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Attachments: FRF Posthearing Statement.April28.doc

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b. Docket No. 060038-EI

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

c. Document being filed on behalf of the Florida Retail Federation.

d. There are a total of 79 pages.

e. The document attached for electronic filing is The Florida Retail Federation's Post-Hearing Brief and Statement of Issues and Positions.

(see attached file: FRF Posthearing Statement.April28.doc)

Thank you for your attention and assistance in this matter.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Florida Power and Light Company's Petition for Issuance of a Storm Recovery Financing Order	)	DOCKET NO. 060038-EI
	)	FILED: APRIL 28, 2006

THE FLORIDA RETAIL FEDERATION'S POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS

The Florida Retail Federation ("FRF"), pursuant to Rule 28-106.215, Florida Administrative Code ("F.A.C."), and Order No. PSC-06-0301-PHO-EI, hereby files its Post-Hearing Brief and Statement of Issues and Positions.[1]

INTRODUCTION AND SUMMARY

The damages caused by Hurricane Wilma to FPL's transmission and distribution systems, and the resulting losses sustained by FPL's customers, were exacerbated by prior inadequate - and imprudent - inspection and maintenance by FPL. Specifically, the

[1] The following abbreviations are used in this brief. The Florida Public Service Commission is referred to as the "Commission" or the "PSC." The Florida Retail Federation is referred to as the "FRF." Florida Power & Light Company is referred to as "FPL." The Office of Public Counsel is referred to as "OPC" or the "Citizens." The Florida Industrial Power Users Group is referred to as "FIPUG." The term "Consumers" is used to refer collectively to the intervenor parties in this case who represent the interests of FPL's captive retail customers, including the Attorney General of Florida, AARP, OPC, FIPUG, the Federal Executive Agencies, and the FRF. Citations to the hearing transcript are in the format [TR abc], where abc indicates the page number cited to. Citations to hearing exhibits are in the format [EXH jkl, xyz], where jkl indicates the exhibit number and xyz indicates the page number of the exhibit cited to, if applicable. References to the Florida Statutes are to the 2005 edition thereof.

failures of FPL's Corbett-Conservation 500 kV lines and its Alva-Corbett 230 kV line appear to have resulted from inadequate maintenance and construction management practices, especially in light of the fact that FPL knew as early as 1998 that there were loose and missing cross-brace bolts on the transmission towers of the Corbett-Conservation line.

Additionally, FPL had suspended its pole inspection program as a cost-cutting measure in 1991 and only reinstated a pole inspection program in 1999. Of FPL's asserted components of its pole inspection program, only the Osmose program is an effective inspection program, and this program was initiated on a limited basis in 1999 and has since been reduced in scope. FPL's pole inspection practices have been, overall, insufficient to identify and replace deteriorated poles, with the result that many pole failures during Hurricane Wilma were due to deterioration. Additionally, FPL's inadequate vegetation management practices contributed to pole failures. FPL is not entitled to recover the preventable costs of pole failures, nor is FPL entitled to recover repair costs associated with conductors that fell as a result of such pole failures. Further, because a significant number of FPL's pole failures were due to inadequate and imprudent maintenance, inspection, and vegetation management activities, the Commission should penalize FPL as allowed by Chapter 350 for these failures, which resulted in additional outages and losses to FPL's customers.

Only those costs that are directly related to restoring

facilities damaged by storms should be included as storm restoration costs recoverable from FPL's customers. For example, lawsuit claims and image-enhancing advertising costs should be disallowed, as should claims for unrealized contingencies. Additionally, proceeds received from other companies (e.g., BellSouth) for storm repair services provided by FPL should be used to offset costs charged to FPL's customers.

The Commission must not allow FPL to include costs that are for cost components that are already included in base rates in its storm restoration costs. Such costs include normal employee salaries, normal tree-trimming costs, normal vehicle costs, and similar cost components.

A storm reserve of $150 million is adequate, reasonable, and prudent. FPL's request for a $650 million reserve is excessive and inappropriate for many reasons, as discussed in detail in the Florida Retail Federation's post-hearing statement below.

DISCUSSION OF KEY ISSUES

In this section of its Post-Hearing Statement, the Florida Retail Federation addresses several major issues in the case, generally in the order in which those issues are set forth in the Prehearing Order. In summary, the discussion makes the following points.

1. Regarding 2004 storm restoration costs, the FRF agrees with Public Counsel's witness Donna DeRonne that FPL's request for recovery of 2004 storm costs should be reduced by approximately $51.4 million, generally because FPL's request covers costs that were projected but not incurred, or that were incurred or proposed to be charged to the storm reserve after July 31, 2005.

Commission Order No. 05-0937[2] provided, inter alia, 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." EXH 150, Order No. PSC-05-0937 at 39.

2. Regarding claimed 2005 storm costs, the Commission should apply the incremental cost accounting approach advocated by Public Counsel's witness Hugh Larkin to prevent double recovery of certain costs by FPL, and the Commission should also reject FPL's attempts to recover "lost revenues" through purported "adjustments." In summary, the Commission should disallow $31.9 million in costs claimed by FPL because those costs are for items that are already recovered through base rates, and the Commission should reject FPL's attempts to recover effectively the same amounts through its purported "adjustments" advocated by FPL witness Davis. The Commission should also disallow additional costs of approximately $57.0 million as described in witness DeRonne's testimony and exhibits.

3. FPL's response to the 2005 storm events was probably adequate or perhaps even "good," but its overall service in 2005 must be found inadequate in light of the conditions actually experienced. The official National Hurricane Center post-storm report on Hurricane Wilma indicates that Wilma was predominantly a Category 1 storm as it passed through FPL's service area on October 24, 2005. In light of FPL's having suspended its only adequate pole inspection program from 1991 to 1999, and then having re-implemented it on only a limited basis, which FPL subsequently reduced from year to year from 2002 to 2005, and in light of FPL's not planning its distribution system giving consideration to the value that its customers place on not being interrupted, and in light of FPL's not having adequately sought or heeded the predictions of its in-house hurricane expert, the Commission should find that FPL's overall service was inadequate, and that FPL's overall behavior was imprudent, and should accordingly reduce FPL's claim for recovery, if necessary by imposing penalties pursuant to Section 350.127, Florida Statutes.

Inadequate pole inspections led to at least some preventable damage and outages; perhaps FPL's failure to consult Mr. Hebert appropriately in early 2004 did, also; perhaps FPL's failure to "do anything differently" upon receiving Mr. Hebert's "extraordinary prediction" in late May 2004 did, also; regardless, the extensive outages experienced as a result of what was predominantly a Category 1 storm are not acceptable, not what

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[2] 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, PSC Docket No. 041291-EI, PSC Order No. 05-0937 (Fla. Pub. Serv. Comm'n, September 21, 2005; also Exhibit 150 in the record of the instant docket.

the Commission should expect of FPL and not what FPL's customers expect. FPL could have done better. The Commission could consider imposing a minimum penalty of about $1.5 million for FPL's imprudently cutting its pole inspection efforts. Imposing a penalty for only the period 1/1/2005 through 10/23/2005 (296 days) at the maximum statutory rate of $5,000 per day = $1.48 million. The Commission could also go further back in time, to at least as early as 2002, to when FPL began cutting its pole inspection program.

4. FPL's request for a $650 million storm reserve, to be funded by its customers on the front end, is grossly excessive. A reserve of $150 million is reasonable, adequate, and appropriate. If the Commission is going to continue to allow FPL to shift storm cost risk onto its customers, the least the Commission can do is to follow the recommendation of the consumers' witness on the issue of how large the reserve should be.

5. With regard to the bond issuance procedures, the Commission should adopt the positions advocated by the Commission Staff's witnesses Fichera, Klein, and Noel, using the "best practices" advocated by those witnesses and providing for active Commission involvement in the bond issuance process on a real-time basis.

In the section titled "BRIEF ON LEGAL ISSUES," the FRF provides concise discussions of legal issues relating to the effect of Order No. 05-0937, the Commission's final order from the proceedings addressing FPL's 2004 storm restoration costs (Issue 5), relating to post-vote and post-order procedures (Issue 74), and relating to whether to keep this docket open (Issue 88).

The Florida Retail Federation will take no position with regard to issues relating to rate impacts, rate design, or the term of recovery if the Commission approves recovery through securitization. The FRF's positions on all issues for which it has positions are set forth in the final section of this pleading, the detailed statement of post-hearing issues and positions.

FPL'S 2004 STORM RESTORATION COSTS - ISSUES 1-4

Consistent with the requirements of Order No. 05-0937, the Commission should disallow $51.4 million of FPL's requested 2004 storm costs, which it proposes to include in the amount to be recovered through the securitization surcharges under its proposal, because those costs were not charged to the storm reserve by July 31, 2005. Additionally, some of the charges may yet be offset by insurance proceeds and by reimbursement from other entities (e.g., telephone companies) whose poles FPL replaced after the 2004 storms and the costs of which have been charged to FPL's storm reserve.

FPL has incurred less in 2004 storm recovery costs than it projected in the 2004 storm cost recovery case (Docket No. 041291-EI). However, FPL is proposing to recover the full amount of the unrecovered balance of the amount that the Commission authorized for recovery in that case, which, if left uncorrected, will allow FPL to recover costs that it did not actually incur. TR 980-81. Ms. DeRonne's evaluation and calculations indicate that FPL does not project to incur the amount of costs, net of insurance proceeds and capital costs, effectively allowed for by the Commission in the 2004 case. TR 984. Additionally, Ms. DeRonne recommends disallowance of about $2.66 million for estimated claims outstanding and pending lawsuits, which are not costs directly related to the storm recovery efforts. TR 984. Additionally, Ms. DeRonne recommends disallowance of approximately $21.5 million for nuclear plant damages that appear

to be beyond those presented in the 2004 case and estimated after July 31, 2005, which was the cutoff date specified in Order No. 05-0937. TR 985. Moreover, these nuclear plant costs may ultimately be offset by insurance proceeds. Id. Finally, FPL's request for recovery of 2004 costs through the surcharges to be established in this proceeding should be further offset by an amount to reflect reimbursement amounts from the owners of other poles ("joint use poles") that FPL replaced. TR 988.

Thus, in total, the Commission should reduce FPL's claim for recovery through storm recovery bonds by $51.4 million relating to 2004 storm costs.

FPL'S 2005 STORM COSTS & RECOVERY - ISSUES 6-26

Regarding FPL's claimed 2005 storm restoration costs, the Commission should apply the incremental accounting cost approach advocated by Public Counsel's witness Hugh Larkin and disallow FPL's attempts to recover costs that are already embedded in FPL's base rates. The total amount of adjustments for these items is $31.9 million, as set forth in the testimony of Ms. DeRonne. The Commission should also reject FPL's purported "adjustments" as a transparent attempt by FPL to get recovery of "lost revenues," i.e., revenues for sales that FPL didn't make because it was unable to deliver electricity that its customers wanted.

Additionally, the Commission should reduce FPL's requested recovery of claimed 2005 storm costs by $57.0 million to disallow FPL's claim for recovery of, or offset FPL's claims by, the

amounts of: warranty items, certain power plant repair costs, advertising and communications costs, uncollectible accounts expense, remaining contingencies, overtime incentives for exempt employees, additional capital cost amounts, the value of proceeds expected for FPL's repair or replacement of poles owned by others, and proceeds from other utilities for reimbursement for work done by FPL employees.

The Commission should also disallow certain costs associated with pole replacements and repairs, due to the inadequacy of FPL's pole inspection programs, and the costs associated with repairing the Conservation-Corbett 500 kV transmission line. The total amount for these adjustments is $10.411 million from any future recovery.

