

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Florida Power & Light Company's)	Docket No. 060038-EI
Petition for Issuance of a Storm Recovery)	Filed: April 28, 2006
Financing Order)	
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FLORIDA POWER & LIGHT COMPANY'S POST-HEARING BRIEF

Florida Power & Light Company ("FPL" or the "Company") files with the Florida Public Service Commission (the "PSC" or the "Commission") its Post-Hearing Brief in the above-referenced docket, and states:

STATEMENT OF BASIC POSITION

A. Storm Cost Recovery Regulatory Background

Utilities such as FPL accept an obligation to provide service to all customers in its geographic service area. In exchange, regulation allows the recovery of prudently incurred costs to provide such electric service. Storm recovery costs are a cost of providing electric service in Florida. Windstorm insurance coverage, secured on behalf of customers and in the past included as a part of FPL's cost to provide electric service paid for through base rates, has not been cost-effectively available since Hurricane Andrew in 1992. Storm recovery costs are not reflected in FPL's base rate charge.¹ Thus, storm-recovery costs must be recovered through means other than FPL's base rate charge.

Pursuant to prior Commission orders and consistent with Rule 25-6.0143, Florida Administrative Code, FPL has established a storm and property insurance Reserve (Account No. 228.1) ("Reserve") in amounts that were intended to be sufficient to cover, among other things, storm-recovery costs associated with most but not all storm seasons.

Consistent with past Commission policy and practice, in cases of extreme weather and restoration costs, a special assessment or surcharge has been determined by the PSC to be an

¹ Prior to the Stipulation and Settlement Agreement approved by the Commission in Docket No. 050045-EI, \$20.3 million, a relatively small portion of the expected annual cost of storm restoration, was reflected in the Company's base rates.

appropriate means to recover the cost of storm restoration in excess of the Reserve.² A long period of relatively mild hurricane seasons allowed the Reserve to grow to \$354 million prior to being depleted as a result of the unprecedented 2004 storm season, leaving the Company's Reserve with a large deficit to recover through a special assessment. As a result of the 2005 hurricane season, that deficit was further increased and, as of the date of FPL's petition, was in excess of \$1.1 billion.

Over the years, FPL and the Commission periodically have reviewed the levels of the target Reserve amount and the annual accrual and, in some instances, the Commission has increased those amounts. In 1998, the Commission explicitly considered the adequacy of the \$20.3 million annual accrual then in effect as well as the target amount of the Reserve. In consideration of the existing Reserve balance at the time, among other factors, the Commission concluded that no changes in those amounts were needed at that time. However, consistent with the Post-Hurricane Andrew regulatory framework (i.e., no affordable commercial insurance for storm), the Commission acknowledged that:

[i]n the event FPL experiences catastrophic losses, it is not unreasonable or unanticipated that the Reserve could reach a negative balance.... In cases of catastrophic loss, FPL continues to be able to petition the Commission for emergency relief, as reflected in Order No. PSC-95-1588-FOF.

In re: Petition for authority to increase annual storm fund accrual commencing January 1, 1997 to \$35 million by Florida Power & Light Company, Order No. PSC-98-0953-FOF-EI, Docket No. 971237-EI (issued July 14, 1998) at p. 3. The Commission also affirmed that "the costs of storm damage incurred over and above the balance in the Reserve and the costs of the use of the lines of credit would still have to be recovered from ratepayers." *Id.* (emphasis added).

The Commission's storm cost recovery approach is entirely consistent with the observation that the costs of restoring electric service, fundamentally, are a cost of providing electric service in Florida, and therefore are legitimately recoverable from customers under basic

² See, e.g., Order No. PSC-98-0953-FOF-EI, Docket No. 971237-EI (issued July 14, 1998) at p. 3; Order No. PSC-95-0264-FOF-EI, Docket No. 930405-EI (issued Feb. 27, 1995) at p. 2 (concluding that "an increase above the current \$7,100,000 annual accrual is needed because the fund should be expected to grow due to the unpredictable nature of weather and to reduce dependence on a relief mechanism such as a special customer assessment"); Order No. PSC-95-1588-FOF-EI, Docket No. 951167-EI (issued Dec. 27, 1995) at p. 2 (finding that "a self-insurance program has two fundamental characteristics that are interrelated: an annual accrual amount and an emergency relief mechanism to prevent insolvency in the storm fund" and acknowledging that "FPL has experienced a catastrophic loss from Hurricane Andrew and that the potential for another loss of this magnitude exists. ... FPL may petition the Commission for emergency relief if FPL experiences a catastrophic loss"); Order No. PSC-93-0918-FOF-EI, Docket No. 930405-EI (issued June 17, 1993) at pp. 5-6 (authorizing self-insurance for storm losses in the absence of commercial insurance and instructing FPL, in part, that "FPL has shown no reason to believe that the Commission will require a utility to book exorbitant storm losses without recourse. ... The Commission will expeditiously review any petition for deferral, amortization or recovery of prudently incurred costs in excess of the Reserve.")

principles of regulation. They are not foreseeable “business risks.” FPL does not now recover (and has not since Hurricane Andrew recovered) through base rates the full expected costs of restoring service after storms. Nor does FPL recover through base rates the amounts that would be necessary to compensate for the risk capital that would need to be supplied were investors to assume this insurance function. That is because the Commission has determined that the current regulatory framework is a less costly means of attaining the same end. An integral part of that framework is the ability of the utility to recover prudently incurred costs in excess of whatever Reserve balance happens to exist at the precise moment that hurricanes strike.

B. The 2004 Storm Cost Proceeding and 2005 Settlement Agreement

Pursuant to PSC Order No. PSC-05-0937-FOF-EI, issued September 21, 2005, in Docket No. 041291-EI (“2004 Storm Cost Recovery Order”), FPL’s prudently incurred 2004 storm season costs in excess of the Reserve currently are being recovered through a monthly storm recovery surcharge equal to \$1.65 for a 1,000 kWh residential bill (“2004 Storm Restoration Surcharge”). In that proceeding, which included extensive presentation of fact and analysis by all interested parties, culminating in evidentiary hearings and a definitive ruling by the Commission regarding prudence, the Commission considered and rejected the notion that there should be a so-called “sharing” of prudently incurred storm restoration costs. The Commission found no ambiguity in the provisions of the 2002 Stipulation and Settlement and no other sound legal or policy rationale upon which to force a regulated utility to absorb prudently incurred storm restoration costs. Specifically, the Commission concluded:

. . . As noted above, paragraph 13 of the Stipulation specifically states that FPL would have the opportunity to petition this Commission for recovery of prudently incurred storm costs in excess of the amount in the Storm Reserve and amounts paid through insurance. In addition, paragraph 3 states, “Effective on the Implementation Date, FPL will no longer have an authorized Return on Equity (ROE) range for the purpose of addressing earnings levels, and the revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels.” Finally, while paragraph 8 specifies that FPL may petition for a base rate increase only in the event its base rate earnings fall below a 10% ROE, the Stipulation is silent with respect to what return level FPL may be brought back to as a result of its requested rate relief. For these reasons, we believe FPL is within its right to petition for recovery of all reasonable and prudently incurred storm-related costs to maintain the return it was otherwise entitled to earn.

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

Order No. PSC-05-0937-FOF-EI, issued September 21, 2005, at p. 30. The costs of restoring power after a tropical storm are an integral part of the cost of providing electric service in

Florida, a region susceptible to tropical storms and hurricanes. As such, they are legitimately fully recoverable from customers under the basic principles of regulation addressed above.

In its base rate proceeding last year in Docket No. 050045-EI, FPL proposed to increase base rates by an amount sufficient to cover the expected average annual cost of storm restoration plus an amount to replenish the Reserve over a reasonable period of time. Considerations of storm cost treatment represented a significant component of the discussions leading up to the Stipulation and Settlement Agreement (“2005 Settlement Agreement”) that was negotiated and signed by all parties to Docket No. 050045-EI and unanimously approved by the Commission in Order No. PSC-05-0902-S-EI issued September 14, 2005. Instead of addressing the need to pay for storm restoration costs going forward through an increase in base rates, the parties to the 2005 Settlement Agreement elected to hold base rates constant by providing for the recovery of all such costs outside of the Company’s base rates, either through means of a new financing vehicle approved by the Florida Legislature during its 2005 session and codified in Section 366.8260, Florida Statutes, and/or through the more conventional mechanism of a special assessment or surcharge.

In exchange for agreeing to hold base rates constant, FPL required, and intervenors agreed to, the language contained in the agreement. In addition to the same provisions that existed in the Stipulation and Settlement that was approved by Commission Order No. PSC-02-0501-AS-EI, Docket No. 001148-EI (issued April 11, 2002) (“2002 Stipulation and Settlement”) and upon which the Commission’s decision in Docket No. 041291-EI was predicated,³ in part, the 2005 Settlement Agreement includes an additional provision that even more explicitly states:

FPL will be permitted to recover prudently incurred costs associated with events covered by Account No. 228.1 and replenish Account No. 228.1 to a target level through charges to customers, that are approved by the Commission, that are independent of and incremental to base rates and without the application of any form of earnings test or measure.⁴

2005 Settlement Agreement, Paragraph 13.

In approving the 2005 Settlement Agreement, the Commission expressed concern about being left without a more definite course of action to replenish the Reserve and strongly encouraged the Company to propose a plan at the earliest opportunity. FPL therefore filed its petition in this proceeding in response to its commitment to the Commission to pursue a plan to

³ Paragraph 13, of the 2002 Stipulation and Settlement provides in part that “[i]n the event there are insufficient funds in the Storm Damage Reserve and through insurance, FPL may petition the FPSC for recovery of prudently incurred costs not recovered from those sources.”

⁴ The 2005 Settlement Agreement also provides that FPL “will continue to operate without an authorized Return on Equity (ROE) range for the purpose of addressing earnings levels, and the revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels. . . .” Ex. 130, at par.16.

replenish its Reserve within six months of the Commission's approval of the 2005 Settlement Agreement. See Order No. PSC-05-0902-S-EI, Docket Nos. 050045-EI, 050188-EI (issued September 14, 2005) at p. 5. Now, FPL asks that the plain language of the 2005 Settlement Agreement, as well as the Commission's regulatory framework for storm cost recovery, be adhered to and upheld.

Acceptance of the cost-shifting or "sharing" proposal outlined in the brief piece of testimony submitted by Mr. Jenkins would have a chilling effect on negotiated settlements of contested regulatory proceedings and would fundamentally alter investors' perceptions of risks associated with committing capital to Florida. First, investors would simply require a higher rate of return to compensate for the cost shifting that Mr. Jenkins proposes. Over the long haul, it is not possible to consistently impose costs on investors, since capital is readily transferable and investors have many other competing alternatives for capital allocation, particularly in jurisdictions that do not impose the sharing of prudently incurred costs on jurisdictional utilities.

