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 Subject: Docket 060038-EI
 Attachments: FIPUG's Revised Prehearing Statement of Issues and Positions - 4-12-06.doc

1. Timothy J. Perry, McWhirter Reeves, 117 S. Gadsden Street, Tallahassee, FL 32301, (850) 222-2525, tperry@mac-law.com is the person responsible for this electronic filing;
2. The filing is to be made in Docket 060038-EI, In re: FPL's petition for issuance of a storm recovery financing order;
3. The filing is made on behalf of the Florida Industrial Power Users Group;
4. The total number of pages is 9; and
5. The attached document is The Florida Industrial Power Users Revised Prehearing Statement of Issues and Positions.

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ORIGINAL

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: April 12, 2006

THE FLORIDA INDUSTRIAL POWER USERS GROUP'S
REVISED PREHEARING STATEMENT OF ISSUES AND POSITIONS

The Florida Industrial Power Users Group (FIPUG), pursuant to Order No. PSC-06-0069-PCO-EI, hereby files its Revised Prehearing Statement of Issues and Positions. The revisions to FIPUG's Prehearing Statement of Issues and Positions filed April 10, 2006, appear below. Otherwise, FIPUG's Prehearing Statement of Issues and Positions filed April 10, 2006, remains unchanged.

REVISIONS TO FIPUG'S
PREHEARING STATEMENT OF ISSUES AND POSITIONS

D. STATEMENT OF BASIC POSITION:

FIPUG agrees with the positions of the Office of Public Counsel (OPC) in general, and the revenue sharing position of Staff on revenue issues. FIPUG supports the incremental cost recovery methodology set forth in the testimony of OPC witnesses Hugh Larkin and Donna DeRonne, and the financing advice propounded by the Staff's financial witnesses. For reasons set out in its position statement on Issue 35 below, FIPUG takes no position on the risk sharing approach of Staff witness Joe Jenkins.

The incremental cost approach is a fair method of storm cost recovery for both the ratepayers and the utility. It allows the utility to recover the cost of storm restoration activities while shielding ratepayers from any double recoveries by removing costs that are covered via the utility's base rate revenues. FIPUG strongly opposes FPL's proposal to diminish the OPC's incremental accounting approach by plugging in "lost revenues." Adjusting for lost revenues negates the incremental cost approach and, in effect, accomplishes the same result as FPL's proposed actual restoration cost approach, which results in double recoveries. Further, adjustments for lost revenues are unnecessary in light of the fact that FPL's electric sales, and thus its revenues, during the storm period actually exceeded its projections even though some customers received no service. Moreover, according to surveillance reports filed by FPL with the Commission, FPL's normal O&M costs and its full authorized rate of return were collected from its customers during the July-December 2005 time period.

It appears that all parties are attempting to insure that present customers are not unfairly treated with respect to income taxes by developing a procedure that matches storm expenses with

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revenue collected to cover these expenses. FIPUG encourages this effort, and seeks a treatment that will ensure that every dollar collected from ratepayers for storm damage is available to pay for such costs free from any adverse tax consequences. It should be made clear that income taxes do not reduce the level of the storm reserve.

With respect to allocating costs between customer classes, FIPUG endorses the approach that matches revenue collections to storm costs incurred — that is, customers taking service from the transmission system should not be charged for damages to the distribution system. However, FPL proposes instead to allocate the costs based on the cost of service methodology the company proposed in its last rate case, Docket No. 050045-EI. There were material disputes over FPL’s cost of service studies in the 2005 base rate case. The case was settled without the Commission approving the studies. This is evidenced by the fact that the order approving the settlement and stipulation — Order No. PSC-05-0902-S-EI — and the settlement and stipulation, which is an attachment to the order, uses the words “current” or “currently” nineteen times in the document. The use of “current” or “currently” is intended maintain the circumstances in place at the time the base rate case was filed, not approve the disputed testimony and exhibits filed in the case. Instead, the costs should be allocated based on the cost of service methodology last filed with and approved by the Commission in Docket No. 830465-EI.

E. STATEMENT OF ISSUES AND POSITIONS:

PRUDENCE OF 2005 STORM CHARGES

Issue 35: Should the Commission require FPL’s storm recovery costs for 2005 be shared between FPL’s retail customers and FPL and, if so, to what extent?

FIPUG: In general, FIPUG supports reasonable risk/reward sharing between utilities and their customers. In the as-of-yet undocketed storm damage rule review, FIPUG argued that the Commission should adopt the approach discussed in the testimony of Staff witness Joseph D. Jenkins. Nevertheless, in the settlement agreement in FPL’s last base rate case (Docket 050045-EI), the parties agreed that for the period of the agreement FPL “will be permitted to recover prudently incurred costs associated with events covered by Account No. 228.1 [the storm damage account]. . . .” FIPUG is bound by that agreement in this case to the extent that storm costs are prudent and do not constitute a double recovery.

