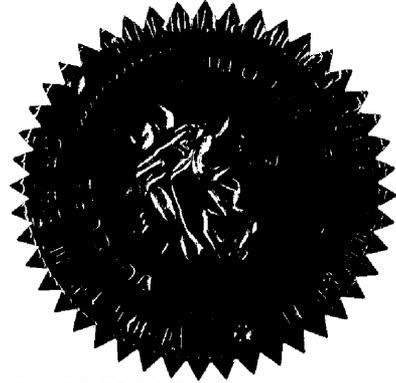


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 060038-EI

In the Matter of:

PETITION FOR ISSUANCE OF A STORM  
RECOVERY FINANCING ORDER, BY FLORIDA  
POWER & LIGHT COMPANY.



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VOLUME 1

Pages 1 through 37

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN LISA POLAK EDGAR  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER ISILIO ARRIAGA  
COMMISSIONER MATTHEW M. CARTER, II  
COMMISSIONER KATRINA J. TEW

DATE: Wednesday, April 19, 2006

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: JANE FAUROT, RPR  
Official Commission Reporter  
(850) 413-6732

1 PARTICIPATING:

2 WADE LITCHFIELD, ESQUIRE, NATALIE SMITH, ESQUIRE, and  
3 BRYAN ANDERSON, ESQUIRE, 700 Universe Boulevard, Juno Beach,  
4 Florida 33408-0420, and JOHN T. BUTLER, ESQUIRE, 9250 West  
5 Flagler Street, Miami, Florida 33102, appearing on behalf of  
6 Florida Power & Light Company.

7 JOHN W. MCWHIRTER, JR., ESQUIRE, and TIMOTHY J.  
8 PERRY, ESQUIRE, c/o McWhirter Law Firm, 400 North Tampa Street,  
9 Suite 2450, Tampa, Florida 33602, appearing on behalf of  
10 Florida Industrial Power Users Group.

11 PUBLIC COUNSEL HAROLD McLEAN, CHARLES BECK, ESQUIRE,  
12 JOSEPH MCGLOTHLIN, ESQUIRE, AND PATTI CHRISTENSEN, ESQUIRE,  
13 Office of Public Counsel, c/o The Florida Legislature, 111 W.  
14 Madison Street, Room 812, Tallahassee, Florida 32399-1400,  
15 appearing on behalf of the Citizens of the State of Florida.

16 ROBERT SCHEFFEL WRIGHT, ESQUIRE, and JOHN T. LAVIA,  
17 III, ESQUIRE, Young Law Firm, 225 South Adams Street, Suite  
18 200, Tallahassee, Florida, appearing on behalf of Florida  
19 Retail Federation.

20 ATTORNEY GENERAL CHARLIE CRIST, CHRISTOPHER M. KISE,  
21 SOLICITOR GENERAL, JACK SHREVE, SENIOR GENERAL COUNSEL, and  
22 CECILIA BRADLEY, ESQUIRE, Office of the Attorney General, The  
23 Capital, Tallahassee, Florida, appearing on behalf of the  
24 Office of the Attorney General.

25

1 PARTICIPATING CONTINUED:

2           CAPTAIN DAMUND WILLIAMS, ESQUIRE, 130 Barnes Drive,  
3 Suite 1, Tyndall Air Force Base, Florida 32403, appearing on  
4 behalf of the Federal Executive Agencies.

5           MIKE B. TWOMEY, ESQUIRE, P. O. Box 5256, Tallahassee,  
6 Florida 32314-5256, appearing on behalf of AARP.

7           COCHRAN KEATING, ESQUIRE, JENNIFER BRUBAKER, ESQUIRE,  
8 ROSANNE GERVASI, ESQUIRE, FPSC General Counsel's Office, 2540  
9 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850,  
10 appearing on behalf of the Florida Public Service Commission  
11 Staff.

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## P R O C E E D I N G S

1  
2 CHAIRMAN EDGAR: Good morning. Welcome all to the  
3 Public Service Commission. Thank you for bearing with us while  
4 we took a few extra minutes to get some of our paper work in  
5 order. And I'm going to begin by asking our staff counsel to  
6 read the notice.

7 MR. KEATING: Pursuant to notice issued January 26th  
8 and April 3rd, 2006, this time and place have been set for a  
9 hearing in Docket Number 060038-EI, petition for issuance of a  
10 storm-recovery financing order by Florida Power and Light  
11 Company.

12 CHAIRMAN EDGAR: Thank you, Mr. Keating.

13 Next we'll take appearances, and we'll start at my  
14 left. I will ask you to go kind of slowly so I can make sure  
15 that I get everybody's name down.

16 MR. LITCHFIELD: Thank you.

17 Good morning, Chairman Edgar. My name is Wade  
18 Litchfield, I'm appearing on behalf of Florida Power and Light  
19 Company. I would also like to enter appearances for Natalie  
20 Futch Smith, Bryan S. Anderson, and John T. Butler, also of  
21 Florida Power and Light Company. And their addresses, as well  
22 as mine, are as reflected in the prehearing order in this  
23 matter.

24 CHAIRMAN EDGAR: Thank you.

25 MR. WILLIAMS: Captain Damund Williams appearing for

1 the Federal Executive Agencies.

2 MR. KISE: Good morning. Christopher Kise, Office of  
3 the Attorney General, on behalf of the Attorney General. Also,  
4 I would like to enter an appearance for Jack Shreve and Cecilia  
5 Bradley also from the Office of the Attorney General.

