,140, to its storm reserve. FPL identified $5,261,887 as the amount of vehicle costs included in its 2004 budget; FPL agreed that it would have incurred this amount of expense in the normal course of business, whether or not there were hurricanes. There is nothing in the record quantifying the amount of fuel costs included in FPL's 2004 budgeted amount. An adjustment to limit vehicle expense to one half of the fuel costs would be $7,614,607 ($8,088,177 less $473,570). This is in contrast to the adjustment of $5,261,887 proposed by OPC witness Majoros.

In its brief, FPL states that it has charged vehicle expenses to the storm reserve in accordance with the Actual Restoration Cost Approach. FPL argues that even if OPC's proposed incremental approach is used, OPC's proposed adjustment of $5,261,887 should be decreased by $2.4 million, because that portion of the budgeted amount was related to capital projects. OPC objects to this rationale, stating that FPL does not differentiate between capital costs and operating expenses in its breakdown of charges to the storm reserve.

We find that an adjustment allowing only one half of the fuel cost charged to the storm reserve would be excessive and is not supported by the record. Rather, to prevent customers from being charged twice for the same cost, we find it appropriate to make an adjustment for the amount identified by FPL as the cost it would have incurred whether or not the hurricanes occurred. Accordingly, we find that vehicle expenses booked to FPL's storm reserve shall be reduced by $5,261,887, as follows:

Company-Owned Fleet Vehicles Costs	
FPL Charge to Storm Reserve	$8,088,117
Commission-Approved Charge	$2,826,230
Adjustment	$5,261,887

Call Center Costs

In his direct testimony, OPC witness Majoros stated: "Call center expenses for the storm recovery should be limited to the call overloads created by the storms. I do not have sufficient information to make an adjustment for call center expense at this time." In his rebuttal, FPL witness Davis responded that call center costs charged to the storm reserve consisted of the incremental costs of staffing the function and training employees. During cross examination,

witness Majoros admitted that he was aware of no information suggesting that FPL charged anything other than incremental call center costs to the storm reserve.

In its brief, OPC states that, based on witness Davis' testimony, FPL properly determined the costs of call center activities that should be charged to the storm reserve and charged only incremental call center costs to the reserve. FRF has stated in its position that FPL has not properly quantified the costs of call center activities charged to the storm reserve. However, neither FRF nor any other party has stated an amount by which the reserve should be adjusted for call center costs.

We agree with FPL and OPC that only appropriate incremental costs of call center activities have been charged to the storm reserve. Accordingly, we find that no adjustment is necessary.

Advertising and Public Relations Expense

FPL stated that it charged safety and storm-related public service advertising and media costs to the storm reserve consistent with the Actual Restoration Cost Approach. FPL witness Whalin testified that FPL 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. FPL witness Davis testified that all capital costs and all O&M costs incurred in connection with the three named hurricanes have been charged to the storm reserve. The record indicates that FPL charged $1,703,453.54 to its storm reserve for advertising related to the 2004 hurricane season.

Under the Storm Damage Guidelines proposed by OPC, all advertising expense (which includes any public relations expenses) should be excluded from the amount charged to the storm reserve. OPC stated that the purpose of its guidelines is to ensure that only extraordinary expenses are booked to the storm reserve. OPC argued that customers should not be required to pay a surcharge to receive the benefits of the basic function of keeping customers informed, particularly during emergencies. OPC contends that ensuring public safety is part of the regulatory framework under which FPL is required to provide safe, reliable electric service within its territory. OPC further argued that FPL is obligated to restore service to customers as quickly and safely as possible after hurricanes, and that part of restoring service safely is making sure customers have current information regarding the emergency. Thus, OPC contends that the $1,703,453.54 charged to the storm reserve should be removed.

We agree with OPC that FPL should book only extraordinary expenses to its storm reserve account. The storm-related costs that should be booked to the storm reserve should be limited to those that are incremental to the level of normal operating and maintenance expenses that would have otherwise been incurred. The record indicates that FPL's total advertising expense for 2004 was $9,950,674, and that FPL's budgeted advertising expense for 2004 was $9,799,630. Consistent with our decisions on other cost categories, we find that FPL shall be permitted to charge its storm reserve only $151,044 for advertising and public relations expense, representing the difference between the advertising expense that was incurred and the amount

that was originally budgeted for 2004. Accordingly, we find that advertising and public relations expenses booked to FPL's storm reserve shall be reduced by $1,552,410 as follows:

Advertising/Public Relations Expense	
FPL Charge to Storm Reserve	$1,703,454
Commission-Approved Charge	$ 151,044
Adjustment	$1,552,410

Normal O&M Cost Offset and Uncollectibles Expense

The record indicates that FPL has not charged any "lost revenues" or "uncollectible expense" to the storm reserve, because such items would not be charged to the storm reserve under the Actual Restoration Cost Approach followed by FPL. However, FPL takes the position that if this Commission utilizes an incremental cost approach for charging storm costs to the storm reserve, the impact of lost base rate revenues and uncollectibles expense should be taken into account.

In his direct testimony, FPL witness Davis points out that during the hurricanes there were very significant outages during which sales and corresponding revenues were lost. Further, he testified that while hurricanes result in a reduction of some base rate costs because those costs are charged to the storm reserve, there are also reductions of base rate revenues. As articulated by FPL witness Davis and as agreed to by OPC witness Majoros, for the company to experience no base rate effect from the hurricanes, base rate expenses and base rate revenues would have to decrease by the same amount. To recognize this result, FPL believes that under the incremental cost approach, lost revenues should be considered an incremental cost and included as part of storm damage costs. FPL calculated lost base rate revenues due to the impact of the 2004 storm season to be $38.2 million.

Regarding uncollectible accounts receivable write-offs, FPL takes the position that if an incremental cost approach is used, uncollectible accounts receivable write-offs directly related to the storms should be charged against the storm reserve. In his rebuttal testimony, FPL witness Davis states that "the Company estimates that uncollectible accounts receivable increased nearly $6 million as collection efforts were suspended because field collectors were mobilized for storm duty."

OPC and the other Intervenors contend that charges to the storm reserve should be limited to the incremental and extraordinary costs of restoring service and repairing the physical system. In its brief, OPC states that "'Lost revenues' are not *costs* at all, and labeling them as such does not make them so." Further, the scope of recoverable storm costs adopted by OPC and endorsed by OPC witness Majoros specifically excludes recovery of lost revenues. Witness Majoros pointed out that lost revenues are not a cost incurred to restore service. Additionally,

OPC believes that it is improper to take into account estimated lost revenues without also quantifying the gains in revenue due to post hurricane economic activities. During cross-examination, OPC witness Majoros agreed that he had no reason to dispute the calculation of the $38.2 million in base rate revenue loss.

In addition, OPC asserts that uncollectible accounts receivable, consisting of money owed to FPL that FPL decides to write off, are not costs. OPC also takes the position that the amount of uncollectibles is speculative. OPC witness Majoros stated that OPC's proposed guidelines, which he endorsed, are designed to ensure that only extraordinary expenses would be booked to the storm reserve, and these guidelines specifically exclude uncollectible expense.

This Commission sets base rates on the basis of both projected expenses and the expectation of the utility realizing certain revenues. As set forth above, we have required various adjustments to the amounts FPL charged to its storm reserve in order to preclude FPL from recovering normal operating and maintenance (O&M) costs that are already recovered through base rates. However, this does not take into account the fact that, due to the outages that resulted from these storms, FPL has not realized the level of base rate revenues expected to cover these normal O&M costs. Thus, while we agree that lost revenues are not a cost, we find that the normal O&M costs that FPL charged to the storm reserve, which we removed from the storm reserve as set forth above, have not been recovered in base rates and should be eligible for recovery in the storm recovery mechanism. Therefore, we recognize lost revenues by allowing FPL to charge its storm reserve with normal O&M expenses totaling $33,814,297 that were not recovered in base rates.