A. The Commission Should Not Allow FPL "Double Recovery" Of Costs Embedded in Base Rates Through Storm Surcharges.

The issues identified in this proceeding include how various costs incurred by FPL should be accounted for, and how much of the costs claimed as storm restoration costs should be allowed for recovery from FPL's customers. Hugh Larkin, a Certified Public Accountant and witness for the Public Counsel, testified that the Commission should allow recovery of only incremental costs associated with storm restoration, rather than all costs "booked" to storm restoration activity work orders. TR 894-95, 903. He further testified that the Commission should follow its fundamental purpose of being a substitute for competition, and should, in that endeavor, look to the business risk borne by FPL's customers and shareholders. TR 891. Applying this

principle, which was followed by the Commission in Order No. 05-0937, see EXH 150, will reduce FPL's recovery of claimed 2005 storm costs by approximately $31.9 million, as shown in the testimony of Public Counsel's witness Donna DeRonne. See EXH 85; TR 959-61.

FPL's proposed accounting of storm restoration costs would recover all costs booked to the activities, even though some of the payroll costs and material costs thus booked are already reflected in FPL's base rates. TR 892-93. Such costs include base salaries and budgeted amounts of overtime. Proper accounting and ratemaking would allow FPL to recover only amounts incremental to these base and budgeted amounts. TR 893-94, 918. Allowing FPL to recover all costs thus booked would result in FPL "charging ratepayers twice for the same payroll dollars, once through base rates and a second time through storm related work orders," and the same would be true for the amounts of materials and supplies that have been included in base rates. TR 894.

FPL's witness Davis argues that using the incremental accounting approach would require the company to use estimates, as though this is something unusual. See TR 1578-79. This is a startling assertion, in view of the fact that FPL, like other utilities, bases its rate case filings on projected, budgeted, and necessarily estimated base year data. TR 899, 904. Mr. Larkin also dispels Mr. Davis's assertion that using estimates is inconsistent with the financial reporting requirements imposed on companies by the Sarbanes Oxley Act. TR 899-900.

"FPL's methodology of accumulating every payroll, material, contract or other cost in storm related work orders without segregating that component of those costs which would otherwise still be incurred by FPL absent the storm results in a double recovery from ratepayers." TR 903.

Public Counsel's witness Donna DeRonne identified $24.575 million of payroll related costs that should be disallowed to avoid double recovery by FPL. TR 959-61; EXH 85, at 1 of 3. Ms. DeRonne also identified $7.358 million in other costs (including tree-trimming, fleet vehicle, and telecommunications expenses) that must be disallowed to avoid double recovery by FPL. TR 961-63; EXH 85, at 1 of 3. Together, these total $31.9 million that the Commission should disallow from FPL's claim for 2005 storm cost recovery.

B. The Commission Should Disallow Recovery of $57.0 Million In Additional Claimed Costs.

The Commission should also disallow FPL's claim for recovery of, or offset FPL's claims by, the amounts of: warranty items, certain power plant repair costs, advertising and communications costs, uncollectible accounts expense, remaining contingencies, overtime incentives for exempt employees, additional capital cost amounts, the value of proceeds expected for FPL's repair or replacement of poles owned by others, and proceeds from other utilities for reimbursement for work done by FPL employees. These amounts total approximately $57.05 million. TR 963-76; EXH 85, at 1 of 3.

C. The Commission Should Not Allow FPL to Recover "Lost Revenues."

FPL argues that if the Commission were to adjust for the double recovery identified by Mr. Larkin, it should be allowed to make adjustments that would enable it to recover for lost revenues, i.e., base revenues that FPL did not collect from customers for electricity that it wasn't able to sell them while its facilities were out of service during the 2005 storms, primarily Wilma and Katrina, both of which were predominantly Category 1 storms.[3] The Commission should reject this claim: lost revenues are not costs of restoring service following hurricanes, and allowing FPL recovery of such amounts would inappropriately shift risk away from FPL's shareholders, who are already compensated for accepting risks through their allowed return on equity investment, and onto FPL's customers. TR 910. Moreover, FPL actually achieved greater sales (and thus greater revenues) than it had projected during the storm months of 2005, TR 909, EXH 84, so it cannot credibly claim to have experienced storm-caused "lost revenues" that were not already reflected in its expectations.

Public Counsel's witness Larkin testified that FPL is attempting to impose "adjustments" to the incremental cost approach to effectively get lost revenue recovery. TR 907-08, 912. In so doing, FPL is attempting to add additional cost items to its storm recovery claim that are not expenditures on the

[3] See Exhibit 143 and the discussion of the National Hurricane Center's official measurements and official report on Hurricane Wilma below.

storm recovery process. Id. If the Commission were to allow such treatment, the Commission would be allowing lost revenue recovery, inappropriately. Id.

Specifically, the Commission should reject FPL's attempts to recoup the claimed costs of catch-up work, backfill work, and uncollectibles expense. DeRonne, TR 958; Larkin, TR 906-08. Following the recommendations of Mr. Larkin and Ms. DeRonne, no further adjustments are necessary to the proper incremental cost approach. Id.

Giving the utility lost revenue recovery would inappropriately shift risk from utility to customers, who are already compensating the utility for the risk per its established rate of return on equity. TR 910. Utilities, here FPL, are already compensated for weather-related risks. TR 907-08. Rejecting FPL's claims would have no significant impact on FPL's financial integrity. Larkin, TR 911. Even if it did, FPL's remedy would be to seek rate relief if allowed to do so under the 2005 stipulation and settlement. That agreement only allows FPL to recover prudently costs associated with storm events and to seek general rate relief if its achieved rate of return on equity falls below a specified threshold. Order No. PSC-05-0902-S-EI at 8, 10.

In the storm months of July through October of 2005, FPL experienced total sales that were approximately 1.36 billion kWh greater than budgeted. TR 909; EXH 84. Exhibit 147 shows that for the same 4 months, FPL experienced total base revenues that

were approximately $49 million greater than budgeted or planned. While it is doubtless also true that FPL did not sell all of the kWh that it would have sold if its system had been capable of better withstanding the predominantly Category 1 storms that impacted its system in 2005, the relevant point here is that FPL received greater revenues during the storm months than it had projected, so it cannot claim to have been worse off than it expected to be, in terms of revenues, as a result of the storms. Accordingly, FPL's efforts to obtain lost revenue recovery should be rejected for this reason as well.

D. The Commission Should Disallow At Least Part of FPL's Claimed Pole Replacement Costs Because of FPL's Imprudence In Cutting Its Pole Inspection Program.

FPL has what it characterizes as a 3-prong pole inspection program: its Osmose inspection program, visual inspections done as part of the Thermovision inspections, and what it calls "touchpoints" where linemen see and touch poles in their daily work. TR 802-03. Of these, only the Osmose inspection program is a true effective program the purpose of which is to thoroughly evaluate the soundness of poles. Byerley, TR 802, 807. The Osmose program actually inspected only about 7,710 poles in 2004. TR 804. At that rate, FPL's wood pole inspection cycle would be on the order of 125 years (assuming 80% of FPL's distribution poles are wood, the cycle for inspecting wood poles would be about 1,200,000 poles times 80% divided by 7,710 = 124.5 years).

As Mr. Byerley testified, prior to 2005, "FPL did not have a planned pole inspection program which adequately covered all

their wood poles." TR 807. Moreover, even using KEMA's best assumptions, FPL was performing pole inspections on a cycle somewhat greater than 15 years, which compares less than favorably to 5 of the 7 respondents to KEMA's survey of other utilities' distribution practices. TR 807-808, EXH 16 at 95. The other two utilities' responses were shown as N/A. Id.

FPL previously had an Osmose-type inspection program in the 1980s and up until 1991, but that program was discontinued as a cost-cutting measure from 1991 to 1999. TR 803; EXH 76 at 1. When FPL reinstituted its Osmose program in 1999, it inspected a relatively small number of poles in only two distinct geographic areas. TR 803. In 1999, the number inspected was 17,670 poles, EXH 76 at 3, or approximately 17 percent of FPL's total distribution pole population, allowing for that number to be somewhat less in 1999 than it is today. See EXH 163 for the 2005 estimated number of FPL distribution poles. In 2002, the number of poles inspected was not available, but the expenditures were approximately $998,000. EXH 140 (Pole Inspection Program description, dated 07/16/2004); EXH 76 at 16. In 2003, program expenditures were reduced by nearly half, to about $520,000, and the number of poles inspected was reported at about 12,000, or about 1.1% of FPL's distribution pole population. See EXH 140, EXH 163 at 2. In 2004, projected expenditures stayed about the same, at $522,000, but the number of poles inspected fell to less than 6,000. Id. In 2005, projected expenditures were budgeted to decline slightly, to about $511,000, with the number of poles

further declining to around 2,300. Id. For 2006, expenditures were projected to rebound to $523,000, with no target number for poles to be inspected, treated, repaired, or replaced given. Id.

The foregoing shows that FPL was cutting its pole inspection activities during the relevant time period preceding the 2005 storm season (and, though not at issue in this case, leading up to the 2004 storm season as well). FPL's position is that its actions were prudent in light of other expenditures on reliability initiatives, but no information was given on those. As discussed below, given FPL's overall performance in 2005, when its system was primarily impacted by one Category 1 storm (Katrina) and one predominantly Category 1 storm (Wilma), the Florida Retail Federation gives little credence to FPL's suggestions that it was adequately pursuing other reliability initiatives with the funds it was diverting from its pole inspection activities. The FRF believes that FPL's program cuts were imprudent.

Page 9 of FPL's forensics report on causes of damage sustained during Hurricane Wilma is reproduced and in evidence as Exhibit 83. That page is titled "Broken Poles by Contributing Factor," and includes separate figures (bar graphs) for (total) Broken Poles by Contributing Factor, Broken Feeder Poles by Contributing Factor, and Broken Lateral Poles by Contributing Factor. The forensics report states that it has a 99% confidence level that 40% to 46% of broken poles were due to wind only. Id. Although it does not state a specific confidence level with

regard to other causes of pole breakage, it is fair to infer that the confidence of those estimates, based on the same data and same evaluation process, have equally or at least similarly high confidence. This report shows that deterioration was present - the forensics report indicates deterioration as a "contributing factor" - in about one-sixth of FPL's feeder poles that failed in Wilma (195/1,203 = 16.2%). Id. The report also shows that deterioration was the major contributing factor in the failure of nearly half - 47% - of lateral poles. Id. Deterioration was present in 247 of 524 lateral poles evaluated by the FPL forensics team. Id.

It is reasonable, arguably inescapable, that deterioration played some role in the pole failures that FPL experienced in Hurricane Wilma (and in Hurricane Katrina as well). Making the reasonable assumption that FPL's pole inspection program actually identifies defective poles for repair and replacement, it is equally inescapable that more rigorous, more widespread pole inspection efforts would have identified more defective poles over the 1999-2005 period and that those defective poles would have been replaced before the 2005 storm season. Further, considering that Katrina was a Category 1 storm and that Wilma was predominantly a Category 1 storm as they passed through FPL's service area, it is inescapable that some poles that failed - perhaps as many as 25.6% of the failed poles, that being the percentage of total poles identified in the forensics report as having failed due to deterioration - would not have. See EXH 83.

FPL lost 12,632 distribution poles in the 2005 season, EXH 163, of which approximately 11,400 were lost during Wilma. TR 1396. In his direct testimony, Mr. Byerley accepted the notion that some poles would have failed anyway, and asserted that some 45% of poles likely failed due to deterioration/inadequate maintenance. See TR 812 (revised). On cross-examination, Mr. Byerley accepted that approximately 28% of poles failed due to deterioration, as opposed to the 45% used in his direct testimony. See TR 869-70. Thus, the value of costs incurred due to inadequate pole inspections would have to be reduced from those presented in Mr. Byerley's original testimony. On that point, the FRF will agree with the final estimates advocated by OPC.