6 CHAIRMAN EDGAR: Thank you.

7 ATTORNEY GENERAL CRIST: Charlie Crist, the Attorney  
8 General of Florida.

9 MR. McWHIRTER: John McWhirter and Tim Perry  
10 representing the Florida Industrial Power Users Group. Our  
11 address is correctly stated in the pretrial order.

12 MR. TWOMEY: Madam Chair, Commissioners, good  
13 morning. Mike Twomey appearing on behalf of AARP and that  
14 portion of its approximately 2.8 million members served by  
15 Florida Power and Light Company.

16 CHAIRMAN EDGAR: Thank you.

17 MR. BECK: Good morning, Madam Chairman. I would  
18 like to make an appearance for Harold McLean, Public Counsel.  
19 My name is Charlie Beck. Also appearing today on behalf of the  
20 Citizens of Florida will be Joe McGlothlin and Patty  
21 Christensen.

22 CHAIRMAN EDGAR: Thank you. Are there others?

23 MR. WRIGHT: Madam Chairman, Commissioners, good  
24 morning. Robert Scheffel Wright, and also appearing will be  
25 John T. LaVia, III, on behalf of the Florida Retail Federation

1 and its several thousand members who are served by FPL.

2 CHAIRMAN EDGAR: Thank you.

3 MR. KEATING: Cochran Keating appearing on behalf the  
4 Commission. Jennifer Brubaker and Rosanne Gervasi also  
5 appearing on behalf of the Commission.

6 CHAIRMAN EDGAR: Thank you. Well, as you all know,  
7 we have a lot of material to cover. We have three full days to  
8 do it. We have a lot of witnesses, we have a lot of testimony.  
9 I expect we'll have a lot of exhibits. As you are also, I'm  
10 sure, well aware, we have a statutory time clock that we are  
11 operating under, which makes the opportunity to extend the  
12 hearing time quite limited. There is very little opportunity  
13 for us to schedule something to go beyond the three days. If  
14 we have to, we will certainly try to accommodate that.

15 • But keeping in mind the time frame we have for the  
16 hearing and also the statutory time frame that we must meet, I  
17 do ask that all of the parties take that into account. We will  
18 cover all of the material that you want to, and the best way  
19 that we are able, but I would ask the parties to avoid  
20 duplicative cross-examination, and to try to limit their  
21 friendly cross and keep the cross-examination focused and  
22 concise so that we can get through all of the material that we  
23 need to in these next three days.

24 Staff, can you walk us through the preliminary  
25 matters.

1 MR. KEATING: Staff is aware of a few preliminary  
2 matters. First, both staff and FPL have provided other parties  
3 in the docket with notice of intent to request official  
4 recognition of some other state financing orders as well as  
5 other state statutes under which those financing orders were  
6 authorized.

7 I have not heard any objection. If there is no  
8 objection, staff would ask that those two requests be approved.

9 CHAIRMAN EDGAR: Is there any objection? Seeing  
10 none, show that request approved.

11 MR. KEATING: Second, I wanted to point out that  
12 there are some pending confidentiality matters. There are a  
13 handful of pending confidentiality requests in the docket.  
14 Most of those have been filed within the last few weeks and  
15 will be addressed in due time. To the extent that any of the  
16 confidential information is not used at the hearing and can be  
17 returned, staff does intend to return that information to the  
18 party.

19 And for purposes of this proceeding, any information  
20 that's subject to a pending request or claim of confidential  
21 treatment will still be handled as confidential.

22 CHAIRMAN EDGAR: Thank you.

23 MR. KEATING: In addition, FPL filed yesterday a  
24 motion for protective order to protect certain confidential  
25 information provided to Public Counsel and the Attorney

1 General's Office from disclosure during the course of this  
2 proceeding, I don't believe there is any objection to that  
3 motion, and I believe that's something that could be ruled on  
4 and perhaps approved at this point.

5 CHAIRMAN EDGAR: Are there any objections?

6 Then I find in favor of the motion.

7 MR. KEATING: Staff has handed out a Comprehensive  
8 Exhibit List that it prepared for the parties and Commissioners  
9 use in this proceeding. And we are handing out right now a  
10 revised version of that list. The only change is you will note  
11 the previous version that you may have been provided started  
12 with an Exhibit Number 1. We realized this morning that there  
13 were, I think, two exhibits that had already been marked and  
14 admitted into the record through the service hearings in this  
15 proceedings, so we are going to start this Comprehensive  
16 Exhibit List with Exhibit Number 3, and we would ask that the  
17 list itself be marked as Exhibit 3 as shown on the copy that  
18 was just handed out.

19 CHAIRMAN EDGAR: We will begin with the Comprehensive  
20 Exhibit List for the record as Exhibit 3.

21 (Exhibit 3 marked for identification and admitted  
22 into the record.)

23 MR. KEATING: Noted on that Comprehensive Exhibit  
24 List are the exhibits that accompanied parties prefiled  
25 testimony as well as a consolidated exhibit of discovery

1 responses from FPL that was prepared by Staff. Due to time  
2 limitations, the consolidated exhibit had been numbered and  
3 copied prior to staff learning that not all of the items  
4 included in it could be stipulated.

5           Hence, what we have done, as you will see, and we  
6 have handed out a copy to all the parties, it's a large stack  
7 of documents, it has got a yellow page on the top. The yellow  
8 page indicates the portions of this document, this consolidated  
9 exhibit, that Staff understand had been stipulated by the  
10 parties. The green page underneath includes a list of all the  
11 documents that are included in this comprehensive exhibit. So  
12 what staff proposes to do is mark the consolidated exhibit,  
13 given the next number on the Comprehensive Exhibit List, as  
14 Exhibit 4.