Further, we find that there is a direct relationship between hurricane activity and the amount of uncollectible, or bad debt, expense incurred. We believe that bad debt expense is not excludable from recovery through the storm reserve simply because it is not a cost of repairing FPL's system and restoring service. We note that the recovery of uncollectible accounts receivable write-offs directly related to the storms was a consideration in our recent decision to allow Progress Energy Florida to recover $231.8 million in storm restoration costs. By Order No. PSC-05-0748-FOF-EI, issued July 14, 2005, in Docket No. 041272-EI, In re: Petition for approval of storm cost recovery clause for recovery of extraordinary expenditures related to Hurricanes Charley, Frances, Jeanne, and Ivan, by Progress Energy Florida, Inc., we allowed Progress to recover directly related uncollectible accounts receivable write-offs of $2.25 million. Consequently, we find it appropriate for FPL to charge its storm reserve with its estimated incremental $6.0 million of directly-related uncollectible expense. Any collection of this directly-related uncollectible expense shall be credited to reduce the amount of unrecovered storm damage costs, and directly-related uncollectible expense will be subject to the cumulative true-up at the end of the storm cost recovery period.

Backfill Work, Catch-Up Work, and Contracted Work Expenses

According to FPL, backfill work, catch-up work, and contracted work are all incremental expenses incurred that were directly caused by the hurricanes, but not charged to the storm reserve. FPL described catch-up work as normal operations and maintenance work that has been

postponed due to the urgency of the storm restoration and repairs but still must be performed and accomplished after the restoration is completed. FPL witness Williams discussed two examples of catch-up work: (1) the relocation of facilities due to a customer-required road widening and (2) pole replacements. According to witness Williams, typically, a road project's overall deadline does not change and a certain number of poles must be replaced according to need, regardless of the hurricane-damaged poles. Catching up on this type of work impacts normal ongoing operations until the backlog is completed, either through additional overtime hours or engaging additional contractors, the incremental cost of which is not charged to the storm reserve. As articulated by FPL, backfill work "is similar to catch-up work except that it is performed by a limited number of employees who remain behind during the storm restoration activities to address only the most pressing distribution related issues such as a thunderstorm caused outage." According to FPL, catch-up work and backfill work are real costs that are unavoidable.

As stated by FPL witness Davis, FPL "mobilizes all available employees with one common objective – restore power to customers as safely and as quickly as possible. This effort required the involvement of linemen and other field personnel." Witness Davis goes on to describe why backfill and catch-up work take place. While linemen and other field personnel are working on the actual restoration, staff personnel support the field efforts by various means, including, but not limited to, organizing and running restoration sites and distributing food to crews in the field. According to witness Davis,

> [A]s a result, the duties normally performed by staff personnel do not go away; they are merely deferred or performed by others during storm restoration. 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 charged to normal operating expense, not to the Storm Damage Reserve. The company incrementally spent $7.0 million on contractors and outside professional services and $9.0 million of overtime was charged to normal operating expenses during the last two months of 2004.

FPL states that completing the backfill and catch-up work impacts normal on-going operations until the backlog is completed either through additional overtime or engaging additional contractors.

OPC and the other Intervenors believe that catch-up, backfill, and incremental contractor work should be considered only if they meet certain criteria. According to OPC, "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." OPC witness Majoros stated that to be recoverable through the storm reserve, costs should be incurred to facilitate restoration activities. OPC believes that FPL's claim for backfill and catch-up work should be considered only if we remove regular, normal payroll costs from the amount charged to the storm reserve. Further, OPC believes that FPL has the burden to demonstrate that specific catch-up work exists

after "the modifications" and that this work cannot be performed by employees during regular hours or by contractors within the normal amount of budgeted contract work.

Although we do not believe that these types of costs fall into the category of "extraordinary," we believe that these costs could be considered incremental if we could determine that the specific expenditures supporting the $9.0 million and $7.0 million amounts quoted by witness Davis were beyond regularly budgeted amounts. We also believe that these types of costs may have been incurred to facilitate restoration activities. However, the record in this case discloses no information regarding regularly budgeted costs for these expenditures and no calculations in support of the proposed amounts. Furthermore, we do not believe that FPL has proven that the catch-up work and backfill work could not be performed by employees during regular hours or by contractors within the normal amount of budgeted contract work. The burden is on FPL to demonstrate and document that there was such overtime, that it was caused directly by loss of personnel to storm assignments, and that it was not budgeted for. We find that FPL has not provided sufficient information to carry its burden to demonstrate that the catch-up and backfill amounts were incremental to those the utility would incur under normal circumstances. We do not believe that because these costs were incurred in the last two months in 2004 is sufficient to establish that these costs were beyond regularly budgeted amounts. Accordingly, FPL shall not charge its storm reserve with its proposed $7.0 million for contractors and outside professionals and its proposed $9.0 million for overtime.

Materials and Supplies Costs

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. FPL 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. Witness Davis claims that any adjustment would be insignificant because virtually the entire 2004 budget was spent without consideration of the amounts charged to the storm reserve. OPC argued that 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, OPC asserts that protecting the customers from potential "double dipping" by FPL under any circumstances is significant regardless of the dollar amounts involved and that all dollars associated with this "double dipping" should be eliminated.

OPC also contends that FPL should not charge the costs of replenishing supplies and inventories to the storm reserve. According to OPC, since there is a difference between the budgeted and actual costs for materials and supplies, FPL has not taken into account the normal, annual costs of replenishing materials and supplies. OPC states that to the extent FPL has charged normal, annual costs to the storm account, that amount – or $1.5 million - should be removed.

FPL contends that there is no dispute over this issue. FPL notes that OPC's prehearing position was that "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." FPL further stated that OPC witness Majoros acknowledged that he has no evidence that FPL has charged materials and supplies inventory costs to the storm reserve in a manner inconsistent with OPC's position.

We agree with OPC that FPL should charge only the costs of materials and supplies used during restoration activities to the storm reserve and should not charge the costs of replenishing supplies and inventories to the reserve. FPL has stated that it has not charged any replenishment costs to the storm reserve. Further, OPC witness Majoros acknowledged that he had no evidence that FPL has charged materials and supplies inventory costs to the storm reserve in a manner inconsistent with OPC's position. Based on this record, we find that FPL has not charged any costs of materials and supplies to the storm reserve. Therefore, we find that no adjustment is necessary.

Capital Costs

FPL witness Davis identified approximately $58 million of capital additions that were necessary to return FPL's electric system to its pre-storm condition. Approximately $36.4 million of "plant in service" was removed from service and retired due to storm damage. Witness Davis identified approximately $12.2 million for the cost of removal of storm-damaged plant items. Witness Davis also stated that it was necessary to record $21.7 million of Contributions in Aid of Construction (CIAC) to restore the accounts to their pre-storm levels.

Consistent with the Actual Restoration Cost Approach it used, FPL believes that all storm-related plant additions and cost of removal should be charged to the storm reserve. This proposed treatment is consistent with the way that replacement cost insurance works. However, the Intervenors assert that costs for new plant additions under normal operating conditions should be booked to plant in service rather than the storm reserve. The Intervenors further assert that only new plant additions that exceed this level should be booked to the storm reserve. While there is disagreement over how the $58 million in capital additions should be booked, there appears to be no disagreement over the dollar amount.

As discussed above, we believe that charges to FPL's storm reserve should be adjusted to remove items normally related to base rates. Consistent with that approach, we find that the $58 million of capital costs associated with FPL's storm recovery efforts shall be booked to rate base, as plant in service.

The Intervenors disagree with how FPL booked cost of removal and with FPL's estimate of the cost of removal. OPC witness Majoros testified that FPL's storm-related removal costs should have been as high as $36.4 million, equaling the level of retired plant. Historic plant balance and depreciation reserve activity from FPL's 2004 depreciation study, shows that poles, towers, and overhead lines for transmission and distribution have experienced costs of removal ranging from 88% to 162% of the amount of retirements. Using historical data as a comparison, it might be expected that FPL's cost to remove and retire $36.4 million of plant from service would far exceed the $12.2 million figure given by FPL witness Davis. However, witness Davis

testified that FPL's estimate for removal costs was taken from the FPL work management system, which tracks labor and other costs required to perform particular tasks.

We find it appropriate to use FPL's $12.2 million removal cost estimate because this value was based on storm restoration activity tracked by FPL's work management system. This value is closer to FPL's actual removal cost than historic plant removal activity might indicate. Historic activity might be influenced by a number of factors such as age of retired plant or other unusual events. The goal is to book the actual cost of removal.