Second, and more important, Mr. Jenkins' proposal would actually make the situation worse for customers because there would likely be a significant increase in risk associated with investor's assessment of the stability of the regulatory climate. If the basic principles of regulation are changed and negotiated settlements disregarded to the utilities' disadvantage after the fact, investors will sense a significant increase in risk in the regulatory environment in Florida. This effect would serve to increase the cost of capital. Thus, the long-term effect would be to increase cost not only for FPL's customers, but for all customers within the state.

Therefore, as a legal and policy matter, it is critically important to uphold the Commission's regulatory framework that allows the recovery of all reasonable and prudently incurred costs of providing electric service to customers. Following the impact of a storm, the interests of the Company and its customers should be aligned in restoring service as safely and rapidly as possible. Adoption of Mr. Jenkins sharing proposal would deliberately introduce a significant financial incentive to act contrary to customers' best interests by creating an incentive to minimize storm restoration costs (and thus the amount of cost disallowance or sharing). This would be poor public policy, particularly at such a critical time.

C. The 2005 Storm Season and FPL's Restoration Work

FPL and its customers were subjected to another extremely destructive hurricane season in 2005. During 2005, FPL and its customers were affected by four hurricanes – Dennis, Katrina, Rita and Wilma. All four of the hurricanes impacted the most densely populated areas in FPL's service territory, Palm Beach, Broward and Miami-Dade counties, where 60% of FPL's customers reside. Hurricane Katrina made landfall near the Miami-Dade and Broward county line. Hurricane Wilma made landfall on the southwest coast of Florida and exited near Palm Beach, significantly impacting Palm Beach, Broward and Miami-Dade counties and causing more outages for FPL than any other previous storm. In addition to the damage to FPL's infrastructure, Hurricane Wilma caused significant damages to the communities that the Company serves. Hurricane Wilma was the worst storm to impact Miami since August 1992, when Hurricane Andrew caused more than \$25 billion in damage. The American Red Cross also has reported that over 27,000 dwellings were destroyed or rendered temporarily unlivable, an

indication of the destruction caused by Hurricane Wilma. Hurricanes Dennis and Rita, while not making landfall in FPL's territory, traveled near enough for their outer bands to cause significant outages, particularly in Miami-Dade and Broward counties.

Of the four storms impacting FPL's service territory last year, the two storms inflicting the vast majority of damage to FPL's system in 2005 occurred subsequent to execution of the 2005 Settlement Agreement. Hurricane Wilma, a massive storm and the most destructive event to FPL's service territory of the season, swept across the most heavily populated areas within FPL's service territory and resulted in widespread damage to property and infrastructure, including huge portions of FPL's transmission and distribution system. In the heavily populated counties of Miami-Dade, Broward, and Palm Beach, 99% of FPL's customers were without power once the storm passed. Unlike prior storms, Hurricane Wilma inflicted damage not just to distribution systems, but to transmission structures and substations throughout FPL's service territory. To repair the damage and restore service to more than 3.2 million customers in 21 counties, over 19,000 restoration workers, including approximately 9,200 foreign utility and other contractor personnel, from 36 states and Canada were deployed by FPL. A restoration team of this size had never before been assembled in FPL's 80 year history.

FPL's planning and execution before, during and after the 2005 storms was focused upon safely restoring the greatest number of customers in the least amount of time to return the communities the Company serves to normalcy. For the four 2005 storms, approximately 5.3 million customers required power restoration. For Hurricanes Dennis and Rita, customers were 100% restored within three and two days, respectively. For Hurricane Katrina, 77% of the customers affected were restored in three days, 95% in five days and 100% in eight days. For Hurricane Wilma, FPL restored service to over two million customers, or 65% of all affected customers, by the fifth day, and 100% were restored by the eighteenth day. The high percentages accomplished in the first few days in each storm result from FPL's consistently applied restoration strategy – to restore facilities that serve the largest number of customers first. FPL further refined its processes and effectively managed field operations, while acquiring an extraordinary number of workers and managing many staging sites. As a result, FPL restored service to its customers and repaired its facilities in an expeditious and prudent manner. FPL submits that its 2005 storm-recovery, described more fully in the Company's supporting testimony, are reasonable and prudent, "with reference to the general public interest in, and the scope of effort required to provide, the safe and expeditious restoration of electric service," as provided for in Section 366.8260(2)(b)1.b., Florida Statutes.

During the 2004 storm cost recovery proceedings, the prudence of FPL's efforts was not challenged. In fact, the Company's performance was applauded by many of the same parties here today. Indeed, with respect to the 2004 costs and the Company's performance, the Commission concluded:

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

found to be appropriately charged to the Storm Reserve are reasonable and prudent.

2004 Storm Cost Recovery Order at p. 24.

Significantly, it is uncontroverted by any testimony filed in this proceeding that the Company's performance was just as good, or better than it was in 2004. It defies logic now only a year later to say that the Company has faulty maintenance practices. If there were any merit whatsoever to such a claim, the evidence would have been borne out long before now through lower reliability indicators in FPL's day to day operations. Instead, FPL's overall reliability is, and has been for many years, in the top quartile of the utility industry. A utility simply cannot, over a multi-year period, consistently produce top quartile reliability if it operates in a slipshod fashion. It just does not happen. And it has not happened in the case of FPL.

The storm damage that FPL experienced in 2005 is in line with expectations for the wind strength of the storms that impacted FPL's system. There is no valid basis to conclude that FPL acted imprudently with respect to the inspection or maintenance of its system.

D. FPL's 2005 Storm Costs and Total Storm Reserve Deficit

As a result of the devastating impact of the 2005 storm season, in addition to the need to replenish the Reserve (still depleted from the 2004 storms) to a reasonable level for future storm seasons, FPL and its customers are left with an even larger deficit in the Reserve and a more urgent need to remedy the situation in anticipation of yet another potentially active storm season in 2006. FPL's Petition reflected total estimated storm-recovery costs for 2005 of \$906.4 million, including \$721.7 million due to Hurricane Wilma, increasing the Reserve deficiency to a level of approximately \$816 million and leaving a deficit balance in the Reserve in excess of \$1.1 billion.

E. FPL's Request for Recovery and for a Storm Recovery Financing Order

Historically, there have been periods of higher and lower hurricane activity. A growing body of climatological evidence suggests that the Atlantic basin has entered a more active period for hurricane formation. If true, an adequate and timely replenished Reserve is even more critical to meet the needs of another potentially active storm season in 2006.

As contemplated by Section 366.8260(2)(b)1.b., the Commission should approve recovery of FPL's prudently incurred storm-recovery costs related to the 2005 storm season. Such recovery will enable FPL to continue to fulfill its statutory obligation to serve its customers by safely and expeditiously restoring power in the event of storms, with FPL being timely reimbursed for its reasonable and prudently incurred storm-related costs. Further, such approval will reduce regulatory uncertainty associated with storm-related expenditures.

In order to facilitate review of the matters presented in the Petition and to help ensure that the requisite elements needed to satisfy rating agency conditions, obtain favorable tax treatment, and otherwise ensure the benefits associated with the issuance of storm-recovery bonds, the Commission should issue a Financing order substantially in the form submitted by FPL as

Exhibit B to its Petition to implement storm-recovery financing as provided for in Section 366.8260. Specifically, FPL requests that the Commission approve the issuance of storm-recovery bonds in the amount of up to \$1,050 million⁵, enabling: (i) recovery of the remaining unrecovered balance of the 2004 storm costs; (ii) recovery of the 2005 prudently incurred storm costs; (iii) replenishment of the Reserve to a level of approximately \$650 million; and (iv) recovery of the upfront bond issuance costs. Bonds are issued for the after-tax value of storm restoration costs to recognize the tax benefit received when storm restoration costs are deducted for income tax purposes. Thus, the \$1,038 million (approximately) of bond proceeds available after the payment of upfront bond issuance costs, provides approximately \$638 million to reimburse the Company for unrecovered storm costs and approximately \$400 million to replenish the fund (the after-tax equivalent of a \$650 million Reserve).

The actual balance of unrecovered storm-recovery costs will be influenced by several factors including: actual versus forecast surcharge collections for the existing surcharge, actual versus projected commercial paper rates, differences resulting from the actual versus estimated bond issuance date, as well as changes in estimated 2004 and 2005 storm-recovery costs. The Commission should find that any differences between the estimated and actual balances for unrecovered 2004 and 2005 storm-recovery costs will be reflected in the amount of replenishment of the Reserve. Thus, if the actual balance of unrecovered 2004 and 2005 storm-recovery costs is below the estimated July 31, 2006 balance, the resulting balance in the Reserve will be higher and vice versa. FPL recommends that the Commission address any adjustments through a final true-up process in light of remaining uncertainties relative to the 2004 and 2005 storm costs and differences between other estimates and the actual costs discussed in the testimony of Company witnesses. Thus, while the amount of the Reserve may be affected through the adjustments and variances described above, the amount of the bond issuance will not. This has the practical value and meets the important goal of allowing the issuance to move forward while still providing an accounting and recovery mechanism which will ensure that only actual costs ultimately will be collected from customers. Such an approach is consistent with Section 366.8260(2)(a)2., which contemplates that a financing order may be issued based on estimated storm-recovery costs.

F. The Effects of Granting FPL's Petition for a Financing Order

As explained in its Petition and FPL's supporting testimony, approving a financing order will enable FPL to issue storm-recovery bonds to recover in a timely manner the storm-recovery costs that the Company incurred and advanced on behalf of its customers during the highly destructive back-to-back 2004 and 2005 storm seasons.

The unrecovered portion of the 2004 storm-recovery costs also would be included for recovery in the subject financing, as well as FPL's prudently incurred 2005 storm-recovery costs. Thus, the 2004 Storm Restoration Surcharge would be terminated on the effective date of the new cost recovery mechanism implemented pursuant to the financing order and upon issuance of the storm-recovery bonds.

⁵ Significant changes in interest rates could reduce the amount of bonds issued.

Approving the requested financing order to recover storm-recovery costs incurred also will enable FPL to replenish the Reserve to a level of approximately \$650 million. Although a Reserve of \$650 million is not necessarily what the Company would project as an adequate Reserve level going forward, weighing a number of factors including (i) an expected average annual cost for windstorm losses of approximately \$73.7 million as determined by FPL's outside expert Steven P. Harris, (ii) the possibility that Florida is in the midst of a much more active hurricane period relative to average levels of activity over the much longer term, (iii) the potentially diminished availability of non-T&D property insurance, (iv) the impact of the recent severe and unprecedented storm seasons on customer bills in the near term, and (v) the opportunity to revisit this issue in future proceedings, establishing a Reserve level of approximately \$650 million is reasonable at this time.