15           And staff would ask that the stipulated portions, as  
16 identified on the yellow cover page, be moved into the record.  
17 The nonstipulated portions, staff will still be referring to  
18 those portions of this exhibit on cross-examination, and we  
19 would propose to move those into the record at the appropriate  
20 time.

21           CHAIRMAN EDGAR: Seeing no objections, show the  
22 request granted.

23           (Exhibit 4 marked for identification and admitted  
24 into the record.)

25           MR. KEATING: One more point on this Comprehensive

1 Exhibit List, or a couple more points. You notice on the  
2 second page Staff has also prepared a consolidated exhibit that  
3 consists of confidential discovery responses from FPL. We have  
4 provided that to the Commissioners and the court reporter.  
5 Staff would ask that that be marked as Exhibit 5 and moved into  
6 the record, as staff understand there is no objection to moving  
7 that into the record.

8 CHAIRMAN EDGAR: Show that as Exhibit 5.

9 (Exhibit 5 marked for identification and admitted  
10 into the record.)

11 MR. KEATING: And, finally, on the copy that was just  
12 handed out, staff has provided numbering for all the prefiled  
13 exhibits on this list that were filed with testimony in this  
14 docket. Starting with 6, and going through 136, it is staff's  
15 understanding and the parties should probably jump in now if  
16 we're incorrect, but it's staff's understanding that there was  
17 no objection to moving any of these exhibits into the record  
18 for purposes of streamlining the process. We would propose  
19 that they be marked in the order that they are presented,  
20 Number 6 through 136, and moved into the record at this time.

21 CHAIRMAN EDGAR: Seeing no objections, we will show  
22 this as Exhibit 6 through 136.

23 (Exhibit 6 through 136 marked for identification and  
24 admitted into the record.)

25 MR. KEATING: Staff is not aware of any other

1 preliminary matters, but I believe there are two parties that  
2 have also proposed stipulated exhibits to be marked and moved  
3 into the record.

4 CHAIRMAN EDGAR: Mr. Litchfield.

5 MR. LITCHFIELD: Thank you, Madam Chairman.

6 We have distributed this morning to all the parties  
7 two documents, they are responses and also general objections  
8 to interrogatories propounded by Florida Power and Light  
9 Company. They have been agreed to be entered into the record  
10 this morning. I would indicate that not all of the answers to  
11 these two sets are attached, but simply those numbers to which  
12 the parties have agreed to have moved into the record along  
13 with the general objections. So I would ask that both of these  
14 documents be marked as a composite exhibit sequentially and be  
15 moved into the record.

16 CHAIRMAN EDGAR: Are there any objections?

17 Mr. McWhirter.

18 MR. McWHIRTER: Madam Chairman, FIPUG has an exhibit  
19 which I guess at this juncture would be Exhibit 139 that we  
20 would like to --

21 CHAIRMAN EDGAR: Mr. McWhirter, just a moment, I  
22 don't want to get too far ahead of myself.

23 Are there any objections to Mr. Litchfield's request  
24 for the exhibits he has put forth?

25 No. We will label those 137 and 138.

1           (Exhibits 137 and 138 marked for identification and  
2 admitted into the record.)

3           CHAIRMAN EDGAR: And, Mr. McWhirter, I'm now ready.

4           MR. McWHIRTER: These exhibits are three requests for  
5 admissions dealing with lost revenue that Florida Power and  
6 Light claims. They are admissions by Florida Power and Light  
7 on the subject.

8           CHAIRMAN EDGAR: So this would be Exhibit 139. Are  
9 there any objections?

10          MR. LITCHFIELD: None.

11          MR. KEATING: Just for clarity sake, for the record,  
12 FPL had handed out two documents, and I would just like to make  
13 clear, I guess, that Exhibit 137 will be the Staff objections  
14 and responses, portions of the Staff objections and responses  
15 to FPL's Third Set of Interrogatories. And 138 would be the  
16 portions of objections and responses to FPL's Sixth Set of  
17 Interrogatories to Staff.

18          CHAIRMAN EDGAR: Mr. Keating, thank you for that  
19 clarification.

20                 And, I'm sorry, Mr. McWhirter, will you, for me,  
21 again give a description of the exhibit that you are  
22 proffering, which would be 139.

23          MR. McWHIRTER: Excuse me, Madam Chairman?

24          CHAIRMAN EDGAR: A description.

25          MR. McWHIRTER: A description?

1 CHAIRMAN EDGAR: A description.

2 MR. McWHIRTER: An admission with respect to lost  
3 revenues.

4 CHAIRMAN EDGAR: Any objection?

5 MR. LITCHFIELD: I will object to the  
6 characterization. I think the documents will speak for  
7 themselves, but I do not object to the records going into the  
8 record. Thank you.

9 CHAIRMAN EDGAR: Mr. McWhirter, how about an  
10 alternative title?

11 MR. McWHIRTER: FPL admissions on revenue.

12 CHAIRMAN EDGAR: Okay. Show that as Exhibit 139.

13 (Exhibit 139 marked for identification and admitted  
14 into the record.)

15 CHAIRMAN EDGAR: Any other preliminary matters?

16 MR. McWHIRTER: 139?

17 CHAIRMAN EDGAR: Yes, sir.

18 MR. McWHIRTER: Thank you.

19 CHAIRMAN EDGAR: Okay. We are at a point in time  
20 where we will begin here in just a moment with opening  
21 statements. Per the prehearing order, we will begin with  
22 counsel for Florida Power and Light who will have ten minutes  
23 to address the room. And then the intervenors will have 20  
24 minutes collectively. I understand that they have divided that  
25 time up amongst themselves. And then our staff will have five

1 minutes.