FPL witness Davis agreed that charging all capital costs to the storm reserve entailed quantifying the normal plant account amount and then adjusting that amount by an additional entry called CIAC. Witness Davis went on to further state that the adjustment was not really CIAC, but was the equivalent of it. The purpose of the $21.7 million "CIAC" adjustment was to reduce the $58 million of new gross plant back to the estimated $36 million of property retired as a result of the hurricanes. OPC witness Majoros testified that this CIAC adjustment was an artificial mechanism for aging new replacement plant items to a predetermined level equal to that which existed prior to the storms and should not be allowed. We agree with witness Majoros that charging $21.7 million of "CIAC" against the storm damage reserve is not appropriate.

In conclusion, we find that $58 million of capital costs shall be booked to rate base as plant in service rather than to FPL's storm reserve. Further, $12.2 million of removal costs shall be booked to the cost of removal reserve rather than to the storm reserve. Finally, the $21.7 million classified as CIAC shall not be charged against the storm reserve.

The proper accounting treatment for these adjustments is shown in the table below. The first entry is a credit to the storm reserve to remove the $91,900,000 from the surcharge amount. The second entry is a $21,700,000 debit to plant in service that increases the capital additions to plant back to the amount that would have been booked under normal conditions. The third entry is a $36,300,000 debit to accumulated depreciation to record retired plant as it normally would be recorded. The fourth entry debits accumulated depreciation to properly record the $12,200,000 cost of removal in a normal manner. The fifth, and last, entry is a debit to the storm reserve to transfer $21,700,000 from restoration costs that are recoverable through the surcharge to restoration costs that are not recoverable through the surcharge.

Entry No.	Account No.	Description	Debit	Credit
1	228.1	Storm Damage Reserve	---	$91,900,000
2	101	Plant in Service (CIAC)	$21,700,000	---
3	108	Accumulated Depreciation (Retired Plant)	$36,300,000	---

4	108	Accumulated Depreciation (Cost of Removal)	$12,200,000	---
5	228.1	Storm Damage Reserve (Not Recoverable in Surcharge)	$21,700,000	---
		TOTALS	$91,900,000	$91,900,000

C. Cut-Off Point for Charges to Storm Reserve

OPC argues that the Commission should establish a cut-off date for expenses to be charged to the storm reserve. Witness Majoros testified that FPL should stop charging items to the storm reserve once normal operations have resumed, outside contractors have been sent home, and employees are back to working a normal workweek. In its brief, OPC recognized that this point in time has been difficult to determine and suggested that, based on FPL witness Williams' testimony, the appropriate cut-off date is July 31, 2005. The positions of FIPUG, FRF, Twomeys, and AARP appear to be based on the argument made by witness Majoros or based on a January 1, 2005, cut-off date that limits the charges to the calendar year of the hurricanes.

FPL argues that its accounting practice is consistent with the direction given by Rule 25-6.0143, Florida Administrative Code, because application of the rule provides that all costs determined to be the result of storm damages should be charged to the storm reserve. Witness Davis cited the 1995 Order that he believes allowed follow-up work which occurred after Hurricane Andrew to be charged to the reserve. Witness Davis argued that the appropriate criterion for determining whether costs of the repair work should be charged to the storm reserve is the root cause of the work, not the timing of the work.

At issue here is whether additional criteria for storm restoration cost recovery should be established based on the timing of the work and the absence of "foreign" (non-FPL) utilities or outside contractors. This concern is operational rather than accounting. We find that the record does not support a cut-off date based on the absence of foreign utilities or other factors that would indicate the utility's normal operations have resumed. After the emergency phase of restoration ended and normal operation resumed, FPL began multiple sweeps of its system to bring its infrastructure back to pre-failure state. FPL witness Williams testified that the projects which OPC witness Majoros believed to be questionable were follow-up projects conducted in the second phase of storm restoration to permanently repair damages caused by the hurricanes. As a policy, setting an arbitrary cut-off date based on the calendar year or the absence of "foreign" utilities may give a perverse incentive for utilities to rush the work and to retain foreign utilities or outside contractors in a less cost effective manner. Depending on the nature and extent of the damage caused by a hurricane, permanent repair may require less than several weeks or more than one year. Therefore, we find that a case-by-case review is a better policy.

At the hearing, witness Williams provided the estimated completion dates of the feeder and lateral work (June 30 and July 31, 2005, respectively), described FPL's procedures that differentiate the regular and storm-repair work orders, and stressed FPL's use of bidding to perform the work in a cost effective manner. Further, FPL has provided a revised cost estimate of $26 million for its incomplete storm-related projects with a cap on the total amount. Given the nature and the extent of the hurricanes impacting the state in 2004 and the demonstration by FPL as described above, we believe FPL's estimated completion date of July 31, 2005 is reasonable.

In addition, we believe the follow-up project cost must be demonstrated to be related to the 2004 storm damages and an audit by our staff after completion of the project is a more effective way to limit the amount in question. A Commission-staff audit can address whether FPL followed its stated procedures, whether FPL followed the cost accounting methodology approved in this proceeding, and whether the actual costs exceeded FPL's cost estimate or the cap. FPL witness Davis agreed that a Commission-staff review after project completion is reasonable.

In conclusion, we find that FPL shall stop charging costs to the storm reserve no later than July 31, 2005, for restoration work related to the 2004 storm season. In addition, the follow-up project cost in question must be demonstrated to be related to the 2004 storm damages, and a Commission-staff audit of the follow-up projects is necessary to ensure that FPL followed its stated procedures differentiating the regular and storm-repair work orders and that FPL followed the cost accounting methodology approved in this proceeding.

D. Summary of Appropriate Charges to Storm Reserve

Based on the adjustments discussed above, the appropriate amount of storm-related costs to be charged against FPL's storm reserve is $796,333,846 ($799,935,703 system). The following table shows this calculation:

FPL Estimated 2004 Storm Damage Costs (System)		$999,000,000
Less: Insurance Reimbursements		(109,000,000)
Net 2004 Storm Damage Costs		890,000,000
Less: Adjustments		
Non-Management Payroll Expense	(10,900,000)	
Managerial Payroll Expense	(21,100,000)	
Tree Trimming Expense	(1,000,000)	
Vehicle Expenses	(5,261,887)	

Advertising & Public Relations Expense	(1,552,410)	
Uncollectible Expenses	6,000,000	
Normal O&M Cost Offset	33,814,297	
Replacement Capital Costs	(58,000,000)	
- Cost of Removal	(12,200,000)	
- Contributions in Aid of Construction	(21,700,000)	
Total System Adjustments		(91,900,000)
Adjusted for System Adjustments		798,100,000
Retail Jurisdictional Separation Factor		x 0.99525
Adjusted Jurisdictional 2004 Storm Damage Costs To Be Charged Against Storm Reserve		$794,309,025

III. AMOUNT RECOVERABLE THROUGH STORM COST RECOVERY SURCHARGE

A. Prudence of Costs Incurred

In this proceeding, FPL has asked that we determine the prudence of all costs - $890 million – that it booked to its storm reserve. FPL argues that its main objective after the storms was the safe and rapid restoration of service to its customers, that this objective was reasonable and prudent, and, thus, that the costs of achieving this objective were reasonable and prudent costs. This viewpoint was succinctly stated in FPL witness Williams' testimony:

> The primary objective that we have is to restore power to our customers as safely and as quickly as possible. And we will bring additional resources on the property, we will open up staging sites, we will get additional contractors, we will do everything that is humanly possible to bring resources to bear to get the lights back on as quickly as possible because as a matter of principle that is what we have got to do. Our customers are counting on it, the community is counting on it. And from my perspective these costs that make that happen are reasonable and prudent, because we know that our customers are expecting it from us, we also know that government officials are expecting it from us, we expect it from ourselves. So if it speeds up the restoration . . . it is reasonable and prudent, because it is all about getting the customers' lights back on.

We find that the costs that we found to be appropriately charged to the storm reserve, as set forth in the table above (in Section II.D.), are reasonable and prudent. At the customer service hearings in this docket, extensive testimony was offered in praise of FPL's storm

restoration efforts. No party has challenged the reasonableness or prudence of these efforts. More importantly, no party has challenged the reasonableness or prudence of any specific cost among those that we found to be appropriately charged to the storm reserve. Thus, based on the record established, it appears that the costs that we found to be appropriately charged to the storm reserve are reasonable and prudent.