The financing that would be implemented pursuant to Section 366.8260 would provide customers with the benefit of lower cost long-term financing than otherwise would be available. From the point of view of FPL's customers, an issuance of storm-recovery bonds as proposed can reasonably be expected to result in a lower, relatively constant monthly storm charge estimated at \$1.58 (based on projections at the time of filing)⁶ for a 1,000 kWh residential bill over an approximate twelve-year period, in lieu of continuing the 2004 Storm Restoration Surcharge plus other surcharges that would be needed to recover prudently incurred 2005 storm-recovery costs and begin to replenish the Reserve over a reasonable period of time.

Moreover, assuming timely implementation of the proposed storm recovery financing, customers will have the benefit of a funded Reserve being immediately available during the peak of the 2006 storm season. The same cannot be said for the more traditional method of building the Reserve through base rate accruals and/or surcharges. In the past, FPL and its customers have had to experience extended periods of abnormally low storm activity for the base rate accrual to build the Reserve to a level that, nevertheless, proved to be well short of what was necessary to respond to the 2004 storm season, let alone back-to-back seasons of the magnitude experienced. The same also would be true of a surcharge unless it were sufficiently large to cover much more than just expected annual losses.

G. Storm Recovery Financing Order Cost Recovery Methods

The storm cost recovery described in FPL's Petition, and associated financing costs, would be paid for pursuant to an approximate twelve-year Storm Bond Repayment Charge that would be applied on a per kWh basis to all applicable customer classes. FPL customers would pay for any tax liabilities associated with the collection of the Storm Bond Repayment Charge through a similarly collected Storm Bond Tax Charge, to the extent such tax liabilities are not otherwise recovered from customers through other rates or charges. In connection with this proceeding, FPL submitted proposed Storm Bond Repayment Charge and Storm Bond Tax Charge tariff sheets that will closely approximate the final figures, barring significant changes in the terms of an issuance of storm-recovery bonds. The Storm Bond Repayment Charge and Storm Bond Tax Charge together comprise the "Storm Charge." The existing 2004 Storm

⁶ FPL noted at the hearing that the Storm Charge would approximate to \$1.60 based on recent market conditions.

Restoration Surcharge would be terminated simultaneously with the effective date of the proposed tariff sheets.

Advantages of proposed storm recovery financing include recovery of the 2005 storm-recovery costs and immediate replenishment of the Reserve by approximately \$650 million during the 2006 hurricane season. Customers also would pay a lower per kWh charge over a longer period of time relative to the 2004 Storm Restoration Surcharge which would be discontinued.

In light of the size of the current deficit and the need to begin to reduce the deficit and rebuild the Reserve to prepare for another potentially active storm season, as part of the financing order the Commission should approve a surcharge to be applied to bills rendered on and after August 15, 2006 to recover the 2005 storm-restoration costs over approximately three years (or until the applicable revenue requirements have been recovered) in the event the issuance of storm-recovery bonds is delayed for any reason, including an appeal of the Commission's decision in this matter. It is critical that a mechanism for recovery is in place before significant new storm or other costs are incurred to free up short-term liquidity to support ongoing operational requirements such as the fuel hedging program, construction program and clause under recoveries. The monthly impact to residential customers of this surcharge is currently estimated to be \$2.98 for a typical (1,000 kWh) residential bill based on current estimates for 2005 storm restoration costs. This surcharge would only be implemented in the event of a delay in issuing the storm-recovery bonds and it would be discontinued upon issuance of the bonds. The amount of storm-recovery bonds issued would be adjusted to reflect collections pursuant to this surcharge, thus commensurately reducing the resulting storm charge. This is discussed in more detail in Issue 76.

Conversely, if the Commission declines to issue the financing order in substantially the form of Exhibit B to FPL's petition, and/or does not grant the associated approvals for FPL to implement storm recovery financing under Section 366.8260, the Commission should approve a surcharge effective for bills rendered on and after June 15, 2006 in the amount of \$5.19 for a typical (1,000 kWh) residential bill for a period of approximately 3 years. This surcharge would be in addition to the 2004 Storm Restoration Surcharge which would remain in effect. If the Commission approves FPL's alternative request, FPL would submit tariff sheets for administrative approval. This is discussed in more detail in Issue 44.

The Commission should consider and approve the relief requested in FPL's Petition consistent with the 135-day timeline set forth in Section 366.8260(2)(b)1.b. in order that storm-recovery bonds may be issued, and that the purposes of this Petition be achieved. This would allow the establishment of a Reserve of approximately \$650 million, in preparation for the 2006 storm season or, alternatively, timely implementation of a surcharge to recover prudently incurred storm-recovery costs in connection with the 2005 storm season and to begin to replenish the Reserve.

FPL's requests in its petition do not address future storm damage in excess of the Reserve level, irrespective of the method approved by the Commission in this proceeding. In the event

that the Reserve approved in this proceeding is insufficient to cover future storms, FPL will petition the Commission for recovery of such deficiencies.

H. Approach to Bond Issuance

FPL's proposed financing order provides the Commission with flexibility to be involved in every critical step of the issuance process if it chooses to do so. The Commission should not adopt what Saber Partners has mischaracterized as so-called "best practices" which are based on the fundamental premise that the Commission should act by and through its financial advisor, and that its financial advisor should have co-equal decision-making authority with the utility. This approach results in a process that is more adversarial than collaborative leading to delays in issuance and unnecessary increases in issuance costs. In addition to inefficiency and increased cost, co-equal decision-making misaligns authority with legal liability. Only the issuer and the utility have statutory issuers or controlling parties liability for the prospectus and the other offering materials, and it is inappropriate for parties who bear no liability or a lesser degree of liability to have co-equal decision-making authority over these documents. To date, only two Commissions have utilized this practice for completed transactions and there is evidence that both are rethinking this approach. FPL does not recommend that the Commission put itself -- particularly by extension through an independent consultant -- in the role of making final decisions and accepting specific responsibility for execution of the transaction.

However, in the event that the Commission wishes to take an active and direct role in overseeing the issuance process, it should Reserve its decision making authority to itself or the pre-hearing officer, as appropriate, and not delegate or otherwise leave that authority to be exercised directly or indirectly by others. FPL pledges to work cooperatively within whatever framework the Commission wishes to institute

I. Summary Comment on Intervenor Positions

The positions of OPC and others in this proceeding would have the Commission, on an ex post basis, ignore prior regulatory decisions, existing settlement agreements, and Company and investor expectations relative to the recovery of reasonable and prudent storm restoration costs incurred on behalf of its customers. Instead, the Commission's decision in this proceeding should uphold those prior decisions, the existing 2005 Settlement Agreement, and affirm the expectations of the Company and its investors relative to the recovery of storm restoration costs. In so doing, the Commission should consider the impact that any decision may have on future settlements, and avoid introducing into the current regulatory framework any element of "second guessing."

In contravention of the regulatory framework within which we operate, the intervenors would have this Commission deny FPL the ability to recover prudently incurred costs through their support of a so-called incremental approach to accounting for storm costs. They are very selective in their use of the term "incremental." For example, they would deny FPL the recovery of unbudgeted and incremental costs spent on public safety messages during the restoration effort. They would deny FPL recovery of unbudgeted and incremental costs of backfill and catch-up -- even though in last year's hearings OPC's own witness acknowledged that such costs

were recoverable if they were incurred to facilitate restoration activities. And they would deny FPL recovery of unbudgeted and incremental costs incurred in meeting certain obligations to the very utilities that supported us through the storms.

It is important that we all understand for future events what the accounting ground rules are to be. The Commission should decide these issues consistently -- within the overall accounting and ratemaking framework, and with a mind to the policy implications and the incentives or disincentives they will establish going forward. The Commission should continue to ensure that the message communicated to utilities is one that encourages the prompt and safe restoration of electric service to customers, and is consistent with the obvious public interest expressed by government at all levels in this past hurricane season.

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?

Yes. As of July 31, 2005, total storm costs of \$890.0 million were reflected in FPL's accounting records. Subsequent to this date, adjustments were made pursuant to the referenced order to remove \$91.9 million resulting in \$798.1 million of storm costs approved for recovery. As to estimated costs recorded as of July 31, 2005, for work not completed at that date, differences that would result in actual costs exceeding \$798.1 million will be absorbed by the Company. If actual costs are less than \$798.1 million, FPL proposes that the difference be credited to the Storm Reserve.

As explained by FPL's Vice President and Chief Accounting Officer, K. Michael Davis, FPL stopped 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 the 2004 Storm Cost Recovery Order. Tr. 1592 (Davis). FPL's accounting for remaining 2004 storm-related legal claims and lawsuits, nuclear plant storm damages and \$21.7 million of storm costs charged to the Reserve at the direction of the Commission was reasonable and correct, and complied fully with the 2004 Storm Cost Recovery Order. Accordingly, OPC's claims that such amounts should be removed from 2004 storm costs to be securitized should be rejected.

Mr. Davis testified that only the costs resulting from 2004 storm restoration activities that had been identified as of July 31, 2005 are included in the amount of 2004 storm costs. Tr. 1592 (Davis). As of that date, the total storm costs of \$890.0 million were charged to the Storm Reserve in FPL's accounting records. This amount consisted of the following (in millions as of July 31, 2005):

Actual Expenditures	\$852.6
Accruals – Work Completed But Not Billed	8.8
Accruals – Work to be Performed after 7/31/05	<u>28.6</u>
Total 2004 Uninsured Storm Costs	<u>\$890.0</u>

Tr. 1592 (Davis).

FPL completed as many projects as reasonably possible before July 31, 2005. However, FPL had to balance its obligation to serve its customers with available resources and the proper use of those resources. For example, where a power plant has been brought back online after a storm without any safety concerns, but is still in need of repairs due to storm damage, it is more cost efficient for customers if FPL makes necessary repairs during the plant's next scheduled outage. If FPL were to shut down a plant to make repairs by an arbitrary cut-off date, then the load the plant serves would have to be met through an alternate source of generation, possibly with higher fuel costs, which would adversely affect customers. Tr. 1593 (Davis). Indeed, as Mr. Warner pointed out at the hearing, delaying repairs of damaged nuclear facilities until scheduled refueling outages occur saves customers approximately \$1 million per day in generation replacement costs based on the fuel cost differential. Tr. 419 (Warner).