Issue 36: Taking into account any adjustments identified in the preceding issues, what is the amount of reasonable and prudently incurred 2005 storm related costs that should be recovered from customers?

FIPUG: The appropriate amount of adjustments should be the total of OPC’s proposed adjustments.

RECOVERY MECHANISM

Issue 39: Is the issuance of storm-recovery bonds and the imposition of the Storm Charge, as proposed by FPL, reasonably expected to result in lower overall costs or avoid or significantly mitigate rate impacts to customers as compared with alternative

methods of financing or recovering storm-recovery costs and storm-recovery reserve?

FIPUG: Agree with OPC.

Issue 40: Does funding the reserve meet the definition of a cost within the meaning of Internal Revenue Service Revenue Procedure 2005-62? If not, what action should the Commission take with respect to the storm reserve?

FIPUG: Yes.

Issue 42: Based on resolution of the preceding issues, what amount, if any, should the Commission authorize FPL to recover through securitization?

FIPUG: The appropriate amount to be securitized should be based on the following: (1) the recovery of the unamortized balance of the 2004 storm costs; (2) the replenishment of the storm reserve to \$150 million, and; (3) the recovery of FPL's 2005 storm costs minus OPC's proposed adjustments.

Issue 43: Based on resolution of the preceding issues, what amount, if any, should the Commission authorize FPL to recover through a traditional surcharge or other form of recovery?

FIPUG: The Commission should approve recovery via securitization. However, if the Commission approves recovery via a surcharge, the surcharge should be designed to recover the following: (1) the replenishment of the storm reserve to \$150 million and; (2) the recovery of FPL's 2005 storm costs minus OPC's proposed adjustments.

Issue 44: Should the Commission approve FPL's alternative request to implement a surcharge to be applied to bills rendered on or after June 15, 2006 for a period of three years for the purpose of recovering its prudently incurred 2005 storm costs and attempting to replenish the Reserve? If so, how should the Commission determine the following:

FIPUG: See FIPUG's position below subsection (b).

- a. The amount approved for recovery; and

FIPUG: See FIPUG's position below subsection (b).

- b. The cost allocation to the rate classes.

FIPUG: The Commission should approve recovery via securitization. However, if the Commission approves recovery via a surcharge, the surcharge should be designed to recover the following: (1) the replenishment of the storm reserve to \$150 million, and; (2) the recovery of FPL's 2005 storm costs minus OPC's proposed

adjustments. With respect to allocating costs between customer classes, FIPUG endorses the approach that matches revenue collections to storm costs incurred — that is, customers taking service from the transmission system should not be charged for damages to the distribution system. These costs should be allocated based on the cost of service methodology last filed with and approved by the Commission in Docket No. 830465-EI.

Terms and Conditions of Financing Order for Securitized Amounts

Issue 49: What remedies should the PSC employ to protect customers in the event of a servicer's default?

FIPUG: Agree with OPC.

Issue 50: What is the appropriate up-front and ongoing fee for the role of servicer throughout the term of the bonds?

FIPUG: Agree with OPC.

Issue 51: How much should FPL be permitted to recover from ratepayers for its role as servicer in this transaction?

FIPUG: Agree with OPC.

Issue 52: What is the appropriate up-front and ongoing fee for the role of administrator throughout the term of the bonds?

FIPUG: Agree with OPC.

Issue 53: How much should FPL be permitted to recover from ratepayers for its role as administrator in this transaction?

FIPUG: Agree with OPC.

Issue 54: How frequently should FPL in its role as servicer be required to remit funds collected from ratepayers to the SPE?

FIPUG: Agree with OPC.

Issue 56: How should the Commission determine that the upfront bond issuance costs are appropriate?

FIPUG: Agree with OPC.

Issue 57: How should the Commission determine that the on-going costs associated with the bonds are appropriate?