We do not, however, make a finding of reasonableness or prudence for those costs that FPL booked to its storm reserve other than listed in the table above (in Section II.D.). We believe it is unnecessary to make such a finding with respect to costs that are not being proposed for cost recovery at this time or that the Commission believes were not appropriately charged to the storm reserve and thus not appropriate for recovery through the surcharge proposed by FPL (i.e., the costs disallowed in the previous issues). Such a finding could bind this Commission in a future proceeding concerning recovery of those costs, such as a proceeding initiated under the recently signed securitization bill or the rate case pending at the time of our decision in this docket.

B. Safe and Rapid Restoration of Service

FPL also asks us to determine whether its stated objective of safe and rapid restoration of service following tropical storms and hurricanes is appropriate. FPL takes the position that its efforts and its approach to restoration were consistent with the overarching public policy favoring prompt and safe restoration of electric service, were consistent with the expectations of state and local governments, and were consistent with the regulatory framework established by the Commission following Hurricane Andrew. FPL states that the primary objective of its emergency preparedness plan and restoration process is to safely restore power to the greatest number of customers in the least amount of time. FPL states that this objective is consistent with the expectations of state and local governments, and that these expectations were met or exceeded by FPL's performance.

The Intervenors take the position that the question framed by FPL implies that FPL is assuming a burden to meet the objective of safe and rapid restoration that it would not otherwise undertake. OPC states that this notion is nonsensical. First, OPC suggests that because the only way FPL makes money is by selling electricity, it is as much in FPL's best interests as it is in the customers' best interests to restore service rapidly and safely. Second, OPC asserts that in return for FPL's ability to earn a fair rate of return in providing a monopoly service, FPL has a statutory obligation to provide reasonably sufficient, adequate, and efficient electric service to its customers and to do so in a safe and reliable manner. OPC contends that this obligation includes the responsibility to restore service to its customers as quickly and safely as possible following hurricanes. FIPUG adds that while it applauds FPL's efforts, FPL's obligation is not relevant to storm cost recovery.

Chapter 366, Florida Statutes, and Chapter 25-6, Florida Administrative Code, establish the framework under which investor-owned electric utilities like FPL are regulated by the Commission. This regulatory framework clearly requires electric utilities to conduct their service restoration efforts in an efficient, rapid, and safe manner. Rule 25-6.044(2), Florida

Administrative Code, is directly on point: "Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall attempt to restore service within the shortest time practicable consistent with safety." The authority for this rule stems from several provisions of Chapter 366.[3] Additional statutes and rules further clarify utilities' obligations with respect to maintaining their systems in a safe and efficient manner.[4] Further, as FPL witness Geisha Williams testified, safe and rapid restoration of service is consistent with industry practice.

Although the question posed by FPL is clearly answered by reference to FPL's regulatory obligations, it has no direct bearing on our decisions in this case. No party has challenged FPL's objectives or efforts to restore service in connection with the extraordinary storm season that affected its service territory in 2004.

C. Effect of Stipulation Approved in Order No. PSC-02-0501-AS-EI

By Order No. PSC-02-0501-AS-EI, issued April 11, 2002, in Docket No. 001148-EI, In re: Review of the retail rates of Florida Power & Light Company, this Commission approved a Stipulation and Settlement ("Stipulation") that resolved a review of FPL's rates in that docket. The term of the Stipulation was defined as April 15, 2002, through December 31, 2005.

The Stipulation provided that FPL would reduce its base rates by an annual amount of $250 million. Further, the Stipulation established a "Revenue Sharing Incentive Plan," a mechanism by which FPL would share revenues above specified thresholds with its customers through annual refunds. The Stipulation provided that FPL would no longer have an authorized return on equity ("ROE") range for the purpose of addressing earnings levels, and indicated that the revenue sharing mechanism would be the appropriate and exclusive mechanism to address earnings levels.

Under paragraph 5 of the Stipulation, FPL agreed that it would not petition for an increase in its base rates and charges to take effect before the end of the Stipulation, except as provided for in paragraph 8. Paragraph 8 provided that FPL could petition to amend its base rates if its retail base rate earnings fell below a 10% ROE during the term of the Stipulation.

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[3] Section 366.03, Florida Statutes, provides that "[e]ach public utility shall furnish to each person applying therefore reasonably sufficient, adequate, and efficient service upon terms as required by the Commission." Sections 366.04(2)(c) and 366.04(5), Florida Statutes, empower the Commission to require reliability within a coordinated grid for operational as well as emergency purposes and establish the Commission's authority over the maintenance of the electric grid. Section 366.05(1), Florida Statutes, further establishes the Commission's power to prescribe standards of quality and service rules and regulations to be observed by each public utility.

[4] Pursuant to Section 366.04(6), Florida Statutes, and Rule 25-6.0345, Florida Administrative Code, each public utility must comply with safety standards for transmission and distribution facilities set forth in the National Electrical Safety Code. Public utilities must also operate and maintain their facilities and equipment in a safe, efficient, and proper condition (Rule 25-6.037), must establish safe work practices that affect the safety of employees (Rule 25-6.039), and must properly ground their distribution circuits to make them reasonably safe to persons and property (Rule 25-6.040).

Paragraph 13 of the Stipulation related to FPL's Storm Reserve and recovery of storm-related costs:

> FPL will withdraw its request for an increase in the annual accrual to the Company's Storm reserve. In the event that there are insufficient funds in the Storm 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 reserve to cover costs associated with a storm event or events shall not be evidence of imprudence of the basis of a disallowance. Parties to this Stipulation and Settlement are not precluded from participating in such a proceeding.

At issue is whether, under the terms of the Stipulation, FPL must absorb prudently incurred storm-related expenses through earnings until its ROE is reduced to 10% prior to seeking recovery of such expenses through rates. In other words, do paragraphs 5 and 8 of the Stipulation, which limit FPL's ability to petition for a base rate increase, apply equally to limit FPL's ability to petition for recovery of prudently incurred storm restoration costs in excess of its storm reserve and insurance coverage? FPL contends that its request for cost recovery in this docket is consistent with and expressly contemplated by the Stipulation. Each of the Intervenors contends that FPL must absorb its storm-related expenses through earnings until its ROE is reduced to 10% and may only seek recovery of amounts that would cause its ROE to fall below 10%.

FPL contends that the position of OPC and the other Intervenors ignores the plain language of the Stipulation. Citing those portions of the Stipulation noted above, FPL asserts that in exchange for its agreement to reduce base rates, share revenues, and withdraw its request for increased accruals to its storm reserve, OPC, FIPUG, FRF, the Twomeys, and other parties to the Stipulation agreed that FPL would no longer have an authorized ROE range for the purpose of addressing earnings levels and that the revenue mechanism described in the Stipulation would be the exclusive mechanism to address earnings levels. Referring to paragraph 13 of the Stipulation, FPL points out that the parties specifically agreed that FPL would have the opportunity to petition this Commission for recovery of prudently incurred storm costs in excess of the amount in the storm reserve and amounts paid through insurance.

FPL argues that the Intervenors' position would render paragraph 13 meaningless. FPL notes that neither the 10% threshold in paragraph 8 nor paragraph 13 refer to one another in the Stipulation. FPL asserts that in the absence of paragraph 13, it would have the same rights that the Intervenors say it has even with the inclusion of paragraph 13 – to petition for relief in the event that its Storm Reserve balance becomes negative and its ROE falls below 10%. Thus, FPL asserts, if the specific language in paragraph 13 is to be given any meaning, it must be capable of applying even if the 10% threshold of paragraph 8 is not met. FPL contends that a contrary interpretation would violate well-established principles of contract law that require courts (1) to read provisions of a contract so as to give effect to all portions of the contract and (2) to avoid an interpretation that would treat part of an agreement as surplusage if any meaning reasonable and consistent with other parts can be given to it.