Mr. Davis testified that during 2004 FPL had a total of \$999 million in storm costs. Tr. 1656 (Davis). Of this amount, \$890.0 million constituted uninsured storm costs. *Id.* During the 2004 storm cost recovery proceeding, Mr. Davis explained that all amounts not covered by insurance were clearly comprehended as being within FPL's 2004 storm costs to be charged to

the Storm Reserve. Tr. 1656 (Davis). All of the underlying work and costs had been identified and included in the full \$999 million of 2004 storm costs, and accrued on FPL's books of account by July 31, 2005, with the only question being how much would ultimately be covered by insurance. Tr. 1656 (Davis).

These costs specifically included 2004 litigation costs arising from injury and damage claims involving assisting utilities, and remaining nuclear plant storm damage costs subject to negotiation with insurers. Tr. 1587, 1593-94 (Davis). In addition, the Commission, in order to ensure correct accounting treatment in the final 2004 Storm Cost Recovery Order pursuant to a supplemental staff recommendation, ordered FPL to charge \$21.7 million of incurred 2004 storm costs to the Storm Reserve rather than include the costs within the amounts to be collected through the 2004 storm surcharge. Ex. 148; Tr. 604 (Davis).

In the present case, OPC asserts that the Commission should disallow or at a minimum re-litigate FPL's right to recover these costs. Because each of these costs was correctly included and approved within the \$890.0 million in uninsured storm costs for which FPL was granted recovery by the Commission in the 2004 Storm Cost Recovery Order, OPC's effort to seek a second opportunity to disallow these costs is legally improper and should be rejected by the Commission. In addition, the record in the present case independently supports that the charges challenged by OPC are reasonable and proper 2004 storm costs that should be included in the amounts to be securitized through this proceeding, or continue to be recovered through the storm surcharge in the event that securitization is not approved. For these reasons, discussed in more detail below, OPC's claims for reductions in FPL's 2004 storm costs should be denied.

2004 Storm Restoration-Related Litigation Costs

First, OPC witness Donna DeRonne claims that the Commission should remove \$2,664,038 in litigation costs from 2004 storm costs based on the theory that these costs do not directly relate to storm restoration and are considered when base rates are determined⁷. Tr. 984 (DeRonne).

As FPL's witness Mr. Davis explained, however, the 2004 litigation costs included in FPL's March 31, 2006 accrual which Ms. DeRonne challenges are directly related to storm restoration and are thus recoverable storm costs. FPL is a member of the Edison Electric Institute, and the Southeastern Electric Exchange, where the members of these organizations have a mutual aid agreement to help each other when disasters such as hurricanes occur. These organizations have guidelines as to what companies can charge each other for their assistance. The general framework of the mutual aid assistance agreement is that each company is entitled to recover all reasonable costs incurred for providing assistance to the host utility. Tr. 1587 (Davis).

Mr. Davis's testimony went on to explain that under the Edison Electric Institute and Southeastern Electric Exchange mutual aid agreements, pursuant to which FPL seeks assistance from foreign utilities, FPL is required to "indemnify, hold harmless and defend" foreign crews assisting FPL in restoration efforts from any and all lawsuits or claims that result from furnishing emergency assistance. Tr. 1588 (Davis), 1103-05 (Welch).

Removal of these costs from storm recovery would in effect attribute them to base rates. What Ms. DeRonne failed to account for in her testimony, however, is that hurricane litigation reimbursement are extraordinary and non-recurring costs which are excluded when setting base

⁷ Upon further review of its 2004 litigation costs charged to the Reserve, FPL removed \$0.6 million for claims that the Company determined were not a direct result of the 2004 restoration effort. The reduction is reflected in FPL's Storm Costs Recorded on the General Ledger as of March 31, 2006. Tr. 1590 (Davis); Ex. 119.

rates, because the hurricanes that give rise to them are extraordinary in nature. Disallowing these costs for both storm recovery purposes and in a base rate proceeding would prohibit FPL from recovering prudently incurred costs. Tr. 1589 (Davis). Accordingly, FPL's charging to the Reserve of litigation costs arising from FPL's obligations to reimburse other utilities who provided storm recovery assistance is correct, and Ms. DeRonne's proposed disallowance should be rejected.

Remaining 2004 Nuclear Plant Storm Damage Costs

Second, Ms. Donna DeRonne claims that the Commission should remove \$21,467,915 in accruals for nuclear storm damages from 2004 storm costs based upon assertions that this amount is merely an "estimate" which may be offset by insurance recoveries, and was not included in amounts approved in the 2004 Storm Recovery Cost Order. Tr. 987 (DeRonne). OPC's claim should be rejected for several reasons.

Mr. Davis testified that when FPL presented its 2004 storm costs, it included the approximately \$21.5 million in nuclear storm damage costs as part of the \$890.0 million it requested in Docket No. 041291-EI. Tr. 1593 (Davis). The \$21.5 million amount was reduced in February 2006 due to the correction of an error in recording storm costs in 2005. A storm related payment had been incorrectly charged to a non-storm work order due to a transposition error in the work order number. The effect of correcting this error was to reduce the balance available for the uninsured nuclear costs to \$20.5 million. Tr. 1594 (Davis).

The \$20.5 million represented the net uncertainty due to the possibility that a portion of the gross costs associated with repairing damage caused by the 2004 storms at the St. Lucie Nuclear Plant will not be covered by insurance. FPL at the date of the April, 2006 hearings in this matter was still in discussions with Nuclear Electric Insurance Limited ("NEIL") concerning

the scope of damages to be repaired and the costs subject to insurance. Tr. 1594 (Davis). After a March 9, 2006 meeting with NEIL, FPL reduced its estimated uninsured 2004 nuclear storm damages to \$15.4 million. At that meeting the potential scope of uninsured amounts for repair of St. Lucie Nuclear Plant damages was reduced by that amount because the NEIL adjuster agreed that NEIL would cover the repair of the damaged intake and discharge canals all the way to the bottom of the canals, rather than down to approximately eleven feet below the surface, which had been NEIL's previous position. Tr. 1595 (Davis); Tr. 390 (Warner); Ex. 119. The necessary adjustment of \$5.1 million is shown in Mr. Davis' Exhibit 119.

FPL's Vice President, Nuclear Operations Support, Mark Warner, testified that the remaining \$15.4 million for uninsured 2004 nuclear plant storm damage reflects the most accurate and reliable information available concerning 2004 storm cost repairs still to be conducted at the St. Lucie Plant. Work remaining to be performed includes repairs to the nuclear plant's intake and discharge canals, repair of coatings in various areas of the plant, canal dredging, and damage to facilities outside the NEIL insurance boundary. The \$15.4 million accrual representing the costs of completing this work that are not expected to be covered by NEIL should be included in the amount to be securitized pursuant to the Commission's order in this proceeding, and OPC's proposed disallowance of these amounts for nuclear plant storm repairs should be denied. Tr. 341-388 (Warner).⁸

\$21.7 Million Charged To Reserve In 2004 Storm Cost Recovery Order

Ms. DeRonne claims that FPL is not projected to incur \$21.7 million of 2004 storm costs that the Commission ordered FPL to charge to its Reserve in the 2004 Storm Cost Recovery

⁸ In the event that the Commission determines an adjustment should be made to remove the \$15.4 million nuclear repair accrual from storm recovery, FPL requests that the Commission make specific provisions for charging any amount not recovered through insurance to the Reserve. *See*, Tr. 1595 (Davis).

Order and, therefore, that amount should be removed from the amount of 2004 storm restoration costs. Tr. 984 (DeRonne).⁹ Because FPL properly accounted for the \$21.7 million by charging the amount to the Reserve as ordered by the Commission, and the \$21.7 million was for amounts of storm costs actually incurred in 2004, OPC's claim should be rejected.

Mr. Davis testified that the \$21.7 million referred to by Ms. DeRonne is neither unspent nor is it in addition to the total amount of storm costs FPL requested in Docket No. 041291-EI. Rather, the \$21.7 million was included in the total amount of uninsured storm costs requested of \$890.0 million. Tr. 1590 (Davis). The \$21.7 million was the subject of a special Staff supplemental recommendation, to which all parties to the 2004 Storm Cost Recovery proceeding agreed (including OPC), after which the Commission adopted Staff's proposed accounting treatment resulting in the \$21.7 million being charged to the Reserve rather than included in the amounts subject to the 2004 Storm Restoration Surcharge. Tr. 604 (Davis); Ex. 148.

As Mr. Davis explained, FPL followed the Commission order, the \$21.7 million is pending recovery because of its inclusion in the Reserve but exclusion from the 2004 Storm Restoration Surcharge, needs to be dealt with, and this proceeding is the appropriate forum in which to include it for recovery. Tr. 604 (Davis). For the reasons stated above, the Commission should approve inclusion of the \$21.7 million of prudently incurred 2004 storm costs that was properly charged to the Reserve, at the Commission's direction, pursuant to the 2004 Storm Cost Recovery Order. There is no basis for OPC's claim that the Commission should disallow costs

⁹ At the hearings, Mrs. DeRonne stated the issue as "[w]hat I'm recommending is that the amount hasn't actually been expended, and therefore, it should not be recovered." Tr. 998 (DeRonne).

that the Commission has already found in an order to be prudently incurred, and OPC's claim should be denied.¹⁰

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

No. FPL has agreed to certain adjustments specified in Mr. Davis's rebuttal testimony, which should be addressed in a final true-up process. No adjustments other than those specified by Mr. Davis should be made.

The Commission should adopt \$11.1 million of adjustments specified in FPL witness K. Michael Davis's rebuttal testimony and set forth in Exhibit 119 attached to his rebuttal testimony in this proceeding.

First, as discussed in the footnote to the "2004 Storm Restoration-Related Litigation Costs" section of FPL's brief concerning Issue 1, above, FPL proposes an accrual reduction in the amount of \$0.6 million based upon its March 2006 review of 2004 storm-related litigation, and its determination that a claim previously contained within the 2004 storm-related claims could have occurred in the ordinary course of business absent a hurricane, and thus in FPL's view should be excluded from charges to the Reserve. Tr. 1590 (Davis); Ex. 119.