2           And, seeing no further matters, Mr. Litchfield, we  
3 are ready.

4           MR. LITCHFIELD: Thank you. Good morning, Chairman  
5 Edgar and Commissioners. My name is Wade Litchfield, appearing  
6 on behalf of Florida Power and Light Company. Last August all  
7 of the parties before you at the table today were here  
8 recommending your approval of a joint stipulation and  
9 settlement in FPL's base rate proceeding. In that case, FPL  
10 had requested an increase in its base rates of \$430 million,  
11 including an increase of \$100 million in the storm accrual  
12 intended to provide more protection against the need for future  
13 storm surcharges.

14           However, in reaching a settlement that left base  
15 rates unchanged for an extended period of time, a result that  
16 was enthusiastically endorsed by all the parties here today, it  
17 was agreed that FPL would suspend the existing accrual in base  
18 rates and that all storm restoration costs would be recovered  
19 through one of two methods; a surcharge, such as the one that  
20 is currently in place to recover the 2004 storm season costs,  
21 or pursuant to the newly enacted storm cost-recovery  
22 legislation via securitization.

23           Specifically, I would note that the parties agreed  
24 that FPL will be permitted to recover prudently incurred costs  
25 associated with events covered by Account Number 228.1, that's

1 the reserve account, and replenish Account Number 228.1 to a  
2 target level through charges to customers that are approved by  
3 the Commission that are independent of and incremental to base  
4 rates without the application of any form of earnings test or  
5 measure.

6 Now, I would note, also, Paragraph 19 of the same  
7 settlement agreement, all parties to this stipulation and  
8 settlement agree to endorse and support the stipulation and  
9 settlement before the FPSC and any other administrative or  
10 judicial tribunal and in any other forum.

11 All of the parties agreed to these provisions, and  
12 the Commissioners unanimously approved that settlement,  
13 expressing one concern, and that was that the company bring  
14 back a proposal to replenish the reserve at the earliest  
15 opportunity, and the company committed to do that.

16 And we all left here last August with an  
17 understanding and with a plan. Unfortunately, due to an  
18 equally devastating 2005 storm season, we now find ourselves  
19 eight months later in a position to apply that plan.

20 Commissioners, the issues in this case over the next  
21 three days that you will be called upon to decide fall  
22 generally into one of four categories: The first relates to  
23 policy, and the most important policy issue before you is the  
24 one that given the last August settlement, we certainly did not  
25 envision having to address again, and that is whether to accept

1 the recommendation of Mr. Jenkins on your Staff to force FPL to  
2 absorb up to 20 percent of the reasonable and prudently  
3 incurred costs to restore electric service. Mr. Jenkins'  
4 proposal would require you to ignore a fundamental element of  
5 the 2005 settlement agreement that I just referred to. You  
6 should not do so as a matter of policy and as a matter of law.

7           From the standpoint of public policy, if the  
8 Commission were to override a settlement agreement, it would be  
9 doing something that no Florida Public Service Commission in  
10 FPL's recollection, or in Mr. Jenkins' recollection, for that  
11 matter, has ever done in the history of Florida regulation.  
12 Such an action undoubtedly would have a future chilling effect  
13 on negotiated settlements long supported by this Commission and  
14 other regulatory bodies as being in the public interest.

15           Likewise, it would send a very dangerous signal to  
16 the investment community. Indeed, such an action would greatly  
17 increase regulatory risks as perceived by investors, thereby  
18 increasing Florida Power and Light Company's costs to raise  
19 capital and significantly raising costs to customers over the  
20 long-term. As a matters of law, there is nothing in the  
21 Florida Statutes, including the securitization legislation,  
22 that authorizes the sharing of prudently incurred costs. In  
23 fact, the legislature passed the securitization legislation to  
24 provide an additional mechanism for the recovery of prudently  
25 incurred storm costs.

1           And calling it sharing does not alter the fact that  
2 it would be nothing more than a disallowance of prudently  
3 incurred costs, a severe departure from longstanding principles  
4 of utility law and regulation in Florida. Again, it is  
5 important to remember that this issue was raised last year and  
6 rejected by this Commission. It was inappropriate and bad  
7 policy then, and it is inappropriate and bad policy now.

8           The second general category of issues relates to  
9 accounting, and specifically what should be charged to the  
10 reserve. You will hear the intervenors support the concept of  
11 a so-called incremental approach, yet they are very selective  
12 in their use of the term incremental. For example, they would  
13 deny FPL the recovery of unbudgeted and incremental costs spent  
14 on public safety messages during the restoration effort. They  
15 would deny FPL recovery of unbudgeted and incremental costs of  
16 backfill and catch-up work, even though in last year's hearings  
17 Public Counsel's own witness acknowledged that such costs were  
18 recoverable if they were incurred to facilitate restoration  
19 activities. And they would deny FPL recovery of unbudgeted and  
20 incremental costs incurred in meeting certain obligations to  
21 the very utilities that supported us through the storms.

22           You will learn also that the intervenors have some  
23 errors in the mathematical application of their proposed  
24 approach. For example, their witness proposes disallowing  
25 regular payroll expenses, yet makes no adjustment for the fact

1 that a portion of those expenses has already been eliminated  
2 from FPL's request because they will likely be recovered from  
3 insurance proceeds. Similarly, their witness proposes  
4 disallowing fleet vehicle costs, yet, again, makes no  
5 adjustment for the fact that a portion of these expenses has  
6 already been eliminated from FPL's request because they are  
7 included in the capital adjustment.