FPL further contends that the Intervenors' interpretation of the Stipulation is contrary to what the parties intended, as evidenced by the circumstances surrounding the negotiation of the Stipulation. FPL relies largely on the testimony of its witness Moray P. Dewhurst, who testified that he was fully aware of, and approved, the exchange of concessions by which the Stipulation was reached. Citing witness Dewhurst's testimony, FPL states that in exchange for its agreement to reduce base rates, share revenues, and withdraw its request for increased accruals to its Storm Reserve, FPL obtained protections in the form of three conditions: (1) no longer having an authorized ROE range for the purpose of addressing earnings levels; (2) the right to petition for rate relief due to earnings falling below 10%; and (3) the right to seek recovery of prudently incurred excess storm costs during the term of the Stipulation. FPL states that the third condition was added late in the negotiations as part of the final quid pro quo that allowed an agreement to be reached. FPL states that the condition was added because FPL was not willing to accept the specific risk of excess storm restoration costs while under a fixed base rate agreement, even under a draft agreement that already contained a general mechanism for relief if FPL's ROE dropped below 10%. FPL also relies on discussions concerning the Stipulation at this Commission's March 22, 2002, Special Agenda Conference, during which FPL's then-president Paul Evanson indicated that paragraph 13 did not change FPL's right to seek recovery of storm costs as that right existed prior to the Stipulation. FPL notes that Public Counsel did not question or attempt to clarify Mr. Evanson's statement when given the opportunity.

OPC contends that application of the principles of contract construction leads to the conclusion that the 10% ROE threshold in paragraph 8 applies to FPL's petition in this docket. OPC argues that paragraphs 8 and 13 must be harmonized in a way that gives effect to both and asserts that the way to do so is to subject any petition filed under paragraph 13 to the requirements of paragraph 8. OPC further argues that FPL is attempting to negate the provisions of paragraph 8 even though those provisions are, by their plain terms, applicable without limitation. OPC notes that paragraphs 8 and 13 do not refer to each other and asserts that the parties could have easily included language in either paragraph to make clear that the 10% ROE threshold was not intended to apply to petitions under paragraph 13, if that was the parties' intent. OPC argues that because the stipulation doesn't say that, this Commission must give effect to both provisions by making FPL's petition subject to the 10% ROE threshold.

In response to FPL's argument that OPC's interpretation of the contract would render paragraph 13 meaningless, OPC contends that the principle focus of that paragraph 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 continued use of the lower accrual would not form the basis for a finding of imprudence. In response to FPL's argument that paragraph 13 was added to offset a base rate reduction of $250 million that FPL could not otherwise have afforded, OPC points out that Mr. Dewhurst acknowledged on cross-examination that the Intervenors in FPL's last rate case were advocating for base rate reductions of $500 million or more. Thus, OPC asserts, the $250 million reduction in the Stipulation eliminated FPL's exposure to a larger reduction. OPC further states that the Stipulation provided FPL the discretion to reduce depreciation expense by $125 million per year and that this reduction in depreciation expense served to offset the impact of the base rate reduction on FPL's earnings.

OPC contends that this ability to cushion one-half of the $250 million base rate reduction through a modification to depreciation expense belies the notion that the $30 million additional storm accrual sought by FPL was the item that enabled FPL to agree to the terms of the Stipulation. OPC also disputes FPL's argument that the comments of Mr. Evanson at the March 22, 2002, Special Agenda Conference provide proof that the Stipulation was intended to provide FPL with the ability to collect storm-related costs without limitation.

Like OPC, FIPUG argues that reading paragraph 13 in the context of the entire Stipulation, including paragraph 8, compels the conclusion that FPL must absorb its 2004 storm-related costs until its ROE has fallen to 10%. By doing so, FIPUG asserts, FPL will be permitted to recover such costs reflected in the negative balance of the storm reserve while earning a generous or conservatively high return in today's market. FIPUG contends that on top of that, FPL is able to collect taxes from its customers that it doesn't have to pay by virtue of consolidating its return with its parent holding company.

FRF adopts the arguments presented by OPC and FIPUG on this issue, and the Twomeys and AARP adopt OPC's position on the issue.

The language used in a contract is the best possible evidence of intent and meaning.[5] In interpreting a contract, it is necessary to read its provisions harmoniously in order to give effect to all portions of the contract without negating some of its provisions.[6] Further, no part of an agreement should be treated as surplusage if any meaning reasonable and consistent with other parts can be given to it.[7] Based on these principles, we find that the Stipulation should be interpreted such that a petition filed under paragraph 13 is not subject to the 10% ROE threshold in paragraph 8. To interpret the Stipulation otherwise would essentially negate the effect of paragraph 13 and inappropriately treat it as surplusage. Had paragraph 13 not been included in the Stipulation, FPL would have the same rights that the Intervenors say FPL has even with the inclusion of paragraph 13 – the opportunity to petition for recovery of storm-related costs in the event that its storm reserve balance becomes negative and its ROE falls below 10%. Thus, under the Intervenors' interpretation, the effect of paragraph 13 is negated.

OPC attempts to counter this argument by asserting that the focus of paragraph 13 is merely 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 continued use of the lower accrual would not form the basis for a finding of imprudence. Paragraph 13 certainly covers these two points, but it also covers a third point quite explicitly: "In the event that there are insufficient funds in the storm reserve and through insurance, FPL may petition for recovery of prudently incurred costs not recovered from those sources." It is this provision that would

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[5] See, e.g., Bill Heard Chevrolet v. Wilson, 877 So. 2d 15 (Fla. 5th DCA 2004), reh. den. July 12, 2004.

[6] See, e.g., City of Homestead v. Johnson, 760 So. 2d 80, 84 (Fla. 2000); Paladyne Corporation v. Weindruch, 867 So. 2d 630 (Fla. 5th DCA 2004).

[7] See, e.g., Aucilla Area Solid Waste v. Madison County, 890 So. 2d 415, 416-17 (Fla. 1st DCA 2004); Peoples Gas System v. City Gas Co., 147 So. 2d 334, 336 (Fla. 3rd DCA 1962).

inappropriately be treated as surplusage under the Intervenors' interpretation. As FPL asserts, if this provision of paragraph 13 is to be given any meaning, it must be capable of applying even if the 10% threshold of paragraph 8 is not met.[8]

Further, the discussion at the March 22, 2002, Special Agenda Conference at which this Commission addressed and approved the Stipulation offers further indication of the parties' intent and the Commission's understanding of what the Stipulation meant when it was approved. During that Special Agenda Conference, Paul Evanson, then President of FPL, stated in response to a question from a Commissioner that paragraph 13 did not create a right to recovery that did not previously exist and did not change the existing right to seek recovery for storm-related costs. Following that exchange, the Public Counsel, when asked whether anything he had heard during discussion of the Stipulation would change his opinion about whether the Stipulation was a good deal, he replied in the negative. Notably, the existing right to seek recovery of storm-related costs did not require (or preclude) an analysis of FPL's earnings.[9]

To give effect to all of the provisions of the Stipulation without negating the effect of paragraph 13, we interpret the Stipulation to provide that a petition filed under paragraph 13 is not subject to the 10% ROE threshold in paragraph 8.

D. Apportionment of Costs

FPL has proposed that it be allowed to recover the deficiency in its storm reserve. The Intervenors recommend that this Commission first require FPL to expense that portion of storm damage restoration costs necessary to take FPL's 2004 earned ROE to 10% before allowing FPL to recover the remaining balance of reasonable and prudently incurred storm-related costs. Based on FPL's December 2004 Earnings Surveillance Report, FPL would have to record approximately $243.4 million in additional expenses to reach an ROE of 10.0%.

As discussed above, we find that the Stipulation and Settlement approved in Order No. PSC-02-0501-AS-EI, issued April 11, 2002, in Docket No. 001148-EI, does not affect the amount or timing of the storm-related costs that FPL can collect from its ratepayers. This

[8] To support their positions, both FPL and OPC emphasize that paragraphs 8 and 13 do not reference each other. FPL argues that this fact suggests that the parties did not intend to tie paragraph 13 petitions to the 10% ROE threshold in paragraph 8. OPC argues the converse: if the parties had intended to remove paragraph 13 petitions from the conditions of paragraph 8, they could have easily done so but did not. Both arguments invite speculation as to the parties' intent, and one is no more persuasive than the other.