The FRF continues to believe that the value of $6,800 per pole, supported by Mr. Byerley in his testimony, should be used in these calculations. On that point, the record has Mr. Byerley's testimony that, based on his experience in the utility industry, a multiplier of four times normal cost is "conservative" for estimating costs in a storm restoration environment. TR 812.

Against Mr. Byerley's $6,800 value, FPL offers Ms. Williams's opinion that the number is approximately $2,000. See TR 1396. Her proffered value is unsupported by any analysis in the record. In light of all the facts, the FRF believes that Mr. Byerley's value is probably closer to the truth, for the following reasons. It is generally known that there are great

additional costs associated with storm restoration, including overtime for FPL employees, regular time and overtime charges for visiting employees of other utilities, and for contractors. It is also generally known that FPL incurs significant costs for the living expenses of visiting employees. At one point in the Wilma restoration effort, for example, there were some 9,200 visiting workers. TR 179. Ms. Williams says that only about $25 million total (12,632 poles times $2,000 = $25.264 million) of FPL's 2005 storm restoration costs (of which some $782 million were T&D-related) were for pole replacements, with not a lot more added for associated conductor replacement. She testified on cross-examination that of FPL's total 2005 claimed storm restoration costs of $885.6 million, about $782 million was related to transmission and distribution. See TR 1420-22. It is fair to say that most of this was for distribution costs. TR 1421. Exhibit 106 shows that approximately $615 million was spent for labor and contractors, $62 million for vegetation clearing and removal, and $57 million for materials. This indicates that some very large number of dollars, probably on the order of half a billion dollars was spent on "reworking connections, tightening," and similar activities. TR 1431-32. While there is no record evidence to dispute this, nor anything specific to support it other than Ms. Williams's testimony, it must be said that this seems like a very high number for such tightening, rehanging, reworking, and similar activities. Accordingly, the FRF supports Mr. Byerley's estimate based on his experience in the industry.

E. The Commission Should Disallow Recovery of FPL's Costs of Repairing the Conservation-Corbett Transmission Line.

During Wilma, FPL experienced a significant failure of a section of its Conservation-Corbett 500 kV transmission line, in which approximately 30 transmission structures (poles) fell. Mr. Byerley testified that he believes that the cause of this failure was FPL's inadequate inspection and maintenance practices. TR 790. The problem was that FPL did not stay on top of a previously identified situation of loose and missing "cross-brace bolts," and that FPL did not implement an appropriate method of securing the nuts after an earlier inspection showed loose and missing bolts to be a serious problem. TR 792, 797. Based on his review of all data and information available to him, including internal FPL reports from March 1998 and November 1998, reports that recognized that the loose bolts posed a problem independent from the insulator damage already identified, see EXH 71, and recommended that all structures be checked and any loose nuts be replaced and peened. Mr. Byerley concluded that FPL's inspection and maintenance programs were inadequate. TR 790, 795-96, EXH 73.

In cross-examination by Commissioner Deason, Dr. Brown speculated that the loose bolts on the Conservation-Corbett line were caused by Wilma's winds. TR 1305-07. However, Dr. Brown acknowledged that he was not aware of high winds having loosened bolts in other situations. TR 1307.

On this point, the maximum reported official wind speeds shown in the Official NHC Wilma Report for reporting locations in

Palm Beach County were at Belle Glade, which reported a 102 kt (117.4 MPH) gust, and Loxahatchee, which reported a 98 kt (113 MPH) gust. EXH 143 at 11-12. The official report for West Palm Beach was a maximum gust of 88 kt (101 MPH). EXH 143 at 14. Even the maximum unofficial observations for Palm Beach County indicated gusts of 99 kt (114 MPH) at the Palm Beach Jonathan Dickinson Missile Tracking Annex, EXH 143 at 17, and a gust of 103 kt (118.5 MPH) at West Boynton Beach, both of which are still in the high Category 1 range of gusts, and both of which are still well below the NESC "extreme wind" criteria for coastal locations in south Florida. TR 1413-14.

It is obviously difficult to know the truth of this matter with certainty. What is certain is that the transmission structures fell; what is not certain is whether they fell, as Mr. Byerley believes, due to inadequate inspections and maintenance by FPL, or whether they fell in spite of what might be considered - and what FPL asserts were - adequate inspections between 2002 and 2005. FPL's production of new evidence the day before the hearing is suspect; it does seem reasonable that FPL, having apparently been concerned about the failures of its 500 kV transmission towers and having known for some time that this was a significant issue in this case, should have been able to identify this information and convey the information to its expert earlier than the day before hearing. Moreover, the other parties to this proceeding had no effective opportunity to test the new information through discovery, nor any opportunity to

provide rebuttal to it.

And furthermore, even accepting the maximum unofficial wind speeds, which are moderately higher than the official reports for Palm Beach County locations, as indicative of the conditions experienced, those wind speeds are well below the NESC extreme wind criteria values for coastal south Florida.

The amount at issue is some $10.411 million. TR 977, EXH 85. Making the finding of imprudence by FPL and the adjustments recommended by Ms. DeRonne will have no effect on the surcharges to be set in this proceeding, but the Commission should tell FPL now, with this issue having been litigated here, that it may not add the capitalized repair costs for the Conservation-Corbett line into its plant and rate base accounts in the future.

FPL'S INADEQUATE MAINTENANCE AND PLANNING - ISSUES 27-32

FPL claims that its distribution system performed exactly as it was designed to perform and as it was expected to perform in Hurricane Wilma. In light of the actual, official data reported in the National Hurricane Center's official post-storm report on Hurricane Wilma, this claim is astonishing: it is astonishing that FPL would claim that its system was designed to allow more than one million of its customers to be without power for more than 5 days, and for some customers to be without power for 18 days, following what was, based on official data and evaluation, predominantly a Category 1 storm.

FPL's pole inspection "program" was lacking; FPL's cutting its pole inspection efforts was imprudent. FPL's failure to

actively seek out the advice of its hurricane expert to inform its distribution planning activities, especially during the same time frame - early 2004 - that FPL was offering his expert testimony to support a transmission line that it wanted to locate in part based on storm-related reliability concerns, was imprudent. FPL's failure to heed and act on his "extraordinary prediction" as to the 2004 storm season was imprudent. FPL's distribution planning processes, which do not consider the value that customers place on avoiding outages, are at best insensitive to customers' interests.

The Commission should disallow part of FPL's cost recovery, either directly or through the imposition of penalties, to send FPL a message that the Commission expects better and that FPL's customers deserve better. The Commission should consider imposing penalties on FPL for willfully cutting its pole inspection activities in order to enhance its profits. At the statutory maximum of $5,000 per day pursuant to Section 350.127, Florida Statutes, even if the penalty were imposed for only 2005, the penalty could be $1.48 million (296 days times $5,000 = $1.48 million). In view of FPL's significant reductions in pole inspections over the 2002 to 2005 time period, the Commission could impose greater penalties.

A. Background: Wilma Was Predominantly a Category 1 Storm.

The following discussion of Hurricane Wilma's strength as it passed over Florida is taken from and based on Exhibit 143, Tropical Cyclone Report, Hurricane Wilma, 15-25 October 2005,

published by the National Hurricane Center on January 12, 2006 (the "Official NHC Wilma Report"). (This report was recognized by FPL's witness Dr. Richard Brown, and even cited by him as to a certain unofficial observation used in Dr. Brown's rebuttal to Mr. Byerley's testimony. TR 1284.) Hurricane Wilma was surely a powerful storm before traversing the Gulf toward Florida. EXH 143, at 1-2. "Maximum sustained winds were estimated to be near 105 kt[4] (category 3 intensity) when landfall of the center occurred in southwestern Florida near Cape Romano around 1030 UTC 24 October." EXH 143, at 2 (emphasis supplied). However, no official reporting location on the Florida mainland or in the Florida Keys cited in the NHC Wilma Report reported either sustained winds or gusts of Category 2 strength. EXH 143 at 10-14.

Hurricane Wilma was predominantly a Category 1 storm as it passed through FPL's service area. In fact, not a single official reporting station on mainland Florida or in the Florida Keys reported either maximum sustained winds or gusts above the Category 1 range. Yet, FPL claims that its distribution system performed exactly as it was designed to perform and exactly as it was expected to perform. TR 218. If this astonishing claim is true, then FPL's expectations are too low, and certainly out of line with what its customers expect in a predominantly Category 1

[4] As Dr. Brown agreed on cross-examination, one knot, abbreviated kt, is one nautical mile per hour, which is equal to 1.150779 statute miles per hour. TR 319. Thus, the estimated wind speed at landfall was approximately 120 MPH.

storm event.

FPL's witness Dr. Richard Brown agreed that the sustained wind speeds for a Category 1 storm include the range from 74 to 95 statute miles per hour ("MPH") [TR 319-20], and that using a conservative value for an "adder" to calculate the gust speeds associated with Category 1 storms, TR 321, Dr. Brown agreed "that the gust range for [a] category 1 storm is approximately 96 to 120 miles per hour." TR 321. He further agreed that the sustained wind speeds for a Category 2 storm include the range from 95 to 110 MPH, and that the gust range associated with a Category 2 storm is from 120 to 138 MPH. Id. These correspond to sustained wind speed ranges in knots of about 64 kt (74 MPH divided by 1.150779 MPH per knot = 64.30 kt) to 82.5 kt for Category 1 storms, and 82.5 kt to 95.5 kt for Category 2 storms. Applying the "conservative" adder to estimate gust ranges of 25 percent, which Dr. Brown believes reflects the general range of opinion reflected in literature searched by Dr. Brown on this subject, TR 320-21, the gust range for Category 1 storms is approximately 96 to 120 MPH, and for Category 2 storms approximately 120 to 138 MPH. TR 321. (The corresponding gust ranges in knots are: Category 1 - 83.4 kt to 104.3 kt; and Category 2 - 104.3 kt to 119.9 kt., e.g., 96 MPH divided by the conversion factor of 1.150779 equals 83.42 kt.)

Data from the official reporting stations of the National Hurricane Center's reporting system, as reported in the official NHC Wilma Report, show that the majority of reported wind speeds

were in the tropical storm and Category 1 ranges. In fact, not a single official reporting station on mainland Florida or in the Florida Keys reported either maximum sustained winds or gusts above the Category 1 range. One official U.S. marine reporting location, Fowey Rocks (located 6.5 miles southeast of the southern end of Key Biscayne), reported sustained winds of 88 kt and gusts of 107 kt, both in the Category 2 range.

Table 3 of the Official NHC Wilma Report consists of about eight-and-one-half pages of listed measurement stations in Mexico, Cuba, Florida, Georgia, and marine waters (buoys). In all, there are approximately 200 reporting stations listed, of which the vast majority are in Florida. The following discussion summarizes the official and unofficial wind speeds reported in the Official NHC Wilma Report, which demonstrates that Wilma was predominantly a Category 1 storm.

Official Reporting Locations - Mainland Florida and the Florida Keys. Of 61 stations on mainland Florida and in the Florida Keys that reported maximum sustained wind speed measurements for Wilma, 16 reported wind speeds in the Category 1 range, while the other 45 reported speeds in the tropical storm range or below; none reported maximum sustained winds in the Category 2 range. Of 63 stations on mainland Florida and in the Florida Keys, 36 reported gusts in the Category 1 range, while the other 27 reported gusts in the tropical storm range or below; none of the 63 reporting stations reported gusts in the Category 2 range. One U.S. marine reporting location, Fowey Rocks (a

lighthouse with NOAA weather monitoring equipment located 6.5 miles southeast of the southern end of Key Biscayne), reported sustained winds of 88 kt and gusts of 107 kt, both in the Category 2 range.[5]

Unofficial Reporting Stations. The Official NHC Wilma Report also includes what are identified as "Unofficial Observations" at 16-18 of EXH 143. Of approximately 57 such unofficial reporting stations, 9 stations reported sustained winds during Wilma: 7 of these reported winds in the tropical storm range and below, and 2 reported Category 1 winds. Id. Of 23 unofficial stations that reported gusts during Wilma, 10 reported winds of tropical storm strength or less, 7 reported Category 1 gusts, and 6 reported Category 2 gusts. Id.