8           Thus, intervenors profess concern about so-called  
9 double-dipping, yet they apply that exact approach when it  
10 comes to proposing disallowances. It is important that we all  
11 understand for future events what the accounting ground rules  
12 are going to be going forward. We ask that you decide these  
13 accounting issues consistently within the overall accounting  
14 and ratemaking framework and with a mind to the policy  
15 implications and the incentives or disincentives that they will  
16 establish. Mr. Davis and Mr. Gower address these issues in  
17 detail in their testimony.

18           The third set of issues relates to prudence. During  
19 last year's proceedings prudence was not questioned. In fact,  
20 the company's performance was applauded by many of the same  
21 parties who are here today. Significantly, in this case it is  
22 uncontroverted by any testimony filed in this docket that the  
23 company's performance was just as good or better than it was in  
24 2004. It simply defies logic now, only a year later, to say  
25 that the company has faulty maintenance practices. Yet you

1 will hear allegations that FPL did not adequately maintain its  
2 transmission and distribution system. But if there were any  
3 merit whatsoever to such a claim, the evidence would have been  
4 borne out long before now through lower reliability indicators  
5 in FPL's day-to-day operations.

6           The fact is that the most relevant overall  
7 reliability indicator for FPL customers is and has been for  
8 many years in the top quartile of the utility industry at FPL.  
9 An incredible accomplishment when you consider that we provide  
10 service within an area that has the greatest incidence of  
11 lightning strikes anywhere in the country, and an area that  
12 experiences exceptionally rapid vegetation growth. A utility  
13 simply cannot over a multi-year period consistently produce top  
14 quartile results if it operates in a slipshod fashion as has  
15 been alleged. It just doesn't happen. And it has not happened  
16 in the case of FPL.

17           The fact is that only a tiny fraction, less than one  
18 percent, of the company's poles came down due to the  
19 indiscriminate stress of hurricane-force winds during 2005.  
20 About the same percentage that came down during last year's  
21 storms, and a lower percentage than has come down on other  
22 utility systems in hurricanes of equivalent intensity. And the  
23 poles that fell were of all types and ages, including brand new  
24 and even concrete poles. Those figures are entirely consistent  
25 with what one would expect on a system such as FPL's where pole

1 construction standards are among the highest in the industry.

2           This Commission will consider in another proceeding  
3 the extent to which those standards should be further increased  
4 taking into account the prospect of more active storm seasons  
5 in the future. And as a matter of public policy, you will  
6 decide whether and at what cost we should attempt to lower the  
7 hurricane failure rate for poles. Perhaps to three-quarters of  
8 one percent, or perhaps to one-half of one percent, but those  
9 policy decisions are yet to be made.

10           What is important today is that a well-performing  
11 system in nonhurricane conditions performed as expected during  
12 the 2005 storm season, consistent with its design standards.  
13 In weighing what parties in this docket have to say on this and  
14 other matters, we would ask that you keep in mind that none of  
15 the parties other than the Office of Public Counsel has  
16 conducted any independent discovery or filed any testimony on  
17 the subject of prudence in this case.

18           And even the Office of Public Counsel has only one  
19 witness on the subject of prudence, and that is Mr. Byerley.  
20 And the weight of his testimony, we would submit, is paper  
21 thin. His conclusions are predicated on what he calls a  
22 windshield survey, driving through parts of Palm Beach County,  
23 on faulty assumptions relative to the number of poles and the  
24 amount of conductor use in his analysis, and on fundamental  
25 misapprehensions with respect to FPL's own forensic analysis

1 and the KEMA study.

2           The fact that poles fail under the stress of  
3 hurricane impact is not an indication that they were improperly  
4 maintained, despite the rhetoric to the contrary. As reflected  
5 by the non-systematic damage to infrastructure throughout the  
6 state, hurricanes are indiscriminate destroyers. A finding of  
7 imprudence is a drastic remedy in regulation. In this regard,  
8 as you carefully review and contrast the testimony of  
9 Mr. Byerley to those of Mr. Brown, Ms. Jaendl, and  
10 Ms. Williams, you will observe that Mr. Byerley's criticism is  
11 unfounded.

12           Finally, the fourth set of issues that you will be  
13 called upon to address relates to the mechanics of  
14 securitization itself. There are questions for you to resolve  
15 on the specifics of the process, but that remains much to do  
16 after the issuance of the financing order. FPL welcomes and  
17 encourages the direct involvement of Commissioners in  
18 overseeing the securitization process.

19           As Mr. Dewhurst's testimony explains, the Commission  
20 has a decision to make as to the nature of the involvement it  
21 wishes to have in the issuance of the securities, and where  
22 final decision-making responsibility should be. FPL pledges to  
23 work cooperatively within whatever framework the Commission  
24 wishes to institute. However, we would ask, at a minimum, that  
25 the Commission recognize that FPL has ultimate legal

1 responsibility for the offering and marketing documents and,  
2 therefore, should be allowed to make the final call on  
3 precisely what it can or should say in those documents.

4           And, secondly, if the Commission decides to take an  
5 active role in directing and overseeing the bond issuance  
6 process, that the Commission maintain its own decision-making  
7 authority and not leave that authority to be exercised through  
8 others.