[9] The "existing right to recovery" discussed herein refers to the rights afforded FPL by Order No. PSC-93-0918-FOF-EI, issued June 17, 1993, which established the use of FPL's Storm Reserve as a self-insurance mechanism for storm restoration costs, and subsequent orders further defining that mechanism. In Order No. PSC-93-0918-FOF-EI, this Commission stated that FPL could, in the event of extraordinary storm-related costs in excess of its Storm Reserve, petition for relief which could include, among other things, recovery of such costs. In that Order, the Commission rejected a proposal by FPL that would have permitted dollar-for-dollar recovery of storm restoration costs through a cost recovery clause mechanism on the grounds that such a mechanism did not take earnings levels into account and placed the entire risk of loss of FPL's ratepayers. However, the Commission did not go so far as to require that earnings be reviewed in conjunction with a petition for recovery of extraordinary storm-related costs. Nor did the Commission preclude such an earnings review.

Commission expressly stated in Order No. PSC-93-0918-FOF-EI, issued June 17, 1993, in Docket No. 930405-EI, that it is free to consider a variety of options in the event a company petitions for recovery of prudently incurred costs in excess of its storm reserve "depending on what the circumstances are at the time."

The Intervenors argue that if the Stipulation does not apply in this case to limit FPL's recovery, we should nevertheless apply by analogy some of the principles underlying that Stipulation. In particular, the Intervenors contend that FPL should be allowed to recover storm damage restoration costs only to the extent that such costs, if expensed in 2004, would drop its earnings below a 10% ROE; in other words, Intervenors assert that FPL should share responsibility for these costs with the ratepayers. All Intervenors agree that the total amount of storm damage restoration costs incurred as a result of the 2004 hurricane season, if expensed in 2004, would take FPL's earned ROE below 10%, such that partial recovery of those costs should be permitted.

We find that the 10% ROE threshold should not be applied in the manner advocated by the Intervenors. As noted above, paragraph 13 of the Stipulation specifically states that FPL would have the opportunity to petition this Commission for recovery of prudently incurred storm costs in excess of the amount in the storm reserve and amounts paid through insurance. In addition, paragraph 3 states, "Effective on the Implementation Date, FPL will no longer have an authorized Return on Equity (ROE) range for the purpose of addressing earnings levels, and the revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels." Finally, while paragraph 8 specifies that FPL may petition for a base rate increase only in the event its base rate earnings fall below a 10% ROE, the Stipulation is silent with respect to what return level FPL may be brought back to as a result of its requested rate relief. For these reasons, we believe FPL is within its right to petition for recovery of all reasonable and prudently incurred storm-related costs to maintain the return it was otherwise entitled to earn.

We are not convinced that any sharing is appropriate under the circumstances of this case. Consequently, we find that FPL shall be permitted to recover from its ratepayers the full amount of the reasonable and prudently incurred storm damage restoration costs approved in this Order, without regard to the effect of that recovery on FPL's earned ROE.

The Intervenors contend that making the ratepayers responsible for FPL's recovery of all reasonable and prudently incurred storm damage restoration costs insulates its investors from this risk. This Commission has recognized that cost recovery mechanisms, similar to the storm cost recovery surcharge proposed by FPL in this docket, have reduced investor risk:

> Each time we approve a clause for the recovery of utility expenses or capital costs, the overall volatility of the utility's earnings before interest and taxes (EBIT) is reduced. This has the effect of reducing business risk. This reduced business risk should then result in a lower average cost of capital (required rate of return) over the long run. While it can be argued that currently authorized ROEs may not reflect the reduced risk resulting from the guaranteed recovery of

> prudently incurred environmental costs, ROEs set prospectively should reflect this reduced risk.

Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In Re: Petition to Establish an Environmental Cost Recovery Clause Pursuant to Section 366.0825, Florida Statutes, by Gulf Power Company, page 14.

FPL witness Davis testified that FPL's petition specifically seeks recovery of storm damage restoration costs through a "Storm Restoration Surcharge." FPL witness Dewhurst agreed that FPL's request in the instant docket is a "similar or even identical type of recovery mechanism" as the clause mechanism proposed by FPL in Docket No. 930405-EI but rejected by the Commission in Order No. PSC-93-0918-FOF-EI as untimely. We agree with witness Dewhurst that, whether the recovery mechanism is a cost recovery clause or a surcharge, the costs are ultimately borne by the ratepayers.

By approving FPL's request for storm cost recovery in this docket, we send a signal to investors and the market that even in the face of the extensive damage wrought by the "catastrophic and unprecedented" hurricane season of 2004, we continue to be supportive of the financial integrity of FPL and, by extension, the long-run best interests of its ratepayers.

Consistent with this Commission's finding in Order No. PSC-94-0044-FOF-EI and the testimony in the record, to the extent that all prudent and reasonable costs associated with storm damage restoration are borne by the ratepayers irrespective of FPL's earnings, investors are exposed to less risk on a going-forward basis. The fact that ratepayers, not shareholders, bear the risk of storm damage cost recovery should be taken into account in the determination of FPL's investor-required ROE in base rate proceedings.

E. Theoretical Depreciation Reserve Surplus

OPC proposes netting any unrecovered storm damage costs against the theoretical depreciation reserve surplus identified in FPL's 2005 depreciation study that was filed March 17, 2005, in Docket No. 050188-EI, In re: 2005 comprehensive depreciation study by Florida Power & Light Company. The depreciation study docket was subsequently consolidated into FPL's rate case in Docket No. 050045-EI, In re: Petition for rate increase by Florida Power & Light Company.

Based on his review of FPL's depreciation study, OPC witness Majoros determined that FPL had, at a minimum, a $1.24 billion book depreciation reserve excess that had already been charged to and collected from the ratepayers. He stated that the book depreciation reserve excess represented amounts that had been collected that are in excess of the current requirements for depreciation. Witness Majoros contended that FPL has the ability to reduce the negative balance in the storm damage reserve by applying some of the depreciation reserve excess to it. He further recommended that we consider this option to reduce the unrecovered amount of storm damage restoration costs that FPL is seeking to recover.

FPL witness Davis testified in rebuttal to witness Majoros' suggestion that the depreciation reserve surplus should be used to offset the unrecovered amount of storm damage restoration costs. Witness Davis stated that the depreciation reserve surplus was mainly attributable to the newly approved Nuclear Regulatory Commission (NRC) license extensions for FPL's nuclear generating facilities. Prior to the NRC license extensions, the depreciation expense had been calculated over the original license periods of the nuclear generating facilities. The extension of the useful lives of the nuclear generating facilities, however, can result in the creation of an instant surplus. This can best be illustrated by the following example:

	Asset Cost	Useful Life	Annual Depreciation Expense	Accumulated Depreciation after 18 Years
Original Life	$1,000,000	20 Years	$50,000	$900,000
Extended Life	$1,000,000	25 Years	$40,000	$720,000
Theoretical Surplus	---	---	---	$180,000

In this example, the five year life extension at the beginning of the 19th year that the asset has been in service creates a depreciation reserve surplus of $180,000. This represents the difference between the actual accumulated depreciation of $900,000 that was booked based on the original 20-year life and the $720,000 that would have been accumulated if the asset had been depreciated over the extended life of 25 years originally. One methodology for eliminating the surplus is to lower the extended life depreciation expense over the remaining life of the asset. In this example, the $40,000 extended life annual depreciation expense would be decreased by $25,714 ($180,000/7 years) to $14,286 over the remaining 7 year life of the asset. After 25 years, the accumulated depreciation would be equal to the $1,000,000 asset cost. Other methods for disposing of reserve surpluses are reserve transfers within the same function or to amortize the reserve surplus over a time period different than the remaining life of the asset.

As previously mentioned, witness Majoros has suggested that part of the reserve surplus could be used to reduce or eliminate the unrecovered amount of the storm damage restoration costs. Witness Davis stated that the practical result of Mr. Majoros' proposal would be an increase in rate base that would be equal to the decrease in the unrecovered storm damage restoration costs. Because the majority of the depreciation reserve surplus is attributable to the nuclear function, the use of the reserve surplus would increase the net amount of the nuclear assets in rate base. Although this would eliminate the need for a temporary storm damage recovery surcharge, base rates would be higher than they would otherwise be due to the increased rate base and the increased depreciation expense. This would, in effect, spread the recovery of the storm reserve deficit over the 20 year extended useful life of the nuclear assets. Witness Davis further stated that theoretical depreciation reserves can fluctuate between surpluses and deficits over time depending on various circumstances. He cited this as one reason for this Commission's requirement that depreciation rates be reviewed at least every four years. At the present time, our review of FPL's 2005 depreciation study has been consolidated into FPL's current request for an increase in rates.