The data reported in the Official NHC Wilma Report speak for themselves. It is fine and good for Dr. Brown to claim that his company's (KEMA) report is consistent with the NHC's official report, TR 357, but the KEMA report's claim that Wilma was a Category 3 storm, EXH 16 at 98-99, is simply not supported by any of the official reporting station data, nor even by any of the unofficial reporting stations. The facts are that not a single reported data point in the official NHC Wilma Report indicates Category 3 winds, either sustained or gusts, and that the vast majority of data reporting points indicate that Wilma was predominantly a Category 1 storm as it passed through FPL's

[5] One other official NOAA reporting station reported Category 2 sustained winds. That station is Settlement Point, which is located on Grand Bahama Island.

service area.

B. FPL Failed To Consult Its Hurricane Expert In A Timely Way, and When FPL's Senior Distribution Official Received from Mr. Hebert an "Extraordinary Prediction" Regarding the 2004 Season, FPL Didn't Do Anything Differently.

Ms. Williams agrees that Paul Hebert is a recognized expert in hurricane matters. He has been employed as a meteorologist by FPL. EXH 141 at 3-4. TR 227. Mr. Hebert testified in a transmission line siting case in February 2004 on behalf of FPL, EXH 141,[6] regarding the frequency and cyclical character of hurricane activity in Florida. Specifically, Mr. Hebert testified as follows in response to questioning by FPL's attorney.

> Q: . . . Does the frequency with which tornadoes and hurricanes have occurred in the past twenty-six years or less within Lee County and Collier County determine how likely they are to occur in the future?
>
> A: No.
>
> Q: Could you explain?
>
> A: Yes. Tornadoes and hurricanes are both very rare events, and you need a much longer period of record than twenty-six years.
>
> * * *
>
> Q: Is the return period for hurricanes spread out evenly over time?
>
> A: No, it's not. Hurricanes tend to come in cyclic periods, and you can go a long period without having any, and then you can have very many hurricanes in a twenty-year period.

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[6] In Re: Florida Power & Light, Collier-Orange River #3, 230KV Project, Transmission Line Siting Application No. TA03-12, Before the Florida Division of Administrative Hearings, Case No. 03-1629TL, Transcript of Proceedings, February 19, 2004, at 1358-60; reproduced here as Exhibit 141.

For example, if we look at the forty-year period from 1961 to 2000, we will be very much deceived for all of Florida, in particular for Lee and Collier County, because during that forty-year period, Lee and Collier County had one hurricane hit both counties and one major hurricane directly affect the counties.

By directly, we mean they have experienced winds of a hundred and fifteen miles per hour or greater.

In contrast, if we look at the period from 1941 to 1960, which is only twenty years, whereas the first one was forty, during that period, Lee County and Collier County had eight hurricanes of any category, and of those eight hurricanes, sic - of those eight hurricanes, there was six hurricanes which were major during that period.

Q: And what is major?

A: Again, major is winds greater than one hundred and fifteen miles per hour.

Thus, in its transmission line siting case, FPL offered the expert testimony of its recognized in-house expert meteorologist, Mr. Hebert. Yet FPL apparently did not take advantage of its recognized in-house hurricane expert in planning its distribution system during this same time period. Apparently, during the time that FPL was supporting its transmission line proposals on the basis of concern about hurricanes, FPL's senior distribution officer, Ms. Williams, was discussing tropical storm issues with Mr. Hebert in what was at most a general way, TR 227, 229.

However, in late May or early June of 2004, i.e., on the threshold of the season that saw three significant storms (Charley, Frances, and Jeanne) impact FPL's service area, Ms. Williams did have a somewhat detailed conversation with Mr. Hebert. TR 229-30. As she recounted it, she asked him whether there was any significance to the fact that Florida had experienced a very dry spring, to which he replied that it was

his experience that such dry spring conditions indicated the significant possibility that a major storm would strike Florida during the 2004 season. Id.

Ms. Williams subsequently characterized this prediction from FPL's own expert as "an extraordinary prediction," (TR 230, 233) as "intriguing," (TR 233) and as "a folktale." TR 238 Regardless, what is clear is that FPL did nothing differently as a result of obtaining this information from its expert. TR 230, 236.

FPL was imprudent not to consult Mr. Hebert in more detail, especially in light of the fact that FPL was using his services to support transmission initiatives with his expert testimony regarding the cyclical character of hurricane strike patterns and in particular, his testimony that "if we look at the forty-year period from 1961 to 2000, we will be very much deceived for all of Florida . . . ." FPL should not be allowed to selectively rely on Mr. Hebert's opinions only when they support FPL's positions.

FPL needs to plan more seriously using all of the resources at its disposal. Its failure to do so in 2004 and 2005, when it could have done something toward getting ready for those storm seasons, was imprudent. The PSC should use its order in this case to send that message to FPL.

C. FPL Does Not Take Customer Outage-Avoidance Value Into Account In Its Distribution Planning.

FPL has not planned its system for higher-intensity storms, and is only now beginning to plan new distribution facilities for "extreme wind" criteria, which generally correspond to Category 3

conditions in the coastal areas of south Florida. TR 1414. In fact, applying Dr. Brown's testimony regarding gust-to-sustained-wind-speed equivalents (gusts are generally believed to be around 1.25 times sustained wind speeds, though they are variable; see TR 320-21) to this point, even FPL's construction at Grade B standards (to withstand 90 MPH gusts) barely constructs to the minimum of Category 1 force winds. While technically this satisfies and exceeds the minimum safety criteria of the National Electrical Safety Code, it is little comfort to FPL's customers that their power company was, until now, planning its distribution system based on experiencing only minimal Category 1 storm conditions. The customers' comfort level is not enhanced by knowing that FPL doesn't plan its distribution system with consideration of the economic value of avoiding outages to its customers.

FPL does not plan its distribution facilities considering the value of electricity, and the value of avoiding being blacked out, to its customers. TR 214. While not common, other utilities do use such analytical techniques for evaluating distribution projects including Mid-American Energy and some California utilities. Brown, TR 324-25. The use of these techniques is more common for generation projects. TR 324. Dr. Brown testified that he conducted a literature search on such analyses, and that the typical values of avoiding outages indicated by such studies are between $1.00 and $10.00 per interrupted kWh for residential customers, and around $30 per kWh for commercial and industrial

customers.[7] TR 326-27.

In consideration of the fact that only a few other utilities use these "unserved energy" techniques for evaluating distribution programs and measures, it cannot be said that FPL's failure to do so is imprudent. However, the FRF believes that this is further reflective of FPL's general insensitivity to its customers' situations. This is perhaps highlighted even further by Exhibit 29, which is in evidence as the first exhibit to FPL witness Wayne Olson's testimony. This exhibit depicts FPL's view of the securitization transaction, the parties thereto, and various flows of actions, duties, sales, and payments. The exhibit shows the Commission, FPL (as seller, servicer, and administrator), the special purpose entity that will issue the bonds, the underwriters, the trustee, and the bondholders. What is striking is that nowhere on this flow diagram is there any reference to FPL's customers, who are ultimately on the hook for repayment of the bonds. EXH 29.

D. FPL's Pole Inspection Program Was Inadequate, Contributing To Extended Outages.

As discussed in the preceding section regarding disallowances for FPL's claimed 2005 storm restoration costs, FPL discontinued its pole inspection program from 1991 to 1999, only reinstituted the program on a limited basis in 1999, and then cut the program effort levels substantially from 2002 to 2005. This

[7] In fairness, Dr. Brown stated that he does not believe these values because customers are generally not willing to pay for enhanced service reliability based on their stated values.

action was imprudent and resulted in extended outages being suffered by FPL's customers.

E. FPL's Hurricane Wilma Performance Was Inadequate In What Was Predominantly a Category 1 Storm. FPL's Customers Expect and Deserve Better Reliability.

As discussed in detail above, Wilma was predominantly a Category 1 storm, yet FPL lost the ability to serve 3.2 million (75%) of its customers, TR 179, had more than a million customers out of service for more than 5 days, and didn't restore service to all its customers for well over 2 weeks. Even so, FPL continues to claim that its system performed as expected and as designed in Wilma. TR 218. If this astonishing claim is true - that is, if FPL's system was designed such that it lost the ability to serve 75% of its total customer population in a predominantly Category 1 storm - it is pushing the limits of credibility for FPL to assert that its long-term facilities planning is reasonable and prudent.

Although Ms. Williams would not agree that reliability has to be evaluated against the conditions actually experienced, she agreed that it is a "valid point" that FPL's customers care about reliability in storm events. TR 1415-17.

Regardless of how FPL's system performed relative to expectations and design, what is clear is that FPL was cutting costs and failing to seek out the advice of its in-house hurricane expert, with the result being what many customers feel was unreliable. Moreover, under the 2002 FPL rate case

settlement, Order No. 02-0501-AS-EI,[8] which was in effect during the relevant time period for this proceeding, every dollar that FPL saved by not spending it on pole inspection, repair, and replacement, went into FPL's shareholders pockets.

Mr. Dewhurst's claim of productivity improvements is at best speculative. Moreover, simply cutting costs is no evidence at all of productivity improvements. Further, Exhibit 140 shows that, while there might have been a unit cost reduction in the pole program from 2003 to 2004, the detailed estimates of unit costs from 2004 to 2005 were actually increasing, from $13 per pole inspected and treated in 2004 to $16 per pole inspected and treated in 2005, and from $273 per pole braced in 2004 to $291 per pole braced in 2005; this is not evidence of a productivity improvement, rather of cost-cutting. EXH 140.

SIZE OF FPL'S STORM RESERVE - ISSUE 37

In terms of the dollars to be recovered from FPL's captive customer, the largest single item proposed by FPL is its $650 million storm reserve, which corresponds to an after-tax reserve balance of $400 million. The total rates paid to fund this amount would be about $800 million, plus an additional $160 million or so in state and local taxes, including franchise fees.

FPL's request is excessive and inappropriate for many reasons, including the following:

[8] In Re: Review of the Retail Rates of Florida Power & Light Company, PSC Docket No. 001148-EI, Order No. PSC-02-0501-AS-EI (Fla. Pub. Serv. Comm'n, April 11, 2002).

1. It violates the principle of intergenerational equity by forcing today's customers to pay for costs that have not been incurred to respond to storms that haven't even formed, let alone struck FPL's service area.

2. It sends inappropriate price signals by charging today's customers for costs that haven't been incurred.

3. FPL does not need a reserve of anything like its requested $650 million in light of the Commission's current policy, implemented last year under the Commission's pre-existing statutory authority, to provide for rapid action on utility requests for recovery of storm restoration costs.

4. It will include FPL's customers paying for a calculated income tax liability where the supposed income taxes will never be paid to the U.S. Treasury. Although this issue is not "on the table" in this case, the Commission can and should obtain an adequate opportunity to address the issue without rushing ahead, as prayed by FPL here, and authorizing FPL to recover calculated income tax liability on $650 million for its storm reserve. Setting the reserve replenishment amount in this proceeding at $150 million, as advocated by Mr. Stewart and by the Florida Retail Federation, will greatly limit customers' exposure while giving the Commission an adequate opportunity to fully consider this issue.

5. It would impose direct additional state and local tax liability on FPL's customers on the order of $150 million to $160 million.

6. It would create an environment where the burden is shifted onto customers to come to the Commission to demand thorough reviews of FPL's actual expenditures, as opposed to FPL bearing the burden, as it should, of demonstrating that its actual storm costs were reasonable and prudent. In such an environment, it is likely that there would be extensive argument over what form and depth such reviews should take.