9           That concludes FPL's opening remarks, Chairman Edgar.  
10 I thank you, Commissioners.

11           CHAIRMAN EDGAR: Thank you, Mr. Litchfield.

12           As noted ten minutes ago, the Intervenors have twenty  
13 minutes collectively.

14           General, are you going start us off?

15           ATTORNEY GENERAL CRIST: Yes, ma'am.

16           Thank you, Madam Chair, and members of the  
17 Commission. I appreciate the opportunity to have the occasion  
18 to represent the people of the state of Florida.

19           I'm pleased to recognize the outstanding work of two  
20 individuals who fight for the ratepayers of our state every  
21 day: Public Counsel Harold McLean and Deputy Public Counsel  
22 Charlie Beck. I also wanted to recognize some people in the  
23 Office of Attorney General: Jack Shreve, Chris Kise and  
24 Cecilia Bradley who do extraordinary work for our office. I  
25 also commend those who have intervened in order to represent

1 their constituents: Mike Twomey of AARP, John McWhirter and Tim  
2 Perry of the Florida Industrial Power Users Group, Shef Wright  
3 and the Florida Retail Federation, Lieutenant Colonel White and  
4 Captain Williams representing the federal government. I think  
5 somebody is turning down my microphone. Maybe not. It's a  
6 power issue, isn't it?

7           This coalition represents a diverse section of  
8 consumers in Florida, both young people and seniors along with  
9 business and private consumers. Each are required to pay their  
10 bills and pay higher costs when storms reek havoc over their  
11 businesses and their homes. When storms hit a utility such as  
12 Florida Power and Light, the law allows them to recover some of  
13 their losses. We are here today because Florida Power and  
14 Light seeks one and one-half billion dollars from those who are  
15 paying their own storm damage costs. These funds are sought  
16 for storm recovery and to establish a reserve fund. It is an  
17 outrageous amount of money.

18           The hurricane costs sought by utilities must be kept  
19 to a minimum. There are four basic reasons why at least \$615  
20 million total should be cut from the request: Failing to  
21 undertake necessary preventative maintenance inspections. Two,  
22 failing to provide proper maintenance and replacement of  
23 transmission lines and poles. Three, failing to maintain trees  
24 which led to downed poles and damaged lines. And, fourth,  
25 double-counting; including costs and expenses that have already

1 been paid in their base rates.

2           A legendary basketball coach at UCLA, John Wooden,  
3 had an important motto, "Those who fail to prepare prepare to  
4 fail." Coach Wooden has described the approach taken by FP&L.  
5 FP&L has requested a \$650 million reserve. This must be cut  
6 drastically. Florida ratepayers are not only paying for storm  
7 damage, they are also paying extremely high fuel bills for  
8 electricity and the high cost of fuel in their daily lives.  
9 You should cut at least \$450 million from FP&L's requested  
10 reserve.

11           We may not have hurricanes which require a large  
12 reserve. If we have storm damage that exceeds reserves, we can  
13 deal with those when necessary. Right now ratepayers simply  
14 cannot afford to provide a reserve of this size.

15           There is one final question: To whom do the  
16 ratepayers turn to recover their costs? It is, of course, you,  
17 the Public Service Commissioners. You are empowered to look at  
18 these presentations, and even to look beyond to determine the  
19 additional burden placed on the citizens of Florida and to  
20 fight for and to protect them.

21           Thank you very much for giving me the opportunity to  
22 speak, and please excuse me in my necessity to depart early.

23           Thank you very much, Madam Chair.

24           CHAIRMAN EDGAR: Thank you, General.

25           Mr. Beck.

1 MR. BECK: Thank you, Madam Chair, and thank you, Mr.  
2 Attorney General.

3 Commissioners, many of the costs FPL seeks to  
4 securitize in this case are not reasonable and are not prudent,  
5 and the Commission is prohibited by the securitization statute  
6 from allowing FPL to finance any such costs. Our office will  
7 sponsor three witnesses addressing those areas where FPL's  
8 costs are unreasonable and not prudent.

9 The first area that we addressed involves FPL's  
10 inadequate maintenance of their plant. Our witness Mr. James  
11 Byerley will address that area. Mr. Byerley is a registered  
12 professional engineer, and is past manager of transmission  
13 engineering and construction for the Tennessee Valley  
14 Authority. He is well qualified to testify about the adequacy  
15 or lack of adequacy of FPL's maintenance.

16 One of the big failures during the 2005 hurricanes  
17 was the cascading toppling of 28 transmission towers. The  
18 evidence will show -- and this is developed through discovery  
19 and extensive analysis, and not a windshield tour as described  
20 by FPL -- the evidence will show that FPL knew as early as 1998  
21 about loose and missing braces on these towers and was aware  
22 that this problem could pose serious risks of failure in high  
23 wind situations.

24 Had FPL pinged the bolt threads as internal documents  
25 of FPL suggested at the time, or had FPL placed fasteners on

1 their cross-brace bolts as its structural engineer recommended  
2 after the collapse, the towers would not have fallen during  
3 Hurricane Wilma.

4           Mr. Byerley will also tell you how FPL's distribution  
5 pole inspection program has been minimal at best and virtually  
6 nonexistent at times. FPL had initiated a distribution wood  
7 pole inspection program in the 1980s, which it discontinued in  
8 1991 to save money. When it restarted inspections in the late  
9 1990s, some FPL personnel recommended that FPL implement a  
10 system-wide pole inspection maintenance program designed to  
11 inspect all of their poles over a period of four, seven, or ten  
12 years, much like the PSC recently ordered the company to do.  
13 Instead, FPL implemented only a very small inspection program  
14 limited to a relatively small number of inspections in only two  
15 distinct geographic regions.