- FIPUG: Agree with OPC.
- Issue 58: Is FPL's process for determining whether the upfront bond issuance costs satisfy the statutory standard of Section 366.8260(2)(b)5. reasonable and should it be approved?
- FIPUG: Agree with OPC.
- Issue 59: Is FPL's process for determining whether the on-going costs satisfy the statutory standard of Section 366.8260(2)(b)5 reasonable and should it be approved?
- FIPUG: Agree with OPC.
- Issue 60: If the issuance of storm-recovery bonds is approved, should the bonds be sold through a negotiated or competitive sale?
- FIPUG: Agree with OPC.
- Issue 61: What additional terms, conditions or representations should be made in the financing order to enhance the marketability of the bonds and achieve the lowest possible cost?
- FIPUG: FIPUG supports the testimony of Staff witnesses Fichera and Noel.
- Issue 62: Should all legal opinions and other transaction documents and subsequent amendments be filed and approved by the Commission before becoming operative?
- FIPUG: Agree with OPC.
- Issue 63: Is FPL's proposed Staff Pre-Issuance Review Process reasonable and should it be approved?
- FIPUG: Agree with OPC.
- Issue 64: Should the Financing Documents be approved in substantially the form proposed by FPL, subject to modifications as addressed in the draft form of financing order?
- FIPUG: FIPUG supports the testimony of Staff witness Fichera.
- Issue 65: Should the Issuance Advice Letter be approved in substantially the form proposed by FPL?
- FIPUG: FIPUG supports the testimony of Staff witness Fichera.
- Issue 66: Should the Initial True-up Letter be approved in substantially the form proposed

by FPL?

FIPUG: FIPUG supports the testimony of Staff witness Fichera.

Issue 67: How should the Commission ensure that the structure, marketing, and pricing of the storm recovery bonds result in the lowest possible burden on FPL's ratepayers?

FIPUG: Agree with OPC.

Issue 68: Is the proposed structure, expected pricing and financing costs of the storm-recovery bonds reasonably expected to result in lower overall costs or avoid or significantly mitigate rate impacts to customers as compared with alternative methods of recovery?

FIPUG: FIPUG supports the testimony of Staff witness Fichera.

Issue 69: Should the Commission approve the use of floating rate securities and interest rate swaps if their use is reasonably expected to provide customer savings?

FIPUG: No position at this time pending review of testimony and evidence presented at hearing.

Issue 70: Should FPL be afforded flexibility to include call provisions if their use is reasonably expected to provide customer savings?

FIPUG: No position at this time pending review of testimony and evidence presented at hearing.

Issue 71: What additional flexibility should FPL be afforded in establishing the terms and conditions of the storm-recovery bonds, including, but not limited to, repayment schedules, interest rates, and other financing costs?

FIPUG: Agree with OPC.

Issue 72: If the Commission approves FPL's proposed financing order, should FPL be allowed to establish a regulatory asset for the amount to replenish the Reserve?

FIPUG: Agree with OPC.

Issue 73: Should the Commission authorize FPL to establish a separate regulatory asset for the storm recovery property sold to the SPE and a separate regulatory asset for income taxes payable on the storm-recovery costs to be financed?

FIPUG: Agree with OPC.

Issue 74: Based on resolution of the preceding issues, should a financing order in

substantially the form proposed by FPL be approved, including the findings of fact and conclusions of law as proposed?

FIPUG: Agree with OPC.

Issue 75: If the Commission approves the substance of FPL's primary recommendation, should the financing order require FPL to reduce the aggregate amount of the bond issuance in the event market rates rise to such an extent that the initial average retail cents per kWh charge associated with the bond issuance would exceed the average retail cents per kWh 2004 storm surcharge currently in effect?

FIPUG: No position at this time pending review of testimony and evidence presented at hearing.

Issue 76: Should the Commission approve FPL's request that a surcharge be applied to bills rendered on or after August 15, 2006 to enable FPL to recover its prudently incurred 2005 storm costs in the event the issuance of storm-recovery bonds is delayed? If so, how should the Commission determine the following:

d. The surcharge's termination date.

FIPUG: No position at this time pending review of testimony and evidence presented at hearing.

RATES

Issue 79: Are the energy sales forecasts used to develop the bond amortization schedules and the recovery mechanism appropriate?

FIPUG: No position at this time pending review of testimony and evidence presented at hearing.

Issue 81: If the Commission approves recovery of any storm-related costs through securitization, what is the appropriate recovery period for the Storm Recovery Charge?

FIPUG: No position at this time pending review of testimony and evidence presented at hearing.

Issue 82: Is FPL's proposed Storm Charge True-Up Mechanism appropriate and consistent with 366.8260, Florida Statutes and should it be approved? If not, what formula-based mechanism for making expeditious periodic adjustments to storm-recovery charges should be approved?

FIPUG: No position at this time pending review of testimony and evidence presented at hearing.

Issue 85: If the Commission approves an amount to be securitized, on what date should the Storm Recovery Charge become effective?

FIPUG: No position at this time pending review of testimony and evidence presented at hearing.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing The Florida Industrial Power Users Group's Revised Prehearing Statement of Issues and Positions has been furnished by electronic mail and U.S. Mail this 12th day of April 2006, to the following:

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