7. FPL's argument that issuance costs will be higher if it has to come back later for additional bond authorization is specious, especially since FPL rejected the "shelf offering" approach advocated by the Staff's financial advisors and experts.

A. The Commission Should Limit FPL's Storm Reserve Replenishment to $150 Million, Which Is a Reasonable, Adequate, and Appropriate Reserve.

FPL proposes to raise $400 million through bonds and also to collect a storm tax charge for the income tax liability on that

amount. Applying the simple ratio of the total charges to be collected per FPL's proposal ($2.084 Billion) to the total principal amount of costs, including the requested $650 million reserve, claimed by FPL ($1.690 Billion) indicates that the total amount to be collected by FPL, including interest, over the 12-year period of the charges, for the reserve is approximately $801 million. In addition to this amount, FPL's customers would also be forced to pay an additional $150 million or more in municipal utility taxes, franchise fees, gross receipts taxes, and sales taxes (by non-residential customers) imposed on their retail electricity purchases.[9] See TR 550-52.

Stephen A. Stewart, a former employee of the Public Counsel's Office and now a regulatory consultant and proprietor of his own company, testified for AARP and for Public Counsel in this case. Mr. Stewart summarized the point of his testimony eloquently, saying that the Commission should "choose the consumers' pockets over FPL's request." TR 1055.

Mr. Stewart, the only witness for consumer interests in this docket, recommends that the Commission authorize FPL to replenish its reserve to $150 million, and supports that amount as being

[9] Typically, the total taxes on residential service, which accounts for approximately 60-65 percent of FPL's retail revenues, are about 18 percent, including municipal utility taxes, franchise fees, and the gross receipts tax. Other accounts are subject to state and local sales taxes, as applicable, indicating that those accounts are subject to state and local taxes in the range of 23-24 percent. See TR 550-52. Multiplying a rough weighted average tax rate of 20 percent times the $801 million would indicate total state and local taxes, including franchise fees, of about $160 million.

reasonable and adequate. TR 1053A. This amount would be large enough to withstand the storm damage experienced in 13 of the last 16 years, and would be large enough to withstand the average annual storm damage experienced over that 16-year period (approximately $148 million). He further testified that a reserve of $200 million would provide additional coverage in light of the common concern about increased hurricane activity. TR 1053A.

FPL's witness Harris acknowledges that a $200 million reserve would be sufficient to cover average annual damages, as calculated by him, for 3 years. TR 637. It follows that a $150 million reserve would cover average damages, as calculated by Mr. Harris, for 2 years.

The reasonableness and adequacy of a $150 million reserve is especially clear in light of the changed circumstances of Florida regulatory policy, where "FPL can come in to this Commission" quickly on the heels of a major storm or storm season, and where "the Commission has proven it will act quickly and [allow the utility to] recover storm costs that are prudently spent." TR 1059

Further, FPL's attempts to create the impression that earlier orders of the Commission do not support Mr. Stewart's position are misleading: of course the Commission's earlier orders do not support this position, because the Commission dramatically changed its position less than a year ago, against the positions and testimony of the consumer parties to the cases

involving FPL's and Progress Energy Florida's 2004 storm restoration costs, when it allowed these utilities to recover all reasonable and prudent storm costs without requiring amortization treatment of the deficit and without requiring any reference to either utility's earnings in determining how much would be authorized for prompt recovery through surcharges. See Order No. 05-0937 (EXH 150) and 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., PSC Docket No. 041272-EI, Order No. PSC-05-0748-FOF-EI (Fla. Pub. Serv. Comm'n, July 14, 2005).

Moreover, the reasonableness of the reserve must be determined with respect to the interests of FPL's customers, especially where, as here, it is FPL's customers who are being asked to fund the reserve by becoming the ultimate payors and guarantors of the bonds that will probably be issued to provide whatever level of reserve the Commission determines is appropriate. In relation to FPL's customers, and the customers' view of reasonableness, as Mr. Stewart testified, it makes no sense to "take money out of consumers' pockets for something that hasn't happened yet when FPL has a mechanism in place to recover money that they spend on storm restoration." TR 1059.

In summary, allowing FPL to build a reserve of even $150 million must be regarded as generous where FPL has the opportunity to come to the Commission for prompt action on requests for actual storm cost recovery, TR 1059, and where FPL

has not yet incurred any costs to which the future reserve would apply, and further where there has been no review of any such costs. TR 1054-55.

B. Intergenerational Equity, Price Signals, and Rate Shock.

Under FPL's proposal, unless FPL has a major storm within the next year or two, which the Florida Retail Federation and all other Floridians deeply and sincerely hope will not occur, a significant mismatch between the collection of FPL's reserve replenishment amount will begin to develop. This mismatch is referred to as an "intergenerational inequity" because it involves today's customers paying for costs that are not actually incurred to serve them. Additionally, charging customers for costs that haven't been incurred, as a result of events that haven't occurred either, must be regarded as sending inappropriate price signals.

Very recently, the Commission was presented with a strikingly similar proposal by Florida Public Utilities Company ("FPUC"), which sought to recover future costs associated with a known future change in FPUC's wholesale power purchase arrangements. In Re: Fuel and Purchase Power Cost Recovery Clause with Generation Performance Incentive Factor, Docket No. 050001-EI (Fla. Pub. Serv. Comm'n, December 23, 2005), Order No. PSC-05-1252-FOF-EI at 9-10. As opposed to the unknown future costs for which FPL seeks recovery in this case, FPUC sought the Commission's authorization to implement rates immediately to begin recovering for costs that it will undisputedly incur

beginning in 2008, in part in the name of avoiding rate shock and rate volatility. Id. at 9. The Commission recognized the intergenerational inequity inherent in FPUC's proposal, and also the inaccurate price signals that FPUC's proposal would send to customers, id., and properly rejected that proposal. Id. at 10.

The Commission should recognize the overwhelming similarities between FPL's proposal for a staggering storm reserve here and FPUC's proposal that the Commission rejected just over 4 months ago. The Florida Retail Federation respectfully asks the Commission to consider - and to reject - FPL's storm reserve request here in light of the following language from its December 2005 order rejecting FPUC's proposal.

> Under FPUC's proposal it would charge customers a surcharge in 2006 and 2007 for costs that are not fully known at this point and will not begin to be incurred until January 2008. This is contrary to the primary purpose of cost recovery clauses, which is to better match cost recovery with the actual costs incurred to send appropriate price signals to customers. The surcharge as proposed sends the wrong price signals for five years. During cross-examination by OPC we heard that FPUC's proposal will result in intergenerational inequities to the extent that customers who paid a surcharge may not be the same customers who derive a benefit when the surcharge is credited back.
>
> Furthermore, FPUC testified that its proposal is designed to benefit its customers by mitigating the rate shock projected for January 2008 . . . .
>
> * * *
>
> Therefore, based on the evidence in the record, we hereby deny FPUC's request for the adoption of a surcharge to its fuel factor to phase in future higher wholesale capacity and energy costs.

Id. at 9-10. (Emphasis supplied.)

The FRF is confident that the Commission will recognize the overwhelming similarities between FPUC's proposed advance purchase power cost surcharge and FPL's proposed advance storm cost surcharge, and that the Commission will then apply the same policy analysis and reasoning to FPL's proposal as it did to FPUC's, and accordingly accept either Mr. Stewart's primary recommendation, supported by the Florida Retail Federation, for a $150 million storm reserve or the greater $200 million number suggested as a maximum by witness Stewart.

Relative to FPL's cross-examination of Mr. Stewart at TR 1063-64, FPL's attempt to suggest that, if the Commission adopts Mr. Stewart's recommendation, it will result in rate volatility is misleading and deceptive, because it ignores the obvious fact that, under FPL's proposal, rates associated with the storm reserve will go up immediately, and will stay up for 12 years. It is small comfort to customers that the hit that they take on the front end, to pay for storms that haven't occurred and for costs that haven't been incurred, will be spread out over 12 years, with additional interest cost and tax expense. FPL's inappropriate suggestion begs the question: yes, it's true - obviously so - that rates would go up each time a new surcharge was approved, but it's equally true that rates would never go up to recover more funds than FPL had prudently spent, as proven and determined at the time of a post-storm review by the Commission. And, under Mr. Stewart's proposal, as opposed to FPL's, the rates imposed on FPL's customers for the necessity of electric service

would not go up all at once, nor immediately.

It is presumptuous for FPL to attempt to speak for its captive customers. FPL doesn't know what its ratepayers want, its interests are not aligned with its customers' interests, and FPL doesn't know what's best for ratepayers. FPL shouldn't presume to speak for the ratepayers. On this point, the Commission should reflect again on Mr. Olson's Exhibit 29. This exhibit depicts FPL's view of the securitization transaction, the parties thereto, and various flows of actions, duties, sales, and payments. It shows the Commission, FPL (as seller, servicer, and administrator), the special purpose entity that will issue the bonds, the underwriters, the trustee, and the bondholders. What is striking is that nowhere on this flow diagram is there any reference to FPL's customers, who are on the hook for repayment of the bonds. EXH 29.

The bottom line here is clearly drawn. FPL wants a huge $650 million reserve, whereas all of the intervenors support a reserve of no more than $200 million. Where FPL's captive customers are to be the payors and ultimate guarantors of the bonds that will fund the reserve at whatever level the Commission determines, and given that "the risk is completely with the consumers at this point," TR 1073, the Commission should listen to the wishes of those customers and set the reserve at $150 million.

C. FPL Does Not Need A Large Reserve For Financial Integrity Purposes.

FPL witness Dewhurst testified as follows in his rebuttal testimony: "Clearly, the level of the reserve has no impact on FPL's hurricane exposure. Accordingly, a lower reserve will simply shorten the expected time before it becomes necessary to return to the Commission and seek recovery of additional restoration costs." TR 1678.

FPL does not need a large reserve for financial integrity purposes, especially under the current regulatory regime - both pre- and post-securitization legislation.

Again, since "the risk is completely with the consumers at this point," TR 1073, the Commission should respect the wishes of the consumers on this issue and approve a reserve of $150 million.

D. The Commission Should Approve the Smallest Reasonable Reserve Amount for FPL In This Case To Minimize the Total Economic Impact, Including State and Local Taxes and Franchise Fees, on FPL's Customers.

In considering how best to promote consumers' interests, the Commission should also consider the additional tax burden of allowing FPL to implement the full amount of its requested reserve, and should decide in favor of the consumers' position, as articulated through the testimony of the Citizens' witness Mr. Stewart, and approve only a $150 million reserve. Against what are already the highest rates in history, FPL is now seeking to collect rates towards a huge reserve of $650 million. Including interest on these amounts, the total charges collected for FPL's

account will be approximately $800 million.

As discussed above, the state and local tax burden on this amount will be on the order of an additional $160 million. If FPL ultimately experiences storms that require significant storm restoration expenditures and significant infusions of cash to pay for such costs, the customers will pay the reasonable and prudent costs of such restoration efforts. Consumers will also pay whatever taxes are applicable to those charges, which in the case of residential customers total around 17-18 percent, and in the case of commercial customers total around 23-24 percent. TR 550-52. The Commission should not make customers pay the additional tax burden now, when a $150 million reserve is reasonable and adequate.

E. The Commission Should Approve the Smallest Reasonable Reserve Amount for FPL In This Case To Preserve Its Ability To Adequately Review Income Tax Issues Without Committing FPL's Customers To Higher Payments Now.