16           The past distribution pole inspection practices have  
17 been insufficient to identify and replace deteriorated poles  
18 with the result that many of the poles that failed during Wilma  
19 did so not because of high winds, but because of their  
20 deteriorated condition.

21           Inadequate vegetation management is responsible for  
22 12 percent of the pole failures. Since FPL has concluded that  
23 it is most cost-effective for its purposes to replace  
24 tree-damaged poles than prevent the damage, FPL is not entitled  
25 to recover their preventable costs, nor are they entitled to

1 recover the repair costs of the conductors associated with  
2 those poles. And this will be covered by Mr. Byerley's  
3 testimony, as well.

4           The second broad area where the amount of storm  
5 damage is not reasonable and not prudent concerns the way FPL  
6 attributes normal expenses already included in base rates as  
7 hurricane expenses as well. This area is addressed by two of  
8 our witnesses, CPAs Hugh Larkin and Donna DeRonne. The  
9 expenses are imprudent from an accounting perspective because  
10 FPL's proposal would double-count expenses.

11           We propose in our testimony, like the Commission  
12 ordered in 2004, to only allow FPL incremental expenses related  
13 to the hurricanes. Mr. Larkin will cover the overall policy,  
14 and Ms. DeRonne will address specific adjustments consistent  
15 with that policy. While our proposals regarding  
16 double-counting of expenses are consistent with the  
17 Commission's order covering the 2004 hurricane expenses, one  
18 area where our proposals differ from the PSC's 2004 order  
19 concerns lost revenues and uncollectibles.

20           Florida Power and Light's case before you today  
21 attempts to recover lost revenues in a variety of ways. For  
22 example, you will hear them say again and again that they  
23 didn't recover their normal level of expenses embedded in base  
24 rates because they didn't get expected revenues during the  
25 hurricanes. Not only should you not surcharge customers to pay

1 for lost revenues as a matter of principle, but in this case  
2 you will see there were excess revenues during the hurricane  
3 season. There are no lost revenues.

4 As a matter of principle, it comes down to what  
5 business risk is going to be FPL's responsibility and whether  
6 this Commission will force customers to pay for electricity  
7 they didn't use through a surcharge. Is FPL compensated for  
8 business risk? You bet they are. \$100 million per year for  
9 each basis point in their return on equity. There's hundreds  
10 of millions of dollars that FPL receives to compensate them for  
11 their business risk, and those dollars are just as green as any  
12 other dollars received by FPL.

13 Did they lose some revenues on account of the  
14 hurricanes? Yes, because of the time it took to restore power.  
15 But other weather events during the year affected FPL's  
16 revenues in a positive way. It was a very hot summer last  
17 year, and the hot weather led to FPL exceeding expected  
18 revenues by a large margin during the summer. If you look at  
19 the last half of 2005 during which all the hurricane activity  
20 took place, FPL was still ahead on revenues when comparing  
21 actuals to projections, even taking the hurricane outages into  
22 account.

23 You should not make customers pay for so-called lost  
24 revenues whether done directly or through one of the back-door  
25 methods proposed by FPL when the overall effect on FPL from

1 weather phenomena during the second half of 2005 is positive.  
2 If there is anything in this case, there are found revenues not  
3 lost revenues.

4           There are also issues remaining from 2004, the  
5 biggest of which is whether you will make FPL abide by your  
6 order which required FPL to stop charging 2004 storm costs to  
7 the storm reserve by July 31st, 2005. When July 31st came and  
8 FPL had not spent the maximum amount allowed by your order, FPL  
9 simply made accruals for every possible dollar allowed, whether  
10 or not they spent it and whether or not they knew what they  
11 were going to spend it on. The Commission gave FPL a cut-off  
12 date for the 2004 hurricane costs and it should be enforced.

13           Lastly, Commissioners, we ask that you remember that  
14 the hurricanes imposed great hardships on customers. Besides  
15 the incredible disruptions of people's lives that occurred  
16 while they were without electricity, sometimes for weeks at a  
17 time, some people experienced life-threatening medical  
18 emergencies because of the lack of power. Some people were  
19 trapped in their apartments for weeks without electricity  
20 because their elevator wouldn't work without power.

21           At the service hearings you held in Fort Myers,  
22 Fort Lauderdale, West Palm Beach, and Miami, you heard about  
23 the extreme financial hardship that high electric prices placed  
24 on the most needy among us. As you decide this case, we ask  
25 you to please keep these things in mind, and don't make things

1 any worse for the customers of Florida by approving charges  
2 which are higher than necessary.

3 Thank you.

4 CHAIRMAN EDGAR: Mr. McWhirter.

5 MR. McWHIRTER: Madam Chairman, it's hard to follow  
6 those two eloquent presentations, and I will be brief.

7 My clients admonished me to recognize that a lot of  
8 times we sit around and pick on Florida Power and Light and  
9 other utilities for the things they don't do, and infrequently  
10 do we compliment them on the things they do. And I want to  
11 compliment Florida Power and Light people here, but especially  
12 the workers who worked hard to get power back to the customers  
13 as fast as they could. And we appreciate that, and we hope  
14 they will continue that good work.

15 But having said that, we don't want to turn a  
16 hurricane into a windfall for investors to be deployed into  
17 other activities. The first thing that I think we need to  
18 think about is the real magnitude of this case. Florida Power  
19 and Light wants to issue bonds of about a billion dollars, but  
20 they're not asking to collect the billion dollars from  
21 customers, they're not even asking to collect 1.5 billion as  
22 The General said.