Second, as discussed in the "Remaining 2004 Nuclear Plant Storm Damage Costs" discussion in the section of FPL's brief concerning Issue 1, above, FPL as of March 31, 2006

¹⁰ It should be noted that OPC's attack on recovery of the \$21.7 million seeks, in effect, a double disallowance of the expected uninsured costs of outstanding 2004 nuclear storm repairs, for a single reason, as demonstrated by the following points: (i) OPC seeks disallowance of the nuclear repair costs directly, as discussed above in Issue 1; (ii) the nuclear repair costs presently accrued at \$15.4 million on FPL's books are the last remaining 2004 storm work yet to be performed; and (iii) OPC seeks disallowance of the separate \$21.7 million "supplemental Staff recommendation" amount on the theory that it represents money not spent. Since OPC asserts (incorrectly) that the \$21.7 million disallowance should be granted because work has not been performed, and the only work not yet performed is the remaining nuclear repairs, OPC's "uncompleted nuclear repairs" argument is being offered as the basis for disallowing both the \$21.7 million "supplemental Staff recommendation" amount and the cost of remaining 2004 nuclear storm work. As explained in Section 1 above, both claims should be rejected.

reduced its accrual for remaining 2004 nuclear plant storm damage costs by \$5.1 million as a result of FPL's March 9, 2006 meeting with NEIL. At that meeting the potential scope of uninsured amounts for repair of St. Lucie Nuclear Plant damages was reduced by that amount because the NEIL adjuster agreed that NEIL would cover the repair of the damaged intake and discharge canals all the way to the bottom of the canals, rather than down to approximately eleven feet below the surface, which had been NEIL's previous position. Tr. 1595 (Davis); Tr. 390 (Warner); Ex. 119.

Third, FPL proposes removal of \$5,432,966 from 2004 storm costs, representing the amount that FPL has billed to other companies that own poles that FPL replaced after the 2004 storms. Tr. 1586 (Davis); Ex. 119. FPL requests that in the event the amount received by FPL is different than that billed to the other companies, that such difference should be addressed through a final true-up process.¹¹

Accordingly, the Commission should approve net adjustments reducing 2004 storm costs by the amount of \$11.1 million as set forth in Mr. Davis's rebuttal testimony and summarized on Exhibit 119 to his rebuttal testimony. After final true-up of actual to estimated costs, the resulting amount should be credited to the Storm Reserve. No other adjustments should be made.

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?

*No. There are some small differences between the deficiency balance and General Ledger due to rounding down the amount of 2004 storm costs approved for recovery, and differences between estimated and actual interest incurred and billed revenues as 2004 storm cost amounts

¹¹ FPL notes that OPC's witness Donna DeRonne proposes a removal of \$5,564,858 from 2004 storm costs with respect to expected reimbursements for replacement of other companies' poles. The correct amount to be removed from 2004 storm costs for reimbursement billing is \$5,432,966 as is provided for on Exhibit 119 to Mr. Davis's rebuttal testimony.

have been recovered. Any differences remaining as of July 31, 2006 should be addressed as part of the final true-up.*

OPC's proposed reduction of the 2004 Reserve deficiency by \$51,396,811 based upon resolution of Issues 1 and 2 above should be rejected for the reasons stated in FPL's discussion of Issues 1 and 2, above.

The record in this proceeding also shows that a minor difference exists between estimated and actual amounts of 2004 storm costs that are the product of the storm surcharge collection process, which should be handled in the true-up process. Specifically, (i) the amount recorded for unrecovered 2004 storm costs in FPL's General Ledger as of December 31, 2005 was \$293,930,364; and (ii) the amount of unrecovered 2004 storm costs shown on Document No. KMD-3 prepared by Mr. Davis filed with the Petition in this case was \$294,680,000. Tr. 1584 (Davis); Ex. 19.

Mr. Davis's testimony explains in detail how this minor difference was caused by variances between estimated and actual interest incurred and billed revenues as the 2004 storm surcharge has been collected. Tr. 1584-85 (Davis). No intervenor has proposed any action with respect to the occurrence of minor month-to-month variances between actual and estimated unrecovered 2004 storm costs, and the record does not show that any party opposes FPL's recommendation that any differences remaining as of July 31, 2006 should be addressed as part of a final true-up.

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

Yes. FPL has properly reflected the effect of deferred income taxes related to storm costs in its computation of storm costs to be securitized.

The record shows that FPL has properly accounted for the after-tax effects of interest on both unrecovered 2004 and 2005 storm costs in its computation of storm costs to be securitized. The interest charges included in the recovery of the 2004 and 2005 storm costs were calculated by multiplying the average monthly unrecovered balance by the current estimated after-tax commercial paper rate. Therefore, these charges represent the interest expense associated with the debt the Company would incur or has incurred to cover the net-of-tax storm costs. Tr. 436 (Davis); Ex. 20. No intervenor testimony has been offered to the contrary.

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?

In accordance with fundamental principles of ratemaking, the Commission approved recovery by FPL of all costs of storm restoration that it deemed to be reasonably and prudently incurred. Nothing has changed that would alter the propriety of approving recovery of all reasonably and prudently incurred storm costs.

Consistent with the regulatory framework followed by the Commission, as well as paragraph 10 of the Stipulation and Settlement resolving FPL's 2005 retail base rate case, FPL should be allowed to recover all reasonably and prudently incurred costs of restoring electric service without application of an earnings test or measure. Tr. 1666-70 (Dewhurst); Ex. 130. The principle of so-called "sharing" was raised and rejected in Order No. PSC-05-0937-FOF-EI, issued September 21, 2005 in Docket No. 041291-EI, related to FPL's 2004 storm restoration costs. The Commission was very clear in its final order, and the fundamental principle of recoverability of prudently incurred costs continued to be applied. FPL reasonably relied on the outcome of that docket, as well as prior instances where the same principle was clearly recognized, in planning its operations. Thus, any change at this point would be retrospective and

punitive in nature and would have a chilling effect on future negotiated settlements of contested regulatory proceedings.¹² Tr. 1669 (Dewhurst).

In regard to accounting methodology, the 2004 Storm Cost Recovery Method would result in the same total amount of storm restoration costs for the 2005 storm season as would the Actual Restoration Cost Approach with an adjustment to remove capital costs, which is advocated by FPL. As a policy matter, however, the Commission, customers and FPL would all be better served by using the Actual Restoration Cost Approach with an adjustment to remove capital costs, which relies upon objective cost accounting data, rather than the indirect and judgmental assessment of budget-related documents associated with the Incremental Cost Approach. Tr. 440-42, 1578-80 (Davis); 1531-38 (Gower). FPL satisfies the test for a modification in Commission policy or practice because it has presented competent substantial evidence that the Actual Restoration Cost Approach with an adjustment to remove capital costs would achieve substantially the same result as the 2004 Storm Cost Recovery Method in a more reasonable and reliable fashion (as is discussed in greater detail in Issue 6).

On the other hand, OPC and the other Intervenors have urged the use of a different version of the Incremental Cost Approach than the one used by the Commission last year in order to avoid what they contend would be a double recovery of storm costs through base rates and through a storm recovery mechanism. They claim that reimbursing FPL for its actual costs of storm restoration is excessive because such costs are already accounted for in the Company's

¹² If the Commission retroactively changes its policy with respect to recovery of reasonably and prudently incurred storm restoration costs, FPL will have relied on this approach to its detriment contrary to principles of law. *See, e.g., Dolphin Outdoor Advertising v. Dept. of Transp.*, 582 So. 2d 709, 710-11 (Fla. 1st DCA 1991) (the essential requirements of equitable estoppel are: (1) a representation as to a material fact that is contrary to a later-asserted position; (2) reliance upon that representation; (3) a change in position caused by the representation and reliance).

base rates. However, there is no provision for extraordinary storm restoration costs in base rates. In other words, even if, a certain level of normal O&M expense is deemed to be implied in base rates, that level of expense neither includes nor contemplates any amount of cost contingency associated with the impact of a hurricane, which, among other things, results in normally scheduled work and the related costs being deferred or delayed to a subsequent period, not to mention widespread outages during which such costs are not recovered through sales of electricity.¹³ Tr. 443 (Davis). In contrast to the competent substantial evidence presented by FPL, neither OPC nor other Intervenors have provided evidence demonstrating that circumstances have changed warranting a departure from or modification of an accounting approach that permits single recovery of the prudently incurred costs of storm restoration. *See, e.g., Cleveland Clinic v. Agency for Hlth. Care*, 679 So. 2d 1237, 1241-42 (Fla. 1st DCA 1996) (reversing AHCA decision “to simply ‘change its mind’ [with] no good reason why the agency’s abrupt change of established policy, practice and procedure should be sanctioned”); Peoples Gas System, Inc. v. Mason, 187 So. 2d 335, 339-40 (Fla. 1966) (reversing a Commission order that modified an earlier final order because there was not a finding based on adequate proof that modification was necessary in the public interest because of changed conditions or other circumstances that were not present in the earlier proceedings); Order No. PSC-95-1319-FOF-WS, Docket No. 921237-WS (issued Oct. 30, 1995) (while “[a] change in circumstances or great public interest may lead an agency to revisit an order” ... “there must be a terminal point where parties and the public may rely on an order as being final and dispositive.”)

¹³ *See* Order No. PSC-05-0937-FOF-EI, Docket No. 041291-EI (issued September 21, 2005), at pp. 15-18.

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

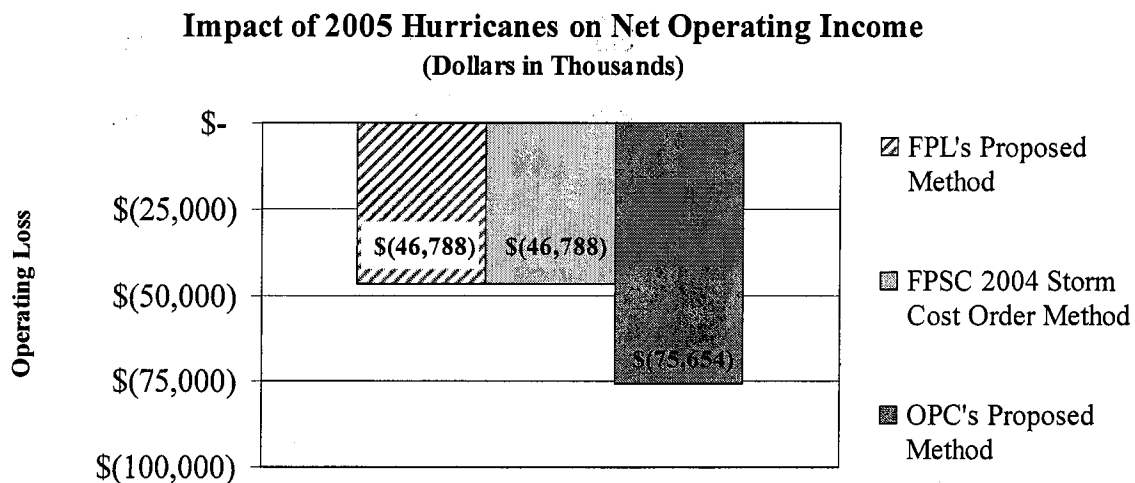
FPL recommends using the Actual Restoration Cost Method addressed in Docket No. 930405-EI with an adjustment to remove normal capital costs. It should be noted that FPL's proposed methodology yields the same result as the Modified Incremental Cost Approach approved by the Commission in the 2004 Storm Cost Recovery Order, Order No. PSC-05-0937-FOF-EI.