Whatever reserve level the Commission approves, FPL will collect income taxes calculated on the basis of the payments made by customers, even though it is likely that that not all of those amounts will ever be paid to the U.S. Treasury. See TR 583-85. Although it has farther-reaching aspects and implications, the FRF addresses this issue here only in relation to the rates to be paid by FPL's captive customers. The FRF would assert that, at least in this proceeding, concerns regarding this issue should lead the Commission to approve only the smallest reasonable reserve, i.e., the $150 million reserve recommended by Mr. Stewart, until the Commission has the opportunity to consider

this significant issue in appropriate depth in future proceedings.

F. The Commission Should Approve the Smallest Reasonable Reserve To Avoid Future Arguments Over the Type and Depth of Review That Would Be Applied To Future Expenditures From the Reserve.

Mr. Stewart testified that "history indicates that the review of storm damage expenses are less stringent when the expenses are paid from an existing reserve versus when the utility must document the expenses in an evidentiary hearing addressing an additional recovery mechanism." TR 1052. In other words, a specific hearing on a utility's storm restoration costs incurred in one storm season will provide better scrutiny of the utility's claimed costs. As Mr. Stewart pointed out, from 1996 to 2002, when FPL covered storm restoration costs from its storm reserve, there were no hearings and consequently little chance - the FRF perceives it as no chance - for review of FPL's storm restoration expenditures by substantially affected parties. TR 1052. Mr. Stewart went on to testify that requiring hearings will guarantee a more thorough review, with the result that it will be less likely that inappropriate expenditures will be charged to the reserve. TR 1052. This appropriate policy consideration also militates in favor of the Commission setting the reserve at the lowest reasonable level, in order to preserve all parties' rights to contest actual expenditures in meaningful proceedings.

This would be of less concern if the Commission were following its previous, pre-2005 practice of requiring utilities

to amortize storm reserve deficits and to seek rate relief when necessary to protect their financial integrity. In that regulatory regime, all parties could argue about the appropriate level of storm reserve accrual in the context of general rate cases. However, the Commission made the decisions it made last year in spite of the Consumers' arguments and testimony to the contrary, and the Legislature has now enacted the securitization legislation, so we are in the regulatory milieu of having to litigate costs on a per-storm-season basis. In this context, consumers should not have their rights to litigate such costs abridged by giving utilities, who now have tremendous opportunities for rapid recovery of storm restoration costs, access to huge amounts of consumers' money. Moreover, it would be inconsistent to give utilities the benefits of near-instant storm cost recovery and then give them the additional benefit of escaping strictest scrutiny of their expenditures; however, allowing FPL to have a huge storm reserve would do exactly that.

The FRF strongly agrees with Mr. Stewart's basic position on this issue: that "the reserve needs to be as low as possible." TR 1073. The FRF also believes that a reserve of less than $150 million would be reasonable, adequate, and appropriate. As Mr. Stewart testified, in light of the securitization legislation, "it is not entirely clear that a Reserve is essential" at all. TR 1053. However, the smallest reserve supported by evidence in the record is $150 million, and accordingly, the FRF recommends and

asks the Public Service Commission to approve that amount and no more.

G. FPL's "Higher Issuance Costs" Argument Is Specious, Especially In Light of FPL Having Rejected the "Shelf Offering" Approach Suggested By the Staff's Financial Advisory Experts.

FPL also attempts to scare the Commission into approving its huge requested reserve by arguing that bond issuance costs will be higher if FPL has to seek additional, smaller bond issues to fund its storm restoration efforts over a period of years. This argument is specious and should really revolve around a consideration of how much different the issuance costs might actually be, given that some of those costs are pegged as a percentage of the amount of the issue, and the time value of money to consumers. More significantly, though, FPL's argument is specious because FPL had - but rejected - the opportunity to pursue a hybrid, "shelf offering" approach that could have achieved efficiency through the issuance of a single financing order, with additional bond issues made when needed in the future.

On this point, Commissioner Arriaga questioned the Commission Staff's witness Joseph Fichera regarding the cost of a series of bond offerings to raise money to fund the restoration costs from a series of storms over several years, whether by one lump sum or several smaller yearly offerings. TR 1208-09. Mr. Fichera testified that his company, Saber Partners, had "originally propose[d] in December [2005] for all the utilities to consider what we call the potential shelf offering meaning to

just raise what, the amount that you need right now and then access the market in the future when you then need more money . . ." TR 1208. Mr. Fichera went on to describe his discussions with the Commission Staff to the point of establishing a standardized financing order, including pre-approved amounts that could simply be drawn down at need. TR 1209.

In response to Commissioner Arriaga's questions, however, Mr. Fichera went on to say the following:

> But it's a little late to think about that now because the company basically rejected discussing that with us in December when we wanted to discuss it, what was called a programmatic approach and a shelf offering, and they decided to go ahead with an individual offering. Well, that's their choice, that's what they've done.
>
> So at this point we don't have the, the efficiencies that we would probably want . . . . If we had done this ahead of time, we might have been able to give you more flexibility. We weren't able to. We're doing it on an individual financing order basis.

TR 1209-10.

In other words, FPL had the opportunity to develop a "shelf offering," with authorization for up to a certain amount of financing with a single financing order, but rejected it. FPL thus created at least a substantial part of the problem here, by proceeding with an individual offering and by rejecting the concept of a shelf offering that would have afforded the Commission additional flexibility, and FPL should therefore bear the consequences of its actions: if it winds up costing more to issue additional bonds, then FPL's shareholders should bear any additional costs associated with such later issues, because FPL

had - but rejected - the opportunity to develop a flexible financing approach using the suggested "shelf offering" approach. Additionally, FPL should not be allowed to bootstrap its intransigence in rejecting the shelf offering approach into saddling its captive customers with additional burdens.

In summary, FPL was imprudent not to give full consideration to the "shelf offering" approach discussed briefly by Mr. Fichera in response to questions from Commissioners. FPL's shareholders, not FPL's captive customers, should bear the consequences of FPL's actions.

THE FINANCING PROCESS, INCLUDING COMMISSION INVOLVEMENT, ISSUES 56-71

This major group of issues addresses how the Commission should deal with the bond issuance process, how it should attempt to ensure that the customers get the best deal, how it should ensure that ongoing costs are appropriate, and similar issues.

The Florida Retail Federation strongly supports the best practices approach, with active Commission involvement, advocated by the Commission Staff's witnesses Joseph Fichera, TR 1185-94, Michael Noel, TR 1123, and Rebecca Klein. (See generally, TR 1231-34, 1240, where Ms. Klein supports the best practices concept.) FPL's customers, who are the sole obligors of the debt to be issued pursuant to this proceeding and the securitization legislation, TR 1120, need to be represented in the transaction. An active Commission, with the assistance and advice of a

financial advisor, is in the best interests of customers. TR 1115.

The "best practices" advocated by the Staff's witnesses include the following functions to be fulfilled by the Commission, actively participating through its Staff and through its independent financial advisors:

1. Active involvement in selecting underwriters.

2. Carefully reviewing and negotiating all transaction documents and contracts that could affect future ratepayer costs.

3. Ensuring that all statutory limits that benefit ratepayers are strictly enforced.

4. Establishing procedures to ensure that all future savings are received and realized by ratepayers.

5. Requiring a "broad" marketing effort for the storm cost recovery bonds to obtain lower interest rates for customers' benefit.

6. Requiring transparency and accountability in the distribution, initial pricing, and secondary markets for storm recovery bonds.

7. Participating actively in all aspects of structuring, marketing, and pricing the storm recovery bonds, and challenging any proposal or decision that would not result in lowest costs to customers.

8. Requiring "accountable certifications" from the underwriter(s), from FPL, and from the Commission's own financial advisor that their actions achieved the lowest cost of funds under market conditions prevailing at the time of issuance.

9. Enforcing the financing order, the servicing agreement, the sale agreement, the indenture, and all other transaction documents for the benefit of FPL's customers who will be required to pay off the storm recovery bonds.

Active Commission involvement, with the assistance of competent, professional financial advisors, on a real-time basis is the only way to ensure that ratepayer interests are protected at the time significant (and less significant) decisions are being made TR 1190. Active Commission involvement, with assistance of a financial advisor that has a fiduciary duty to customers, is essential to protecting consumers' interests. As Mr. Fichera testified,

> The first element is effective representation of the interests of the Commission and ratepayers at every step through the conclusion of the process. Decisions affecting ratepayers should be made in conjunction with someone with a specific and direct fiduciary duty to ratepayers.

TR 1199.

This is crucial because FPL's customers are the sole obligors for the debt to be issued here, TR 1120, but neither FPL's interests nor the underwriters' interests are likely to be fully aligned with customers' interests. TR 1118-20. FPL's interests are not necessarily aligned with customers' interests. TR 1119-20. Customers bear all costs of the bonds, so FPL has less incentive, and may have different incentives altogether, such as to just get the bonds issued as quickly as possible without regard to cost. TR 1120. The interests of underwriters are fundamentally adverse to the interests of customers, TR 1118-19. Underwriters want to negotiate for high interest rates and for the highest underwriting fees. TR 1118-19.

Although the appropriateness of a lowest-cost standard should be obvious to all concerned, FPL actually argues against it, asserting that it's not possible to know whether it's been met. This notion should be foreign to, and rejected by, the Commission, which routinely, in all manner of situations, applies a "most cost-effective" standard. The costs associated with issuing storm recovery bonds should be no different. As Mr. Fichera testified,

> [T]he next element is the decision-making standard, a critical element. The standard should be the best possible deal for ratepayers at the time of pricing, the lowest possible cost of funds. Anything less allows for less than optimal results.

TR 1199-1200. Former Commissioner Rebecca Klein, also testifying on behalf of the Commission Staff, also supports the use of the lowest-cost standard. TR 1232, 1239.

Additionally, to the extent that the Commission allows FPL post-hearing flexibility, FPL's exercise of such flexibility should be subject to review to ensure that its customers' interests were appropriately served. Generally, where costs are involved, this will mean the continued application of the lowest cost standard advocated by the Staff's witnesses Fichera, Noel, and Klein.

BRIEF ON LEGAL ISSUES

ISSUE 5: What is the legal effect, if any, of Order No. PSC-05-0937-FOF-EI on the decisions to be made in this docket?

Order No. 05-0937 is non-binding precedent. Because all

ratemaking is inherently prospective and legislative, as an exercise of the police power, the Commission is free to make any reasonable decision supported by competent substantial evidence of record with regard to the ratemaking issues (including cost allocation and prudency issues) in this case.

ISSUE 74: If the Commission votes to issue a financing order:

(a) What special procedures, if any, should be used after the Commission vote and before the issuance of the financing order to ensure that the order accurately reflects the Commission's decision and meets the anticipated requirements of the financial community?

(b) What post-financing order regulatory oversight is appropriate and how should that oversight be implemented?

The Commission's financing order, if any, should provide for continuous, real-time involvement of the Commission Staff and the Commission's financial advisor, up to and including the point at which any bonds are sold. It should also provide for continuing Commission oversight of any future activities that will affect the costs imposed on FPL's customers. This is fairly obvious and fully consistent with the Commission's overarching duty to regulate in the public interest. (If the Commission should decide to issue a conventional surcharge order, the need for oversight of a bond issuance process would be supplanted by the Commission's ongoing authority to supervise public utilities' issuance of securities.)

The FRF also understands that this issue is intended to

address the possibility of disputes among the parties in the post-Commission-vote environment. Pursuant to discussions with other parties, the FRF believes it will be acceptable to refer issues on which the parties cannot agree to the Prehearing Officer, with the Prehearing Officer having the authority to issue orders to effectuate any stipulated or otherwise agreed-upon resolutions of issues.

However, the FRF believes that, if the Prehearing Officer makes a decision with which any party disagrees, the parties must stipulate and agree, on the front end, that reconsideration may be had on the most expedited basis available and practicable, with the explicit agreement that any full Commission review on reconsideration shall be made using a de novo standard, such that the Prehearing Officer's decision shall be accorded no weight nor presumption of correctness in any such reconsideration review. Otherwise, the challenging party would be disadvantaged by having to meet a higher standard of proof (overcoming a presumption of correctness) than if the full Commission had made the decision in the first place, which would be the normal course of events under the Florida Administrative Procedures Act on decisions affecting substantial interests.