In our view, the appropriate venue for considering the depreciation reserve surplus is in the depreciation study proceeding. Because it is being concurrently considered with the rate case, the decisions made in the depreciation study can be immediately incorporated into the rate case. Therefore, we find that the depreciation reserve surplus shall not be used to reduce the amount of unrecovered storm damage restoration costs.

F. Total Storm-Related Costs Recoverable through Customer Surcharge

Based on the adjusted total net 2004 storm damage costs determined in Section II.D., above, we find that $444,015,346, plus interest and revenue taxes, is the appropriate amount of storm-related costs to be recovered from FPL's retail customers through a surcharge. The following table shows this calculation:

Total Net 2004 Storm Damage Costs (Jurisdictional)	$794,309,025
Less: 12/31/04 Storm Damage Reserve Balance (Jurisdictional) ($354,000,000 x .99525)	(352,318,500)
Unrecovered 2004 Storm Damage Costs To Be Collected From Retail Customers Before Interest and Revenue Taxes	$441,990,525

IV. TERMS OF STORM COST RECOVERY SURCHARGE

A. Appropriate Accounting Treatment for the Unamortized Balance of Storm-Related Costs Subject to Future Recovery

Although not specifically addressed by the witnesses at the hearing or in the parties' briefs, the purpose of this issue was to determine the appropriate account in which to record the approved deferred storm-related costs during the period that they are being amortized. Once an amount is approved for recovery and amortization, it meets the definition of a regulatory asset. In this instance, the appropriate account is Account 182.1, Extraordinary Property Losses. This account was specifically created to include extraordinary losses, such as unforeseen damages to property, which are not covered by insurance or other provisions. This would include the Commission-determined amount of the storm-related costs, approved for future recovery, that exceed the balance in the storm reserve. In order to assist in the tracking and review of the amounts included in this account and their subsequent amortization, a separate sub account of Account 182.1 should be established to record these transactions.

Based on the foregoing, we find that the appropriate accounting treatment for the unamortized balance of the storm-related costs subject to future recovery is to record the costs as a regulatory asset in a sub account of Account 182.1, Extraordinary Property Losses. We note that this would be the "normal" accounting treatment for Commission-approved deferral and future recovery of extraordinary property losses.

B. Accrual and Collection of Interest on Unamortized Balance of Storm-Related Costs

All parties agree that, to the extent recovery of storm damage restoration costs is granted through a storm cost recovery surcharge, FPL should be allowed to charge interest at the applicable 30-day commercial paper rate. The aspect of this issue that must still be decided is the appropriate balance on which the commercial paper rate should be applied.

Consistent with Rule 25-6.0143(4)(b), Florida Administrative Code, FPL booked storm damage restoration costs to its storm reserve for regulatory purposes. For tax purposes, however, FPL expensed the storm damage restoration expenses in 2004. This treatment resulted in FPL booking additional accumulated deferred taxes of approximately $206.6 million. While this is a temporary timing difference that will be reversed as the storm damage surcharge is collected, in the meantime the deferred taxes are a source of cost-free capital to FPL.

In its petition, FPL dealt with the storm-related deferred taxes by including a certain amount in its capital structure. The Intervenors, however, contend that FPL should be required to recognize the storm-related deferred taxes in the calculation of the interest carrying charge on the unamortized balance of any storm-related costs FPL is permitted to recover from ratepayers. Specifically, the Intervenors have recommended that FPL only be allowed to charge interest on the net-of-tax balance of the storm damage account.

All things being equal, including the storm-related deferred taxes in the capital structure as zero-cost capital would result in a greater benefit to ratepayers than using the deferred taxes as an offset to the unamortized storm damage balance in the interest calculation. However, in the instant case, all things are not equal.

The ratepayers only benefit from the inclusion of storm-related deferred taxes in the capital structure if rates are reset when the deferred taxes are present. Because FPL, in its rate case pending at the time of our decision, is using 13-month average balances in a December 31, 2006, projected test year, by operation of math roughly half of the storm-related deferred taxes will have turned around and therefore will not be recognized in the rate case. To capture the value of the storm-related deferred taxes for the benefit of the ratepayers, we establish a compromise approach.

Because FPL's petition is predicated on including a certain portion of storm-related deferred taxes in the capital structure, we leave the corrected 13-month average balance intact and afford it the treatment it would ordinarily receive in the rate case. The amount of storm-related deferred taxes included in the capital structure for purposes of the rate case must be adjusted because the amount included in FPL's rate case filing was based on FPL's initial assessment of a $354 million storm reserve deficiency, not the $533 million deficiency it is now requesting to recover in its amended petition. For the remaining portion of storm-related deferred taxes that, by operation of math, are not included in the capital structure for purposes of the rate case, we use the information from Exhibit 39 provided by FPL witness Davis to determine the net-of-tax balance for purposes of calculating the interest carrying charge.

Specifically, we find that interest shall be calculated on the net-of-tax balance for the period February 2005 through June 2006. Interest will be calculated on the remaining storm recovery balance, without any adjustment for deferred taxes, for the period July 2006 through February 2008. This adjustment reduces the interest carrying charge on the unamortized balance of storm-related costs by approximately $5.1 million. In this manner, we capture the value of that portion of the storm-related deferred taxes for the benefit of FPL's ratepayers that would have otherwise gone unrecognized.

C. Allocation of Storm-Related Costs Among Rate Classes

In its petition, FPL's proposed factors were developed by allocating their proposed storm cost recovery costs to the rate classes based on each rate class's share of gross electric plant in service. Each rate class's share of gross plant was developed using actual historical calendar year 2003 load research and kilowatt-hour data. Under cross examination, FPL witness Morley indicated that this method was employed because this was the manner in which the storm reserves were allocated in base rates.

The record of this proceeding includes FPL's work papers supporting the development of each rate class's share of gross plant. Based on these workpapers, approximately 47% of FPL's gross plant is attributable to the production function, 13% to the transmission function, and 40% to the distribution function.

The record also includes a functional breakdown of the storm damage costs that FPL incurred in the 2004 storms. FPL indicated that they had not performed a functionalized breakdown by FERC function of their storm damage costs. FPL did, however, provide an estimate that itemized storm costs by "Business Unit" and "General Expense" categories as shown below:

Business Unit	**Cost**	**Cost as a Percentage of Total**
Power Systems – Distribution	$668,102,498	75%
Power Systems –Transmission	$27,066,145	3%
Other Business Units	$73,392,660	8%
General	$120,938,697	14%
Total	$890,000,000	100%

According to FPL, the "Other Business" category includes power generation, human resources, and information management expenses. The "General" category includes costs associated with staging sites, meals, lodging, and fuel. As shown above, at a minimum, 75% of FPL's total estimated storm damage costs are attributable to its distribution system. By contrast, FPL's method allocates only 40% of total storm costs using the method used for allocating distribution costs.

We find that the storm damage costs approved for recovery in this Order shall be allocated to the rate classes based on an approximation of the actual amount of storm damage incurred by functional area, rather than based on the rate class's share of gross electric plant in

service. Hearing Exhibit 2 shows revised allocation percentages and recovery factors by rate class based on the functional breakdown shown above. We believe that these allocation percentages more closely approximate the manner in which such costs would be allocated in a rate case proceeding and shall be used to allocate costs to the rate classes in this proceeding.

We agree that it is appropriate to allocate storm accruals established in a base rate proceeding based on gross plant by rate class, because at the time reserves are set aside, it is not known which functional areas will be impacted by storms. However, in this case, in which a surcharge is being assessed after storm damage has occurred, the allocation of the costs of damage in excess of the storm reserve should take into account damage by functional area, to the extent practicable.

Because these percentages were derived using 2003 load data and kilowatt-hour sales, the revised factors shall be based on 2003 kilowatt-hour sales, adjusted upward to reflect the remaining 29-month recovery period. Use of 2003 sales will insure consistency in the factors by rate class, and will also increase the likelihood that the storm damage costs are recovered on or before the end of the 36-month recovery period.

FPL shall immediately file revised tariffs using the allocation method approved herein, to become effective with cycle 13 billings for September 2005. The factors shall be designed to recover the jurisdictional storm cost recovery amount approved herein, plus interest and revenue taxes, less the actual/estimated revenues collected between February 17, 2005, and cycle 12 billings for September 2005.