FPL believes that it is the better view of the record in this proceeding, and it is in the public interest, for the reasons described below, to use the Actual Restoration Cost Method with an adjustment to remove normal capital costs. FPL notes that customers also end up paying and FPL ends up recovering the correct amount of costs when the Commission's 2004 Storm Cost Recovery Methodology is correctly applied. The reasons for preferring FPL's method to the Commission's 2004 Storm Cost Recovery Method revolve around consistency with traditional utility accounting as well as business practicality, particularly for a utility owned by a public company subject to extensive Securities Exchange Commission accounting regulations and the Sarbanes-Oxley Act of 2000.

It is essential to avoid the unreasonable and inaccurate adjustments proposed by OPC in this proceeding which are the product of neither FPL's Actual Restoration Cost Method with a capital adjustment nor the Commission's 2004 Storm Cost Recovery Method. Rather, OPC's proposed methodology is unsupported in accounting rules or literature, contrary to basic principles of rate making, and is illogically and inconsistently applied by OPC's witnesses Hugh Larkin, Jr. and Donna DeRonne in a manner that would result in unfounded disallowance of tens of millions of dollars of prudently incurred costs. Tr. 1534-50 (Gower); Ex. 118.

The justification offered by OPC for its accounting adjustments relies upon assuming, without proper analysis and contrary to clearly proven facts, that such adjustments are necessary to avoid a windfall or so-called "double recovery" of costs. On this point, however, the record

cannot be clearer. As shown in the figures in pages 1 of 3 and the chart in page 3 of 3 of Exhibit 118 prepared by witness K. Michael Davis, even if the Commission approves all of FPL's storm costs under either the Actual Restoration Cost Method with a capital adjustment or the Commission's 2004 Storm Cost Recovery Method, FPL will still have sustained an approximately \$47 million loss in net operating income caused by the 2005 hurricanes. In contrast, accepting OPC's accounting adjustments would cause FPL to have sustained a nearly \$76 million loss in net operating income caused by the 2005 hurricanes. Tr. 1573-74 (Davis). This is clearly shown in Exhibit 118 below, prepared by Mr. Davis:



As Mr. Davis stated in his testimony:

The risk of not realizing budgeted base rate revenues is a risk FPL has always accepted. It is only when intervenors seek to increase FPL's risk beyond lost revenues that FPL has pointed to the fact that the existence of revenues not being realized due to hurricane related outages proves conclusively that there is no double recovery of costs.

Tr. 1573 (Davis).

Since it is the ostensible avoidance of double recovery of costs that lies at the root of OPC's claimed basis for its accounting disallowances, and there has conclusively been shown to

be no double recovery even if FPL is granted recovery of all of its storm costs (nor has OPC offered any analysis showing the contrary), there is simply no basis for using an accounting methodology in this case other than FPL's proposed Actual Restoration Cost Method with a capital adjustment or the Commission's 2004 Storm Cost Recovery Method.

The following sections explain (i) why the record supports adopting FPL's proposed Actual Restoration Cost Method with an adjustment for normal capital costs; (ii) why the Actual Restoration Cost Method is preferable from an accounting and public policy perspective compared with the 2004 Storm Cost Recovery Method; and (iii) why OPC's proposed accounting disallowances are arbitrary and unreasonable, and contrary to proper cost recovery and accounting principles.

**FPL's Proposed Actual Restoration Cost Method,
With A Capital Adjustment, Is Reasonable and Should be Approved**

The record shows that FPL's proposed Actual Restoration Cost Method, with a capital adjustment, is the best, most accurate and reliable method available for booking storm costs. FPL's proposed methodology is consistent with FPL's, the Commission's and the public's common interest in using a correct, comprehensive and transparent accounting method for recording storm costs. The key attributes of the Actual Restoration Cost Method, with a capital adjustment, are as follows:

- This method, excluding an adjustment to capital costs, was utilized by the Company between 1993 and 2003 to determine the storm restoration costs to be charged against the Reserve. In short, it has the benefit of being tried and true;
- FPL's proposed method includes all costs which are incurred to safely restore electric service or return plant and equipment to its pre-storm condition;
- The adjustment to remove capital costs will be at "normal cost" and recorded to rate base, restoring rate base to the pre-storm level and avoiding causing an unintentional

change in capital accounts due to storm repairs, which over the long haul helps keep customers' rates stable; and

- What is left after adjusting for insurance recoveries represents the operations and maintenance expenses the Company has incurred to restore service to its customers.

Tr. 437 (Davis).

Key advantages of the Actual Restoration Cost Method, with a capital adjustment, proposed by FPL include the following:

- First and foremost, this method is by far the most accurate way to account for storm restoration costs. This is because the method properly utilizes the normal cost accounting practices, processes and procedures that are relied upon by the Company in the ordinary course of its business – and by extension, the Commission in its routine oversight and auditing of the Company;
- The method is totally consistent with sound and commonly accepted cost accounting principles, procedures and practices. Moreover, it avoids the necessity of making estimates for year-end budget variances that are inconsistent with the stringent financial reporting requirements imposed on public companies by the Sarbanes-Oxley Act of 2002; and
- It results in accounting for and recovery of the actual costs incurred to restore electric service.

Tr. 437 (Davis).

The record shows many reasons why the Commission and the public should have confidence that adopting FPL's proposed method will ensure that the right amount of storm restoration costs are properly recorded, reported and recovered. These reasons include:

- All of FPL's storm restoration costs are charged to specific storm work orders and account numbers, which FPL's employees are trained and experienced in using;
- The work orders and account numbers are opened up at the time that storm-related work begins, and closed out when it ends; and.
- Simply put, the amounts that end up recorded under these work orders and in these accounts fairly and accurately state FPL's total costs of storm restoration.

Tr. 437 (Davis).

In addition, as Mr. Davis stated, FPL's proposed method has the advantage of replicating the cost recovery that FPL would receive under a hypothetical third party replacement cost insurance policy, were such coverage to be available in the insurance marketplace. This is consistent with the regulatory policy established by the Commission in its rules, such as Rule 25-6.0143, Accumulated Provision for Property Insurance, as well as discussed in prior Commission orders. For example, the express function of Rule 25-6.0143 is to facilitate provision of self-insurance under the direction of the Commission for losses caused by risks, such as storm restoration costs not covered by insurance. Tr. 437-38 (Davis).

**The 2004 Storm Cost Recovery Order Method Introduces
Unintended Accounting and Operating Disadvantages and Complexities**

Although the 2004 Storm Cost Recovery Method, when correctly applied, yields the same financial result as FPL's proposed Actual Restoration Cost Method with an adjustment to remove normal capital costs (Tr. 440 (Davis)), there are several practical disadvantages which FPL asks that the Commission take into consideration in deciding the appropriate methodology to be used for booking the 2005 storm damage costs to the Reserve.¹⁴

FPL believes that as a policy matter, the Commission, customers and FPL would all be better served by using FPL's proposed method which relies upon cost accounting data, rather than the 2004 Storm Cost Order's modified incremental cost approach's indirect and judgmental assessment of budget-related documents, as the measure for storm restoration costs. As a very practical matter, the year-end financial data needed to correctly apply the 2004 Storm Cost Recovery Method only becomes reliably available after the conclusion of a calendar year with storm costs, creating serious interim financial accounting and reporting problems that do not exist under FPL's proposed method. Tr. 440-41 (Davis).

FPL's proposed method correctly applies cost accounting principles and data for capturing and measuring storm restoration costs. The 2004 Storm Cost Recovery Method, in contrast, incorrectly changes the results achieved through the Company's proposed method by using managerial accounting tools for a purpose for which they are not intended. Moreover, instead of relying on readily available and accurate storm restoration cost data, the incremental cost approach relies upon measuring or estimating variances between budgeted and actual expenditures in the numerous budget line items making up the Company's budgeting and cost management process. Tr. 440-41 (Davis).

Using the managerial accounting tool of budget variance analysis is not nearly as good as using storm cost accounting records because budgeted and actual cost performance for individual line items, and for the Company as a whole, varies widely for a host of reasons having nothing to do with storm restoration costs. Unanticipated but necessary expenses continually arise, and other expenses are mitigated or avoided, in the course of routine business operations. Trying to gauge storm restoration costs indirectly by looking at budget variances is a difficult and highly judgmental process at best. It is also unwieldy because final variances are never known until the year's end, making use of the Incremental Cost Approach for measuring storm costs exceedingly difficult in the course of the ordinary business year. Moreover, using such an indirect and unwieldy process is simply unnecessary when accurate, direct, measures of storm restoration costs are available through reference to the actual expenditure data that FPL routinely compiles in the course of its storm restoration work. Using the 2004 Storm Cost Recovery Method results in laboriously improvising an imperfect cost measurement tool, instead of using well-established and existing cost accounting tools and data. Tr. 442 (Davis).

¹⁴ As discussed in Issue 5, FPL has presented competent substantial evidence supporting use of the Actual Restoration Cost Method..

OPC is claiming in the present case, as it did in the 2004 Storm Cost Recovery proceeding, that FPL's accounting method must be rejected in order to avoid what they contend would be a double recovery of storm costs through base rates and through a storm recovery mechanism. This theory claims that reimbursing FPL its actual costs for storm restoration is excessive because, the argument goes, such costs are already accounted for in the Company's base rates. One fatal weakness of this theory is that there is no provision for the cost impacts of hurricanes in base rates. In other words, even if, for example, a certain level of normal O&M expense is deemed to be implied in base rates, that level of expense neither includes nor contemplates any amount of cost contingency associated with the impact of a hurricane, which, among other things, results in normally scheduled work and the related costs being deferred or delayed to a subsequent period, not to mention widespread outages during which such costs are not recovered through sales of electricity. Therefore, FPL receives only a single recovery for its storm restoration costs when its proposed method is used. Tr. 441 (Davis).

FPL therefore urges the Commission to rely upon FPL's actual cost accounting data with respect to storm recovery costs, rather than trying to indirectly infer storm costs through use of the budget variance-based Incremental Cost Approach. FPL's proposed method represents a correct use of accurate accounting data as a basis for achieving a single proper recovery of storm restoration costs. In addition, any method that only adjusts the expense side of the ratemaking equation, violates the basic concept of ratemaking. Therefore, there is no analytical, financial, rate or other logical basis for any assertion that reimbursing FPL for its actual costs of storm restoration constitutes double recovery and the alternative Incremental Cost Approach should not be used. Tr. 443-44 (Davis).