ISSUE 88: Should this docket be closed?

Consistent with the FRF's position on Issue 74, this docket should remain open in order to provide a procedural vehicle

within which the Commission can oversee all aspects of the process in order to protect consumers' interests.

STATEMENT OF ISSUES AND POSITIONS:

The following are the FRF's positions on the issues set forth in the Prehearing Order, Order No. PSC-06-0301-PHO-EI.

CHARGES TO STORM RESERVE

2004 Storm Costs

ISSUE 1: Did FPL stop charging 2004 storm-related costs to the storm reserve by July 31, 2005, for restoration work related to the 2004 storm season, as required by Order No. PSC-05-0937-FOF-EI? If not, what adjustments should be made?

POSITION:

FRF: *No. Agree with OPC as to appropriate adjustments.*

ISSUE 2: Should the 2004 storm costs be adjusted for other items? If so, what is the appropriate adjustment?

POSITION:

FRF: *Yes. Agree with OPC as to appropriate adjustments.*

ISSUE 3: Should an adjustment be made to reflect the actual December 31, 2005 storm cost deficiency related to the 2004 costs. If so, what is the amount of the adjustment?

POSITION:

FRF: *Yes. Agree with OPC that the 2004 reserve deficiency should be reduced by $51,396,811.*

ISSUE 4: **Has FPL properly accounted for the after-tax effects of interest on unrecovered storm costs?**

POSITION:

FRF: *No position as to accuracy of accounting or as to the amount of any adjustment. Agree with OPC that interest should be reduced to reflect the reduction to 2004 storm costs included in the reserve.*

2005 Storm Costs

ISSUE 5: **What is the legal effect, if any, of Order No. PSC-05-0937-FOF-EI on the decisions to be made in this docket?**

POSITION:

FRF: *Order No. 05-0937 is non-binding precedent. Because all ratemaking is inherently prospective and legislative, as an exercise of the police power, the Commission is free to make any reasonable decision supported by competent substantial evidence of record with regard to the ratemaking issues (including cost allocation and prudency issues) in this case.*

ISSUE 6: **What is the appropriate methodology to be used for booking the 2005 storm damage costs to the Storm Damage Reserve?**

POSITION:

FRF: *The appropriate methodology is the incremental cost methodology advocated by the witnesses for the Citizens of the State of Florida.*

ISSUE 7: **Has FPL charged to the storm reserve any costs associated with replacements or improvements that would have been needed in the absence of 2005 storms, and so should be charged to regular O & M or placed in rate base and accounted for accordingly? If so, what adjustments should be made?**

POSITION:

FRF: *Yes. Agree with OPC as to the amounts to be adjusted for such items, including condenser tube repairs, hydrolasing, and loan of FPL personnel and equipment to other utilities.*

ISSUE 8: **Has FPL quantified the appropriate amount of non-management employee labor payroll expense that should be charged to the storm reserve for 2005? If not, what adjustments should be made?**

POSITION:

FRF: *No. Agree with the $24,575,514 in adjustments calculated and advocated by OPC's witnesses.*

ISSUE 9: **Has FPL quantified the appropriate amount of managerial employees payroll expense that should be charged to the storm reserve for 2005? If not, what adjustments should be made?**

POSITION:

FRF: *No. Agree with OPC that FPL's 2005 storm costs should be reduced by $768,000 to remove exempt employees' overtime incentives.*

ISSUE 10: **WITHDRAWN**

ISSUE 11: **Has FPL properly quantified the cost of tree trimming that should be charged to the storm reserve for 2005? If not, what adjustments should be made?**

POSITION:

FRF: *No. Agree with OPC that FPL's claimed tree-trimming costs should be reduced by $1.1 million.*

ISSUE 12: **Has FPL properly quantified the costs of company-owned fleet vehicles that should be charged to the storm reserve for 2005? If not, what adjustments should be made?**

POSITION:

FRF: *No. Agree with OPC that FPL's claimed costs should be reduced by $5,738,000 to ensure that vehicle costs are not inappropriately recovered through both base rates and through storm surcharges.*

ISSUE 13: Has FPL properly quantified the costs of call center activities that should be charged to the storm reserve for 2005? If not, what adjustments should be made?

POSITION:

FRF: *No. Agree with OPC that FPL's claimed costs should be reduced by $520,264.*

ISSUE 14: Has FPL appropriately charged to the storm reserve any amounts related to advertising expense or public relations expense for the 2005 storms? If not, what adjustments should be made?

POSITION:

FRF: *FPL has inappropriately charged advertising and public relations costs to its 2005 storm costs. Agree with OPC that $2,528,196 in advertising and communications costs, and $144,068 for public relations costs, should be removed from FPL's claimed 2005 storm costs.*

ISSUE 15: Has uncollectible expense been appropriately charged to the storm reserve for 2005? If not, what adjustments should be made?

POSITION:

FRF: *No. Agree with OPC that FPL's claimed 2005 storm costs should be reduced by $3,582,000 to remove uncollectible expense included in FPL's storm cost recovery request.*

ISSUE 16: Has FPL properly charged the normal cost of replacement to rate base and the normal cost of removal to the cost

of removal reserve for the 2005 storms? If not, what adjustments should be made?

POSITION:

FRF: *No. Agree with OPC that an additional $2,964,000 adjustment to 2005 storm recovery costs charged to the storm reserve is necessary to reflect the higher proportion of storm costs that are presently expected to be capital-related.*

ISSUE 17: If the Commission applies in this docket the methodology applied in Order No. PSC-05-0937-FOF-EI should the Commission take into account:

a. **Amounts not recovered through base rates due to the disruption of service due to the 2005 storm season or the absence of customers after the storms;**

b. **Overtime incurred by Company personnel in work areas not directly affected by the storm due to loss of some personnel to storm assignments (backfill work);**

c. **Costs associated with work that must be postponed due to the urgency of storm restoration and accomplished after the restoration was completed (catch-up work);**

d. **Uncollectible accounts receivable write-offs directly related to the storms;**

e. **Incremental contractor, outside professional services and temporary labor costs due to work postponed due to the urgency of storm restoration and accomplished after the restoration was completed;**

f. **Costs that would have otherwise been charged to clauses; and**

g. **Costs that would have otherwise been charged to capital.**

h. **Vacation Buy-Backs;**

i. **Nuclear Payroll Expected to be Recovered Through Insurance**

POSITION:

FRF:

a. *No. Only those costs that are directly related to restoring facilities should be included in allowable storm restoration costs and recovered from ratepayers. The PSC should reject FPL's effort to shift additional business risk - substantively, the risk of lost revenues - onto its customers.*

b. *No. Only those costs that are directly related to restoring storm-damaged facilities should be included in allowable storm restoration costs and recovered from FPL's customers.*

c. *No. Only those costs that are directly related to restoring storm-damaged facilities should be included in allowable storm restoration costs and recovered from FPL's customers.*

d. *No. Only those costs that are directly related to restoring storm-damaged facilities should be included in allowable storm restoration costs and recovered from FPL's customers. FPL's claimed storm costs should be reduced by $3,582,000.*

e. *No. Only those costs that are directly related to restoring storm-damaged facilities should be included in allowable storm restoration costs and recovered from FPL's customers.*

f. *Agree with OPC.*

g. *Agree with OPC.*

h. *Agree with OPC that "vacation buy-backs" are a result of FPL's vacation policy and not a direct result of storm restoration activities. Such amounts should not be charged to the storm reserve, nor should they be allowed to offset any adjustments made as a result of the incremental cost approach.*

i. *Agree with OPC that this offset proposed by FPL is inappropriate.*

ISSUE 18: Have landscaping costs been appropriately charged to the storm reserve for 2005? If not, what adjustments should be made?

POSITION:

FRF: *No.*

ISSUE 19: Have lawsuit settlement charges been appropriately charged to the storm reserve for 2005? If not, what adjustments should be made?

POSITION:

FRF: *No. Lawsuit settlement charges are not directly related to storm recovery efforts or for restoring service to customers, and such costs, which are already considered in determining FPL's base rates, should not be included in allowable costs in this docket. This is another inappropriate effort by FPL to shift as much risk as possible onto its customers. FPL' claim for $2,849,571 in such costs as 2005 storm costs should be disallowed.*

ISSUE 20: Have contingency portions of estimated storm costs been appropriately charged to the storm reserve for 2005? If not, what adjustments should be made?

POSITION:

FRF: *No. Agree with OPC that $26,253,351 of contingencies remaining at the end of February 2006 should be removed from FPL's 2005 storm cost estimates.*

ISSUE 21: Should FPL be required to true-up approved 2005 storm related costs? If so, how should this be accomplished?

POSITION:

FRF: *Yes. Agree with OPC that FPL should be required to true up the actual costs incurred and continue to

increase its contingency estimates. Further agree with OPC that a cut-off date of December 31, 2006 should be established for charging 2005 storm restoration costs to the reserve.*

ISSUE 22: Have the costs of repairing other entities' poles been charged to the storm reserve for 2005? If so, what adjustments should be made?

POSITION:

FRF: *Yes. Agree with OPC that a minimum of $7,923,288 should be removed from FPL's claimed 2005 storm costs, and that FPL should be required to true up final costs to ensure that billings to outside parties for pole repair and replacement costs incurred by FPL are based on actual costs, and that they are appropriately credited to the benefit of FPL customers.*

ISSUE 23: WITHDRAWN

ISSUE 24: Has FPL charged any other costs to the storm reserve that should be expensed or capitalized? If so, what adjustment should be made?

POSITION:

FRF: *Yes. Agree with OPC as to additional adjustments for employee assistance costs and repair costs under warranty.*

ISSUE 25: Taking into account any adjustments identified in the preceding issues, what is the appropriate amount of 2005 storm related costs to be charged against the storm reserve, subject to a determination of prudence in this proceeding?

POSITION:

FRF: *Fall-out issue.*

ISSUE 26: At what point in time should FPL stop charging costs related to the 2005 storm season to the storm reserve?

POSITION:

FRF: *Agree with OPC that only the costs for projects that have been identified in this docket and for which physical construction has begun on or before December 31, 2006 should be allowed as charges to the storm reserve for 2005 storms.*

PRUDENCE OF 2005 STORM CHARGES

ISSUE 27: Did FPL adequately inspect and maintain its distribution and transmission system for deterioration and overloading of poles prior to June 1, 2005? If not, what amount, if any, should be adjusted from the costs that FPL proposes to charge to the storm reserve and recover through securitization or a surcharge?

POSITION:

FRF: *No. FPL's inspection activities with respect to the deterioration of wood distribution poles were inadequate. Agree with OPC as to amounts of claimed repair costs that should be disallowed. Additionally, because FPL's activities were inadequate due to FPL's intentional cost-cutting efforts, they were imprudent and FPL should be penalized pursuant to Chapter 350 for the resulting failures, which resulted in excessive outages and losses being sustained by FPL's customers.*

ISSUE 28: Did FPL adequately control vegetation around its distribution and transmission system prior to June 1, 2005? If not, what amount, if any, should be adjusted from the costs that FPL proposes to charge to the storm reserve and recover through securitization or a surcharge?

POSITION:

FRF: *No. FPL's pre-storm vegetation management activities were inadequate. Agree with OPC as to amounts of claimed repair costs that should be disallowed. Additionally, because FPL's activities were inadequate

due to FPL's intentional cost-cutting efforts, they were imprudent and FPL should be penalized pursuant to Chapter 350 for the resulting failures, which resulted in excessive outages and losses being sustained by FPL's customers.*

ISSUE 29: WITHDRAWN

ISSUE 30: Did FPL adequately inspect and maintain its distribution and transmission system for deterioration and overloading of poles prior to October 23, 2005? If not, what amount, if any, should be adjusted from the costs that FPL proposes to charge to the storm reserve and recover through securitization or a surcharge?

