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Sent: Wednesday, January 18, 2006 4:53 PM
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Subject: Electronic Filing for 060038-EI FPL's Response to OPC's Motion for Expedited Discovery Procedures and Motion to hold Public Hearings

Attachments: Response to OPC's Motion to Expedite Discovery Procedures & Hearing Motionfinaldoc.doc



Response to
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a. Person responsible for this electronic filing:

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b. Docket No. 060038-EI re: Florida Power & Light Company's Petition for Issuance of a Storm Recovery Financing Order

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

d. There are a total of 6 pages.

e. The document attached for electronic filing is FPL's Response to OPC's Motion for Expedited Discovery Procedures and Motion to hold Public Hearings

(See attached file: Response to OPC's Motion to Expedite Discovery Procedures & Hearing Motionfinaldoc.doc)

Thank you for your attention and cooperation to this request.

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BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's)
Petition for Issuance of a Storm Recovery)
Financing Order)

Docket No: 060038-EI
Filed: January 18, 2006

**FLORIDA POWER & LIGHT COMPANY'S RESPONSE
TO OPC'S MOTION FOR EXPEDITED DISCOVERY PROCEDURES AND
MOTION TO HOLD PUBLIC HEARINGS**

Florida Power & Light Company ("FPL" or the "Company"), by its undersigned counsel, files this Response to the Office of Public Counsel's ("OPC's") Motion for Expedited Discovery Procedures ("Discovery Motion") and Motion to Hold Public Hearings ("Hearing Motion"), both of which were filed January 13, 2006 in the above-referenced proceeding, and in support states:

1. On January 13, 2006, FPL filed with this Commission a petition requesting that the Commission issue a financing order pursuant to Section 366.8260, Florida Statutes (2005) (the "Petition"), authorizing the issuance of storm-recovery bonds, enabling: (i) recovery of the remaining unrecovered balance of 2004 storm restoration costs currently being recovered through a surcharge related to the 2004 storm season; (ii) recovery of prudently incurred storm-recovery costs related to the four hurricanes that impacted FPL's service territory in 2005; (iii) replenishment of FPL's depleted Reserve; and (iv) recovery of upfront storm-recovery bond financing costs. Alternatively, FPL requested an additional surcharge to recover 2005 storm costs and begin to replenish the Reserve. FPL's Petition was accompanied by nine pieces of

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testimony from Company witnesses and outside experts, a draft form of financing order, and extensive documentation supporting the request.

2. OPC filed its Discovery Motion and Hearing Motion almost concurrently with FPL's filing of its Petition. OPC's Discovery Motion requests that FPL be required to respond to discovery requests in this proceeding within 10 days from the date such requests are served. In light of the scope of this proceeding, the extensive supporting documentation filed with FPL's petition and the time and resource intensive effort required to respond to multiple sets of discovery that may be outstanding at any given time, FPL believes that a requirement to respond to all discovery requests within 10 days of service is unreasonable.

3. Already, OPC, the only intervening party so far, has served two sets of discovery on FPL with almost 60 requests, and FPL is also responding to Staff audit requests. FPL expects that more parties will intervene and that there will be multiple, overlapping discovery requests outstanding at any given time. Indeed, in FPL's recent retail base rate case, there were nine intervenors which combined served more than 1,846 discovery requests with 3,859 subparts. OPC alone served 800 discovery requests on FPL with 1,956 subparts.

4. Florida Rules of Civil Procedure Rules 1.340 and 1.350, which apply to this proceeding, provide timeframes and rules for discovery. The timeframe established by these rules for responding to interrogatories and requests for production of documents is within 30 days of service on the responding party. The Order Establishing Procedure in FPL's retail base rate case discussed above did not deviate from this 30-day timeframe

for responding to discovery requests. See Order No. PSC-05-0347-PCO-EI, Docket No. 050045-EI (issued March 31, 2005).

5. OPC points to a telecommunications docket in which an Order Establishing Procedure set a 10-day timeframe for discovery responses as precedent for its request. However, the telecommunications proceeding referenced by OPC, an application for rate rebalancing pursuant to Section 364.164, Florida Statutes, is substantially different from this proceeding in at least two respects. First, Section 364.164(3), Florida Statutes, limited the scope and type of information that was subject to discovery in that proceeding, so a shorter time frame may not have been as burdensome as it would be here. See Section 364.164(3), Florida Statutes (2006) (“Any discovery or information requests under this section must be limited to a verification of historical pricing units necessary to fulfill the commission’s specific responsibilities under this section of ensuring that the company’s rate adjustments make the revenue category revenue neutral for each annual filing.”) There is no such limitation on discovery in this proceeding. Second, the Commission was required to issue a final order “granting or denying any petition filed pursuant to [Section 364.164] within 90 days.” See Section 364.164(1), Florida Statutes (2006). The Commission has a longer period (135 days) to issue an order under Section 366.8260, Florida Statutes.

6. This same timeframe of 120 days for a Commission decision and 135 days for a Commission order applies to a petition for determination of need for an electrical power plant. See Rule 25-22.080(2), Fla. Admin. Code (2006). In FPL’s last determination of need proceeding, Docket No. 040206-EI, the Commission’s Order Establishing Procedure established a 20-day timeframe for responses to discovery

requests. See Order No. PSC-04-0325-PCO-EI, Docket No. 040206-EI (issued March 30, 2004). A 20-day timeframe for responses also applied in Docket No. 041291-EI, which addressed FPL's petition to recover prudently incurred storm costs from the 2004 storm season that exceeded the Reserve balance. See Order. No. PSC-04-1150-PCO-EI, Docket No. 041291-EI (issued November 18, 2004). FPL believes a 20-day requirement for responses to discovery requests is reasonable and, depending on the case schedule, should provide OPC time to receive responses to the discovery it has already served and additional sets of discovery before intervenor testimony is due.

7. In regard to OPC's Hearing Motion, FPL defers to the Commission regarding whether and where to conduct service hearings in this proceeding. FPL would note, however, that a series of public hearings regarding 2005 hurricane restoration are being conducted throughout hurricane-impacted areas.

WHEREFORE, for the above and foregoing reasons, Florida Power & Light Company responds to OPC's Motion for Expedited Discovery Procedures and Motion to Hold Public Hearings and proposes that a 20-day timeframe for responding to discovery requests is reasonable and appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic mail and United States Mail on the 18th day of January, 2006, to the following:

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