**OPC's Accounting Adjustments and Methodology Are
Incorrect and Unreasonable, And Should Be Rejected**

FPL presented as a witness Hugh A. Gower, an experienced independent utility accounting consultant. Tr. 1553. Mr. Gower explained that:

- The very foundation for OPC witnesses' proposed adjustments to FPL's restoration costs is that there has been a double recovery of these costs and that this is a mere assumption and is false. Evidence shows that, to the contrary, no double recovery occurred and the effect of 2005 storms activity adversely impacted FPL's earnings (even though all restoration costs were excluded from earnings in reliance on regulatory precedents allowing for recovery).
- Second, although OPC witnesses characterize their adjustments as "incremental costing", their work is, at best, a misapplication of incremental costing methods and is unsupported by any competent analysis.
- Third, OPC witnesses' proposals are in conflict with the regulatory framework which underlies cost-based ratemaking which has benefited both customers and utilities alike. The "incremental costing" adjustments OPC witnesses propose should be rejected because they are not in the best interests of either customers or FPL.

Tr. 1520 (Gower).

Mr. Gower explained that OPC witnesses Larkin and DeRonne's proposal to "cost" storm restoration efforts using "incremental" costs is flawed for several reasons. First, it excludes some costs clearly caused by the storm restoration activities. He explained that overtime, employee assistance, vacation buy-backs and back-fill work come easily to mind as do some of the other labor and transportation costs which, although actually devoted to the storm restoration, Mr. Larkin and Ms. DeRonne propose be excluded. Mr. Gower further explained that normal service is, until service restoration can be completed, disrupted. In such situations, it's "all hands to the rescue" and normal work activities are temporarily suspended but must be completed at a later time. He stated that incremental costing in such circumstances does not fairly recognize the true cost of storm restoration. The actual restoration costs need to be known and, since such costs were excluded when base rates were set, must be properly accounted for or an opportunity for their recovery will be denied. Requiring the use of the "incremental" cost method for storm events as OPC witnesses propose

would result in a recovery amount less than the actual storm damage repair and service restoration costs prudently incurred by FPL. Tr. 1537-38 (Gower).

Mr. Gower explained why the fundamental premise relied upon by OPC -- an alleged “double recovery” of costs – is baseless. Mr. Gower pointed out that assuming *arguendo* that the cost of such internal resources were included in base rates (whenever they were set), what Mr. Larkin and Ms. DeRonne seem not to have observed is that customer consumption does not continue during the service interruptions storms cause. And when there is no consumption, there is no revenue with which to recover such costs. Tr. 1537 (Gower).

Mr. Gower also explained that OPC witnesses Larkin and DeRonne’s proposed adjustments of actual storm damage and service restoration costs are not based on incremental costs. Specifically, Mr. Gower detailed how Mr. Larkin and Ms. DeRonne misapplied incremental costing by basing their proposed adjustments to the amount of restoration costs for 2005 largely on the difference between actual non-storm related costs and original departmental budgets. Such budget-actual variances do not represent incremental costs. Further, no effort was made to determine what part of the variance, if any, was due to the storms. They also ignore incremental offsetting costs. For example, OPC proposes to exclude millions of dollars of regular payroll of employees who worked on the restoration effort and correctly charged their time to storm restoration costs. OPC would remove this entire amount from storm recovery while ignoring the millions of directly related cost increases because backfill and catch up costs were incurred to perform essential activities which, but for storms, would have been performed by those employees involved in the restoration effort. Tr. 1539-40 (Gower).

As a result of these errors and omissions, OPC’s proposed “incremental” costs does not accurately capture the true actual “incremental” costs of storm restoration to the extent that FPL

employed internal resources in that effort. Tr. 1539-40 (Gower). Mr. Gower also provided a detailed explanation of how Mr. Larkin's and Ms. DeRonne's reliance on their so-called incremental method is contrary to basic principles and rules of utility accounting, including the Federal Energy Regulatory Commission mandated Uniform System of Accounting and basic utility regulatory framework. Tr. 1544-49 (Gower).

The absence of logical basis, inconsistency and unreasonableness of OPC's proposed accounting method was also shown during the cross-examination of Mr. Larkin:

- While claiming that approving FPL's requested storm costs would result in customers paying twice for the same cost, Mr. Larkin admitted that Larkin & Associates did not conduct any accounting study to trace costs charged by FPL to the Storm Reserve back to base rates. Tr. 933.
- While admitting it would be possible to trace costs, for example for the meter reader that he uses an example in his testimony, starting with the company's surveillance reports, back to the company's financial reports, back to the customer service ledgers, ultimately to the account recording meter reader expense. Mr. Larkin admitted that Larkin & Associates had not performed any such study. *Id.*
- Mr. Larkin asserted that it was somehow possible to know what costs are in base rates that were ostensibly being double-recovered, when the Staff of the Commission for its part said that one cannot tell what costs at all are included in base rates. Tr. 934-35 (Larkin).
- Despite agreeing that many different things can cause the differences between actual costs and budgeted costs used by Mr. Larkin and OPC for its accounting adjustment recommendations, Mr. Larkin admitted after impeachment with his deposition that it was his position that if FPL underspent any budget in 2005, he would automatically conclude without analysis that the variance is caused by storm savings. Tr. 939-40 (Larkin).
- Mr. Larkin's theory goes so far that if FPL had a productivity gain in the course of a year that resulted in spending a million dollars less than it had budgeted in an area, he would still claim that the one million cost savings were due to storm costs and should be subtracted from FPL's storm cost recovery. Tr. 941.

Cross-examination of Mr. Larkin's colleague, Ms. DeRonne showed that her claims carried over the illogic and unfairness of OPC's proposed method: For example:

- While proposing to remove \$1.1 million from FPL's storm costs because of FPL's routine operations and maintenance budget was underspent by that amount, Ms. DeRonne admitted that she did not know the reasons for variances between budget and actual expense for tree trimming. Tr. 1021; and
- While acknowledging that FPL had presented testimony concerning incremental costs for backfill and catch-up work totaling \$8.67 million (which FPL contends are only relevant if the Commission applies the 2004 Storm Cost Recovery Method) OPC opposes including such costs as an offset in the event that the Commission adopts a modified incremental cost method. Tr. 958, 1004 (DeRonne); Ex. 85, line 9.

For all of the foregoing reasons, FPL requests that the Commission approve FPL's proposed Actual Restoration Cost Method, with an adjustment for normal capital costs, for purposes of recording 2005 storm costs. In the alternative, FPL requests that the Commission direct FPL to record the 2005 storm costs utilizing materially the same method discussed in the Commission's 2004 Storm Cost Recovery Order, as discussed with respect to Issue 17 below.

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?

No. FPL has only charged storm-related costs to the Storm Reserve. Therefore, no adjustments should be made.

The record shows that FPL has implemented accounting procedures and controls directed at helping ensure that only storm restoration costs and costs needed for repairs to return FPL's equipment and facilities to pre-storm condition are charged to the Reserve. Tr. 452 (Davis).

FPL has correctly accounted for the costs of Martin Unit 1 and 2 Condenser Tube Repairs and Hydrolasing costs. As discussed in detail below, OPC's proposed adjustments for this work are incorrect and should be rejected by the Commission. In addition, as further discussed below, FPL has properly accounted for its costs and reimbursements with respect to emergency assistance it provided to other utilities during 2005, which costs were never charged as 2005 storm costs and are not within the scope of this proceeding. OPC's claim that the Reserve should be credited for reimbursements for assistance to other utilities should be rejected. Tr. 1618 (Davis).

**FPL's Storm Cost Accounting Processes Provide
Assurance That Storm Costs Are Properly Charged to the Storm Reserve**

The record shows that FPL's storm cost accounting processes provide assurance that storm costs are properly charged to the Reserve. These procedures and controls include the following:

- When a storm is approaching and the Company activates the General Office Command Center, FPL Accounting issues a unique storm work order to capture all costs for storm restoration activities related to the storm. Upon Business Unit request, additional work orders may be issued to further segregate costs.
- Along with the set up of these work orders, Accounting also issues written guidance as to what costs are appropriate to charge to the storm work order.
- FPL also utilizes standard procedures and processes for control and approval of employee time sheets, contractor time sheets, receipt logs, and invoice processing for all storm restoration related work.
- In addition, FPL Accounting representatives trained on costs eligible for storm and required supporting documentation respond to questions and provide accounting guidance as necessary.
- If uncertainty exists regarding a cost, Site Controllers or Accounting reviews the specified cost with Site Management or Business Unit management to ensure the appropriate linkage exists between the expenditure and storm restoration, and as to the reasonableness of the amount charged to the Reserve.

Tr. 453-54 (Davis).

In addition, in 2005 as in 2004 FPL had in place carefully implemented and monitored processes and procedures for estimating storm costs, and for truing-up estimated and actual charges as post-storm restoration work is performed and completed. These processes include:

- Issuance and use of a standard template to each Business Unit to estimate each Business Unit's storm costs. The template displays the actual storm costs recorded in the general ledger and requests each Business Unit to estimate the storm costs they have incurred that are not yet recorded on the Company's books.
- The templates and related supporting schedules are reviewed by each Business Unit's Management who evidences the review by signing the template.
- Once the schedules are returned to Accounting, the templates and supporting schedules are reviewed to determine whether the estimate is properly supported by storm purchase orders and receipt documentation, contractor time sheet summaries, payroll records, vendor bids, engineering estimates or other appropriate supporting documentation.
- Once the final estimates are prepared and reviewed, Accounting works with the Business Units to ensure that they accrue properly for their portion of costs incurred but that have not yet been actualized.

Tr. 455-56 (Davis).

Furthermore, on an ongoing periodic basis FPL conducts detailed reviews of all of its outstanding storm accruals to make sure that they take into account the most up-to-date and accurate information available concerning the subject matter of work remaining to be performed. Audits are conducted by the Commission and by FPL's internal audit staff to help ensure that all costs are correctly accounted for and supported. In this way, FPL is able to provide assurance to the Commission, customers and itself that storm costs have been correctly and accurately recorded, and to make adjustments when necessary.¹⁵ Tr. 1637-42 (Davis).