POSITION:

FRF: *No. FPL's inspection activities with respect to the deterioration of wood distribution poles were inadequate. Agree with OPC as to amounts of claimed repair costs that should be disallowed. Additionally, FPL should be penalized pursuant to Chapter 350 for the resulting failures, which in turn resulted in excessive outages and losses being sustained by FPL's customers. The date through which such penalties should be imposed is the day before Wilma struck South Florida, October 23, 2005.*

ISSUE 31: Did FPL adequately control vegetation around its distribution and transmission system prior to October 23, 2005? If not, what amount, if any, should be adjusted from the costs that FPL proposes to charge to the storm reserve and recover through securitization or a surcharge?

POSITION:

FRF: *No. FPL's pre-storm vegetation management activities were inadequate. Agree with OPC as to amounts of claimed repair costs that should be disallowed. Additionally, because FPL's activities were inadequate due to FPL's intentional cost-cutting efforts, they were imprudent and FPL should be penalized pursuant to Chapter 350 for the resulting failures. The date

through which such penalties should be imposed is the day before Wilma struck South Florida, October 23, 2005.*

ISSUE 32: WITHDRAWN

ISSUE 33: What adjustment, if any, should the Commission make associated with the failure of 30 transmission towers of the 500 KV Conservation-Corbett transmission line and the failure of six structures on the Alva-Corbett 230 transmission line?

POSITION:

FRF: *Agree with OPC that $10,411,000 should be removed from both the total projected storm restoration costs and from the capital cost offset, and that the Commission's final order in this case should state that these costs are being disallowed and should not be included in plant in service.*

ISSUE 34: Should FPL be authorized to accrue and collect interest on the amount of 2005 storm-related costs permitted to be recovered from customers? If so, how should it be calculated?

POSITION:

FRF: *Agree with OPC that FPL should only be allowed to accrue and collect interest on the actual amount of reasonable and prudent storm costs, net of any penalties or other adjustments, as determined by the Commission in this proceeding, and that interest accrual should begin in November 2005 and cease as of the time that the first bonds are issued (assuming securitization).*

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?

POSITION:

FRF: *Understanding this issue to address the possible sharing of costs that are determined by the Commission to be reasonable and prudent costs, the FRF's position is "No position."*

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?

POSITION:

FRF: *Agree with OPC that the maximum amount of allowable 2005 storm costs is approximately $705,000,000 on a jurisdictional basis, pending other adjustments.*

STORM DAMAGE RESERVE

ISSUE 37: What is the appropriate level of funding to replenish the storm damage reserve to be recovered through a mechanism approved in this proceeding?

POSITION:

FRF: *Agree with OPC that the appropriate level of funding for FPL's storm reserve is $150 million.*

ISSUE 38: What portion, if any of the Reserve must be held in a funded Reserve and should there be any limitations on how the Reserve may be held, accessed or used?

POSITION:

FRF: *Agree with OPC that once FPL's storm reserve attains a positive balance, the reserve should continue to be held in a funded account with interest accruing to the benefit of FPL's customers.*

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?

POSITION:

FRF: *No position.*

ISSUE 40: WITHDRAWN

ISSUE 41: Should the unamortized balance of 2004 storm costs continue to be recovered through the current surcharge or should the balance be added to any amounts to be securitized?

POSITION:

FRF: *Agree with OPC.*

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

POSITION:

FRF: *Based on resolution of the preceding issues, if the Commission approves securitization, FPL's requested storm-related costs of $1,690,160,000 should be reduced by at least $660,000,000, and further reduced to reflect any penalties or other adjustments determined to be appropriate by the Commission.*

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?

POSITION:

FRF: *Based on resolution of the preceding issues, if the Commission approves recovery through traditional surcharges or another form of recovery, FPL's requested storm-related costs of $1,690,160,000 should be reduced by at least $660,000,000 and further reduced to reflect any penalties or other adjustments determined to be appropriate by the Commission.*

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:

a. The amount approved for recovery; and

b. The cost allocation to the rate classes.

POSITION:

FRF: *No position.*

Terms and Conditions of Financing Order for Securitized Amounts

ISSUE 45: What adjustment, if any, should be made so that the treatment of the deferred tax liability is revenue neutral from the ratepayer's perspective?

POSITION:

FRF: *Agree with OPC.*

ISSUE 46: Is the recovery of income taxes a financing cost eligible for recovery under Section 366.8260, Florida Statutes?

POSITION:

FRF: *Yes.*

ISSUE 47: **If recovery of the taxes assessed on the storm recovery charges are not securitized, should the tax charge be included in the irrevocable financing order?**

POSITION:

FRF: *No. It would be inappropriate to include charges that are not part of the securitized amounts within the scope of an irrevocable financing order.*

ISSUE 48: **Should FPL indemnify its ratepayers against an increase in the servicer fee in the event of the servicer's default due to negligence, misconduct, or termination for cause?**

POSITION:

FRF: *Yes.*

ISSUE 49: **WITHDRAWN**

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

POSITION:

FRF: *Agree with OPC.*

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

POSITION:

FRF: *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?**

POSITION:

FRF: *Agree with OPC.*

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

POSITION:

FRF: *Agree with OPC.*

ISSUE 54: **STIPULATED (See Section X.)**

ISSUE 55: **In the event any amounts remain in the Collection Account after all storm recovery bonds have been retired, what should be the disposition of these funds?**

POSITION:

FRF: *Agree with OPC.*

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

POSITION:

FRF: *If the Commission determines to approve securitization, then the Commission should adopt the "best practices" standards applicable to reviewing and approving issuance costs.*

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

POSITION:

FRF: *If the Commission determines to approve securitization, then the Commission should adopt the "best practices" standards applicable to reviewing and approving ongoing costs associated with the bonds.*

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?

POSITION:

FRF: *No. Because the process proposed by FPL in its filings does not provide for the active participation of the Commission, FPL's process does not afford adequate, independent protection for its customers with regard to up-front costs, issuance costs, ongoing costs, and interest rates. Accordingly, FPL's proposed process should not be approved.*

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?

POSITION:

FRF: *No. Because the process proposed by FPL in its filings does not provide for the active participation of the Commission, FPL's process does not afford adequate, independent protection for its customers with regard to up-front costs, issuance costs, ongoing costs, and interest rates. Accordingly, FPL's proposed process should not be approved.*

ISSUE 60: If the issuance of storm-recovery bonds is approved, should the bonds be sold through a negotiated or competitive sale?

POSITION:

FRF: *The sale method that produces the lowest overall cost based on real-time market conditions should be the

method that is used to determine allowable costs. If the Commission allows FPL the discretion, after the Commission issues its order in this case, to decide which sale mechanism to use, then any such decisions by FPL must be subject to further prudency review, in subsequent proceedings in which all substantially affected parties have a point of entry.*

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?

POSITION:

FRF: *The financing order should prescribe the ratepayer protections described in Staff witness Fichera's testimony, especially the provisions by which the Commission would be actively involved at all times and in all stages of the structuring, marketing, and pricing of the storm-recovery bonds.*

ISSUE 62: Should all legal opinions and other transaction documents and subsequent amendments be filed and approved by the Commission before becoming operative?

POSITION:

FRF: *Yes.*

ISSUE 63: Is FPL's proposed Staff Pre-Issuance Review Process reasonable and should it be approved?

POSITION:

FRF: *No. Because the process proposed by FPL in its filings does not provide for the active participation of the Commission, FPL's process does not afford adequate protection for its customers with regard to up-front costs, issuance costs, ongoing costs, and interest rates. Accordingly, FPL's proposed process should not be approved.*

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?**

POSITION:

FRF: *If the Commission approves recovery through securitization, the Financing Documents should incorporate, to the extent applicable and practicable, the "best practices" and "financing order recommendations" set forth in Staff witness Fichera's testimony.*

ISSUE 65: **Should the Issuance Advice Letter be approved in substantially the form proposed by FPL?**

POSITION:

FRF: *No position.*

ISSUE 66: **Should the Initial True-up Letter be approved in substantially the form proposed by FPL?**

POSITION:

FRF: *No position.*

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?**

POSITION:

FRF: *If the Commission determines to approve securitization, then the Commission should adopt the "best practices" standard.*

ISSUE 68: Is the "proposed structur[e], 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?"

POSITION:

FRF: *No. Without the ratepayer protections, including the "best practices," described in Staff witness Fichera's testimony, the proposed structure, pricing, and financing costs cannot be reasonably expected to provide appropriate and available benefits to FPL's ratepayers.*

ISSUE 69: WITHDRAWN

ISSUE 70: WITHDRAWN

ISSUE 71: What 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, as well as the use of floating rate securities, interest rate swaps, and call provisions?

POSITION:

FRF: *Agree with OPC. Additionally, the Commission should ensure that any post-approval exercise of flexibility is demonstrated, in appropriate proceedings that afford substantially affected parties a point of entry, to provide real, measurable benefits to customers, and that FPL's customers are protected from any adverse consequences of imprudent FPL decisions pursuant to allowed flexibility.*

ISSUE 72: STIPULATED (See Section X.)

ISSUE 73: STIPULATED (See Section X.)

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?

POSITION:

FRF: *No. Agree with OPC that, assuming that the Commission approves securitization such that a financing order is needed, the financing order needs to reflect the Commission's decisions in this proceeding, including findings of fact and conclusions of law.*

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?

POSITION:

FRF: *No position.*

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:

a. **The amount approved for recovery;**

b. **The calculation of the surcharge;**

c. **The cost allocation to the rate classes; and**

d. **The surcharge's termination date.**

POSITION:

FRF: a. *FPL should not be allowed to implement an interim rate for 2005 storm costs if the bond issuance is delayed.*

b. *See FRF position above.*

c. *No position.*

d. *See FRF position above.*

Terms for Traditional Recovery of Non-Securitized Amounts

ISSUE 77: If the Commission approves a recovery mechanism other than securitization, should an adjustment be made in the calculation of interest to recognize the storm-related deferred taxes?

POSITION:

FRF: *Yes. Agree with OPC.*

ISSUE 78: If the Commission approves a recovery mechanism other than securitization, what is the appropriate accounting treatment for the unamortized balance of the storm-related costs subject to future recovery?

POSITION:

FRF: *No position.*

RATES

ISSUE 79: STIPULATED (See Section X.)

ISSUE 80: If the Commission approves recovery of any storm-related costs through securitization, how should the recovery of these costs be allocated to the rate classes?

POSITION:

FRF: *No position.*

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?

POSITION:

FRF: *No position.*

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?

POSITION:

FRF: *No position.*

ISSUE 83: STIPULATED (See Section X.)

ISSUE 84: STIPULATED (See Section X.)

ISSUE 85: STIPULATED (See Section X.)

ISSUE 86: STIPULATED (See Section X.)

OTHER

ISSUE 87: STIPULATED (See Section X.)

ISSUE 88: Should this docket be closed?

POSITION:

FRF: *No. This docket should remain open in order to provide a procedural vehicle within which the Commission can oversee all aspects of the process in order to protect consumers' interests.*

Respectfully submitted this 28th day of April, 2006.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Florida Power and Light Company's Petition for Issuance of a Storm Recovery Financing Order	)	DOCKET NO. 060038-EI
	)	FILED: APRIL 28, 2006

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that one true copy of THE FLORIDA RETAIL FEDERATION'S POST-HEARING BRIEF AND STATEMENT OF ISSUES AND POSITIONS has been served by electronic mail and U.S. mail on the 28th day of April, 2006, to the following:

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