D. Recovery Period

In its initial petition, FPL proposed to recover its storm-related costs through a monthly surcharge to customer bills over a 24-month period. The proposed recovery period was based on FPL's initial estimate of storm-related restoration costs of approximately $710 million, net of insurance proceeds. By Order No. PSC-05-0187-PCO-EI, issued February 17, 2005, in this docket, we approved interim surcharge factors that became effective on February 17, 2005. By Order No. PSC-05-0283-PCO-EI, in this docket, issued on March 16, 2005, we granted FPL leave to amend its original petition to reflect an updated estimate of the storm-related costs.

In its amended petition, FPL updated its estimate of storm-related costs to $890 million, net of insurance proceeds. FPL stated that approximately 93 percent of the $890 million was based on actual costs, and the remaining costs were estimated. FPL further proposed in its amended petition that the storm cost recovery surcharge be applied for an additional 12 months, for a total of 36 months, or for such shorter period as may be sufficient to recover the deficit. FPL contends that the addition of 12 months to the recovery period will enable them to recover the storm deficit in a reasonable period of time without revising the originally proposed surcharge factors.

FPL has stated that it proposes to monitor the recoverable balance on a monthly basis, and if the balance reaches zero prior to the end of the 36-month period, FPL will suspend billing

the surcharge factor. Since the storm surcharge was initially applied to cycle 13 billings for the month of February 2005, FPL proposes to end the surcharge with its next cycle 12 billings after the balance reaches zero, in order to insure that all customers pay the surcharge for the same number of billing cycles.

At the conclusion of the recovery period, FPL will compare the amount collected with the final actual 2004 storm restoration costs. Within 60 days following expiration of the recovery period, FPL will file the final over- or under-recovery of the 2004 storm damage costs for review and approval. An over-recovery can occur if FPL suspends billing the surcharge factors prior to the expiration of the 36-month recovery period. Since FPL has proposed to bill all customers the surcharge for an equal number of billing cycles, an over-recovery could occur if FPL fully recovers its storm deficiency prior to the end of the 36-month period. FPL proposes to return any over-recovery to customers with interest as a one-time refund. FPL witness Morley states that once the final over-recovery amount has been approved by this Commission, FPL will determine storm recovery true-up factors based on each rate class's kWh sales during the recovery period. Based on these factors, refunds will be distributed to each customer based on their actual kWh sales during the recovery period. Since actual sales may differ from the sales forecast used in developing the factors, an under-recovery may occur at the end of the 36-month recovery period. For any under-recovered portion of the storm cost recovery amount, FPL would propose the means by which it would be recovered at that time.

OPC, Twomeys, and AARP contend that we should consider the impact on customers when deciding on the appropriate recovery period. FIPUG and FRF take the position that the recovery period should be no more than three years.

We find that a recovery period of three years or less is reasonable, therefore we approve FPL's proposed three-year recovery period. The recovery period became effective on an interim basis on February 17, 2005, with FPL's billing cycle 13. The recovery period shall end with cycle 12 billing for February 2008, unless all costs are recovered sooner. If the costs are fully recovered prior to February 2008, the recovery period should continue until the next cycle 12 billings, so that all customers are assessed the surcharge for an equal number of billing cycles.

Within 60 days after the conclusion of this recovery period, FPL shall file the final actual 2004 storm damage costs and the total amount collected through the surcharge during the recovery period. FPL's filing should also include a proposed method for addressing any final over- or under-recovery. While we believe that FPL witness Morley's proposal to refund any over-recovery as a one-time refund appears reasonable, we will make a determination of the appropriate final disposition of any over- or under-recovery when the total amount is known.

E. No Annual Adjustment of Surcharge Factors

As previously noted, we approved interim surcharge factors that became effective on February 17, 2005. The factors are contained in FPL's proposed Original Tariff Sheet No. 8.033. FPL witness Morley testified that the same factors should remain in effect for a total of three years or until the storm costs are fully recovered. Witness Morley further contends that

intermediate or annual true-ups before the end of the recovery period are not necessary and would not represent the best use of this Commission's time and resources. FPL acknowledges that kWh sales during the recovery period could differ from the 2003 kWh sales used in developing the surcharge factors. However, since FPL has proposed to discontinue billing the surcharge factors if it fully recovers its storm restoration costs in less than 36 months, there should be no effect on the amount that customers are ultimately charged. Finally, FPL states that there is no testimony in the record supporting an annual adjustment of the surcharge factors.

OPC, FIPUG, Twomeys, and AARP assert that the surcharge factors should be adjusted annually to reflect actual sales and revenues. For the sake of simplicity and administrative efficiency, we find that annual revisions to the storm cost recovery factors to reflect actual sales are not necessary.

F. Effective Date of Surcharge Factors

As noted above, we approved interim surcharge factors that became effective on February 17, 2005, with FPL's billing cycle 13. FPL witness Morley testified that these interim factors should remain in effect for a total of three years, or until the storm costs are fully recovered. Thus, the three-year recovery period became effective on February 17, 2005.

Because our decision requires FPL to revise its surcharge factors using a different means of allocation among rate classes and to reflect the Commission-approved jurisdictional storm cost recovery amount, the revised factors shall become effective with cycle 13 billings for September 2005. This is consistent with past Commission practice that rates become effective 30 days following the date of the Commission vote. To ensure that all customers are assessed the revised surcharge for an equal number of billing cycles, recovery through the revised factors should begin with cycle 13 billings for September 2005.

G. Disposition of Revenues Collected Through Interim Surcharge

Because the revenues that FPL has collected under its interim surcharge are less than the total amount of storm-related costs approved for recovery herein, the revenues collected on an interim basis, less revenue taxes, shall be applied to the amount approved for recovery herein. Further, total revenues will be subject to the cumulative true-up at the end of the recovery period.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's amended petition seeking authority to recover prudently incurred restoration costs related to the hurricanes that struck its service territory in 2004 in excess of its storm reserve balance is granted, subject to the adjustments and terms set forth in the body of this Order. It is further

ORDERED that, as a result of the adjustments discussed in the body of this Order, the appropriate amount of prudently-incurred storm-related costs to be charged against FPL's storm reserve is $794,309,025 (jurisdictional). It is further

ORDERED that, as a result of the adjustments discussed in the body of this Order, the appropriate amount of prudently-incurred storm-related costs to be recovered from FPL's customers through a surcharge is $441,990,525 (jurisdictional). It is further

ORDERED that FPL shall cease charging costs to its storm reserve no later than July 31, 2005, for restoration work related to the 2004 storm season. It is further

ORDERED that FPL shall record the unamortized balance of its 2004 storm-related costs subject to future recovery as a regulatory asset in a sub account of Account 182.1, Extraordinary Property Losses. It is further

ORDERED that FPL shall be permitted to charge interest on the unamortized balance of 2004 storm-related costs at the applicable 30-day commercial paper rate. It is further

ORDERED that FPL shall account for storm-related deferred taxes as set forth in the body of this Order. It is further

ORDERED that FPL shall revise its proposed storm surcharge factors based on the allocation methodology set forth in the body of this Order and shall immediately file revised tariffs reflecting the new factors, such tariffs to become effective with cycle 13 billings for September 2005. The factors shall be designed to recover the jurisdictional storm cost recovery amount approved herein, plus interest and revenue taxes, less the actual/estimated revenues collected between February 17, 2005, and cycle 12 billings for September 2005. It is further

ORDERED that FPL's revised storm surcharge factors shall be effective through cycle 12 billings for February 2008, unless all approved costs are recovered sooner, in which case the recovery period shall continue until the next cycle 12 billings. Within 60 days following expiration of this recovery period, FPL shall file for review and approval its final over-recovery or under-recovery of the approved costs and shall propose a method to address the final over-recovery or under-recovery. It is further

ORDERED that this docket shall be closed.

By ORDER of the Florida Public Service Commission this 21st day of September, 2005.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: _____
Kay Flynn, Chief
Bureau of Records

(SEAL)

WCK

DISSENT

COMMISSIONER J. TERRY DEASON dissents only with respect to the treatment of lost revenues discussed in Section II.B. of this Order.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.