23 When you take into consideration not only the bond  
24 issue, but the interest on the bond issue over the 12-year  
25 period, plus the servicing costs, plus the income tax that is

1 going to be charged to customers, you are going to find that  
2 Florida Power and Light is really asking to collect  
3 \$2,085,000,000 from customers over the next 12 years. This is  
4 very similar to a very large base rate case, which we haven't  
5 seen in a long, long time of about \$175 million a year on  
6 current customers. That's a big rate increase.

7           The second thing I want to talk about is the issue of  
8 due process. Typically, a utility case, if they came in and  
9 asked for 175 million in a base rate increase, the Commission  
10 would have time to consider it for more than eight months  
11 before it had to issue an order. In this case, the time is  
12 constricted very substantially by the order -- by the  
13 legislation that controls you. As a consequence, to get into  
14 the detail, the records which are exclusively in the possession  
15 of the utility company and many of which are confidential,  
16 makes it an almost impossible task to fully audit the true  
17 circumstances of the case. So we rely heavily on your Staff.  
18 And my clients are relying heavily on the good work that has  
19 been performed by the Public Counsel.

20           So what we are doing is trying to focus on some  
21 specific regulatory issues that we think should be given  
22 consideration. Our main concern is the regulatory aspect of  
23 incremental costs. Stated another way by Mr. Beck just a  
24 minute ago, it is double recovery. If customers have already  
25 paid for a lineman's salary for the day to go out and work on

1 the line, they ought to get credit for the money they have  
2 already paid, and all of that shouldn't go into storm costs.

3 FPL tried in their last rate case to put it all into  
4 storm costs under an accounting procedure that they adopted  
5 back in 1993, and they said that the Commission approved, and  
6 the Commission didn't go along with that. What the Commission  
7 did say is, well, let's look at the revenues you did collect.  
8 And if you didn't collect your full revenues, then you haven't  
9 recovered what you were entitled to get through base rates, so  
10 we will give you lost revenues.

11 In this case, as Mr. Beck has pointed out, the  
12 utility has plugged \$7 million in lost revenues into their  
13 request for collection, and that's money they didn't collect  
14 from people who weren't getting service. But the truth is that  
15 all the people that were still getting service were sitting  
16 home watching TV to see what was going to happen to them next,  
17 and if you were there you recall it very vividly, and their  
18 bills went up. And, as a consequence, during the period of the  
19 storm, Florida Power and Light, and this is what Exhibit 139  
20 shows you, collected \$25 million more than they thought they  
21 were going to collect. So the idea of lost revenues is silly.

22 The next aspect that I want to talk about is income  
23 tax. And I'm not an accountant, and I probably screw things up  
24 more trying to explain it to you than I help you with, but it  
25 is pretty clear that what happens in the regulatory process is

1 that if a utility has an expense and it collects money from  
2 customers to cover that expense, then those revenues are tax  
3 deductible to the utility and there is no income tax. But if  
4 the utility is collecting money for its earnings, the return  
5 that you have allowed it, which is 12.75, I believe, or  
6 11.75 -- they're showing me the watch, I'm going to quickly  
7 hurry up -- in any event, in order to get that done, you mark  
8 up their earnings by 62 percent.

9           Now what we want to be sure, since storm damage are  
10 expenses, you want to be sure that you match the expense to the  
11 revenue collected so that there is no income tax impact. But  
12 in this case, FPL has an original issue discount methodology  
13 that we will get into a little bit further. And the question  
14 is whether that works.

15           The final regulatory issue that FIPUG is interested  
16 in is cost allocation. And that has to do with the fact that  
17 the customers are divided into classes, and when you assign  
18 costs, you should charge each customer class with the impact  
19 their class has caused the company, and we'll talk about that  
20 later in the briefing.

21           And the post final thing is revenue sharing. And  
22 Mr. Litchfield has told you that you are bound by the  
23 stipulation. When we entered into a stipulation in a base rate  
24 case, that stipulation has to do with base rates. From the  
25 customer's side, we're trying to keep the rates level. In our

1 stipulation, FPL said it would not increase rates. It did give  
2 itself an out, however, and it said if we have a storm we want  
3 to collect that money. And in our stipulation we agreed to  
4 that, that they collect the prudent money but they couldn't  
5 double collect. But we did not intend to bind the Commission  
6 in the event of extraordinary circumstances. And the  
7 Commission, if the utility is earning a 50 percent return, no  
8 one would suggest to you that you can't come in and take some  
9 preventative action for customers, even during the period of  
10 time. So this case has to do with revenue sharing, and you are  
11 not restricted in any fashion, although the parties are  
12 restricted.

13           And I'm going to wind up so the other people will  
14 quit bumping on my back.

15           (Transcript continues in sequence with Volume 2.)

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1 STATE OF FLORIDA )

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, JANE FAUROT, RPR, Chief, Office of Hearing  
6 Reporter Services, FPSC Division of Commission Clerk and  
7 Administrative Services, do hereby certify that the foregoing  
8 proceeding was heard at the time and place herein stated.

9 IT IS FURTHER CERTIFIED that I stenographically  
10 reported the said proceedings; that the same has been  
11 transcribed under my direct supervision; and that this  
12 transcript constitutes a true transcription of my notes of said  
13 proceedings.

14 I FURTHER CERTIFY that I am not a relative, employee,  
15 attorney or counsel of any of the parties, nor am I a relative  
16 or employee of any of the parties' attorney or counsel  
17 connected with the action, nor am I financially interested in  
18 the action.

19 DATED THIS 19th day of April, 2006.

20

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22 \_\_\_\_\_  
23 JANE FAUROT, RPR  
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