¹⁵ Staff's witness, Ms. Welch, said that Staff did a "thorough" job in conducting its audit of FPL's storm cost. Indeed, according to Ms. Welch, Staff spent approximately 1000 hours auditing FPL's storm cost. In addition, Ms. Welch and the Staff Auditor reviewed FPL's internal

**FPL's Accounting for Martin Units 1 and 2 Condenser Tube Replacement
and Hydrolasing Work Is Correct, and OPC's Proposed Adjustments
Should be Rejected by the Commission**

FPL initially included in its 2005 storm costs for recovery in this proceeding amounts necessary to repair damage to Martin Plant Unit 1 and 2 condenser tubes. In the course of FPL's review of projects and accruals the Company determined, based upon further analysis, that damage to Martin Plant Unit 2 condenser tubes could not be conclusively determined to have been the result of 2005 storm damage. Tr. 1610 (Davis).

Similarly, further analysis of the Martin Plant Unit 1 condenser tubes showed that the tubes need to be completely replaced, not partially replaced as initially estimated by FPL. A complete tube replacement is identified as a capital project rather than as a repair. Based upon this updated information, FPL's revised estimate as of March 31, 2006 for condenser tube work is \$2,785,364. This amount was then subsequently removed by FPL from the 2005 storm costs and identified as capital costs. Tr. 1610 (Davis). Because FPL has already identified and reclassified the Martin Unit 1 and 2 condenser tube amounts as not includible among storm costs, OPC witness Donna DeRonne's claimed adjustment to these costs should not also be made, as this would result in an incorrect double removal of costs associated with the Martin Unit 1 and 2 condenser tube work.¹⁶

FPL's review of necessary repairs also identified the need for hydrolasing the condenser tubes. The need for this work was caused by storm debris passing through the tubes, and was necessary to enable a proper assessment of the condition of the tubes after the hurricane. As such, the \$0.2 million in hydrolasing costs were not part of normal maintenance activities and are

audits of storm cost and agreed that appropriate adjustments had been made. Tr. 1096-97 (Welch).

properly included in FPL's 2005 storm costs. Tr. 1611 (Davis). Accordingly, Ms. DeRonne's assertion that these costs should be disallowed from 2005 storm costs as being attributable to ordinary maintenance is incorrect, and should be rejected by the Commission.

**FPL Properly Accounted for its Costs and Reimbursements
with respect to Emergency Assistance Provided to Other Utilities
during 2005, and OPC's Proposed Adjustments Should Be Rejected by the Commission**

FPL has properly accounted for costs and reimbursements for emergency aid it provided to other utilities during 2005, as explained below. Because these costs and reimbursements have nothing to do with 2005 storm restoration costs charged to the Reserve that are the subject of this proceeding, OPC's claim that the Reserve should be credited for such reimbursements is incorrect and should be rejected by the Commission. Tr. 1618-20 (Davis).

The purpose of this proceeding is to determine the amount of FPL's prudently incurred costs for 2005 storm restoration that were properly charged to the Reserve, and whether to recover such prudently incurred costs and other costs through securitization or a surcharge. Because FPL's costs for sending employees to help other utilities were never charged to FPL's Reserve, it is not proper to seek to disallow such costs or to seek to apply reimbursements for any such costs against the Reserve charges for the 2005 storms. Tr. 1618 (Davis).

FPL is a member of the Edison Electric Institute ("EEI"), and the Southeastern Electric Exchange ("SEE"), whose members have a mutual aid agreement to help each other when disasters such as hurricanes occur. Under the terms and conditions of the mutual aid agreements, members of these organizations are entitled to recover all reasonable costs for providing assistance to the host utility. It is not a profit-making venture. Tr. 1618 (Davis).

¹⁶ Staff's witness, Ms. Welch, agreed that, to the extent the condenser tube replacement was charged to capital, it should not be removed from the amount requested for recovery in this proceeding. Tr. 1107 (Welch).

When FPL sends its personnel to assist others, it records the actual costs incurred in a job order. That job order is not a work order charged to FPL's Reserve. Rather, when the assistance is complete, FPL applies appropriate adders to the job order, as it would for any third party billing, and then provides an invoice to the host utility. Under the terms of the mutual aid agreements, FPL is not allowed to bill the host utility for overtime it pays its remaining crews to maintain work schedules due to the absence of personnel sent to assist the utility that has suffered a disaster. Rather, these excess overtime costs incurred by FPL are charged to FPL's normal operations and maintenance expenses and offset the payments received from the utility receiving assistance. Tr. 1618-19 (Davis).

OPC proposes that FPL offset its 2005 storm recovery costs charged to the Reserve by \$6,868,593 which is the amount billed by FPL to other utilities for recovery assistance under the mutual aid agreements. This would result essentially in FPL having provided its services to a utility in need with the following result: (i) FPL would suffer, without compensation, the increase in its overtime costs due to having sent crews to help another utility; (ii) FPL would suffer the loss of its crews' time while they are assisting another utility in need; and (iii) FPL would suffer the loss of the reimbursement for its crews' time to which it is entitled under the mutual aid system, by having such reimbursement essentially added to the Reserve against which the storm assistance charges were not charged in the first place. Tr. 1619-20 (Davis).

OPC has cited no proper legal basis for appropriating FPL's funds received in the ordinary course of providing mutual aid to another utility and applying them against the Reserve, and there is none. The sole justification offered by OPC for this unjust result is an unsubstantiated assertion that the costs of the assisting crews are recovered in base rates, while at the same time OPC ignores the very real costs of overtime to FPL necessitated by sending crews

to help other utilities. Tr. 1619 (Davis). Of course, OPC has not pointed to any evidence that non-recurring and extraordinary mutual assistance costs were ever included in base rates, which they were not. OPC inconsistently urges that the Commission should offset these unbudgeted revenues against FPL's storm costs, while at the same time claiming that the Commission should ignore the losses of revenue that occurred due to the 2005 storms.

As Mr. Davis explained in his testimony, due to the \$9.1 million of mutual aid delivered by FPL during 2005, the Company incurred incremental costs of \$2.2 million, overtime and material costs of \$3.4 million and backfill costs caused by sending crews to assist of \$0.3 million. Accordingly, even if one were to accept OPC's unfounded premise that reimbursements for mutual assistance should offset FPL's 2005 storm charges, only the net amount received by FPL of \$3.2 million would even arguably be subject to such a claim or argument by OPC. Tr. 1619 (Davis).

Further, OPC ignores that FPL and its customers are by far net beneficiaries of mutual aid from other utilities. Adopting OPC's proposal would have the direct effect of providing an additional multi-million dollar disincentive for FPL to assist other utilities. Any disincentive to participate when other utilities are impacted by natural disasters is not in the best interest of FPL's customers who rely on these utilities to provide assistance in return. It is unlikely these utilities would provide assistance to FPL if the Company were to be unwilling to do so when they are in need, for example due to adoption of Ms. DeRonne's proposal. Tr. 1619 (Davis). Accordingly, for all of these reasons, OPC's claim that reimbursements for help provided to other utilities should be applied to the Reserve should be rejected by the Commission.

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?

Yes. FPL correctly quantified and included all regular payroll as a direct result of the 2005 storms for exempt, non-exempt and bargaining personnel, subject to an adjustment to remove normal capital costs. Because FPL tracks payroll costs by exempt, non-exempt and bargaining unit personnel, FPL does not separately quantify amounts of “non-management employee labor payroll expense.” No adjustments should be made.

In its prehearing statement submittals with respect to Issue 8, OPC (joined by other intervenors) offered its claim that FPL’s total payroll and labor-related costs were already recovered through base rates and that the Commission should therefore make a total adjustment of \$24,575,514 to FPL’s storm costs, based upon its so-called “incremental cost” theory. Prehearing Order, Order No. PSC-06-0301-PHO-EI, Docket No. 060038-EI (issued April 18, 2006), at p. 24. Accordingly, FPL states its points in opposition to these OPC adjustments in this portion of its brief with respect to Issue 8.¹⁷

The record shows that there is \$26.1 million of regular payroll included in FPL’s 2005 storm costs. This amount is properly included among the storm costs to be recovered by customers because these costs were unquestionably incurred by personnel performing restoration work. This amount includes all regular payroll for exempt, non-exempt and bargaining personnel that worked in the restoration effort associated with the 2005 storms. Included in this are amounts for Nuclear payroll that may be recoverable from insurance, payroll related to capital work, and payroll that would have otherwise been charged to clauses or capital. Tr. 1596-97 (Davis).

Under FPL’s Proposed methodology, the Actual Restoration Cost Approach with an adjustment to remove capital, regular payroll is an appropriate cost to charge to the Reserve and

¹⁷ For convenience of reference, FPL is addressing the issues raised in this Issue 8 as relating to total payroll rather than being separated into “managerial” and “non-managerial” employee payroll, because the key accounting and legal principles are common to all employee payroll costs contained in the 2005 storm charges. FPL will address the separate issue of exempt employees overtime expenses with respect to Issue No. 9.

therefore, should be recoverable from customers. FPL has explained in detail with respect to Issue 6 above the many reasons supporting use of FPL's proposed methodology, to which FPL refers the Commission rather than restating those points here. In summary, under FPL's proposed method, which mirrors a replacement cost insurance approach, all costs that are a direct result of storm restoration are appropriately charged to the Reserve.¹⁸ Tr. 1597 (Davis).

OPC's witness Donna DeRonne asserts that rather than applying FPL's Actual Restoration Cost Approach, with a normal capital adjustment, that the \$26.1 million of regular payroll should be removed from storm costs, subject to some limited offsets, since she alleges that these costs are already recovered through FPL's base rates. Tr. 959 (DeRonne). Ms. DeRonne's proposed adjustment should be rejected for several reasons, discussed below.

Moreover, in the event that the Commission decides to apply its 2004 Storm Cost Recovery Method, it should not adopt the new proposed exclusions from recovery under that method proposed by OPC's witnesses Hugh Larkin, Jr. and Ms. DeRonne in this proceeding, for example of backfill and catchup costs (discussed with respect to this Issue 8), and of normal O&M offset representing energy sales not made due to customer outages caused by the hurricanes (discussed with respect to Issue 17 below), in order to avoid an incorrect and fundamentally unfair disallowance of tens of millions of dollars of prudently incurred costs.

OPC's Proposed Payroll Adjustments Greatly Understate the Costs Of Storm Restoration

A. OPC Starts from a False Premise of FPL Double Recovery

¹⁸ It should be noted that FPL does not track payroll costs between managerial and non-managerial personnel in its normal course of business. Therefore requirements to do so would impose additional system costs that would be unnecessary since this split would only be used for storm recovery purposes. FPL does track payroll costs by exempt, non-exempt, and bargaining unit personnel. The exempt category includes all professional personnel that are paid overtime under approved circumstances such as storm restoration, the non-exempt and bargaining unit categories include all personnel that, by law or contract terms, must be paid for any overtime they work.

There are several critical problems with Ms. DeRonne's proposed adjustments to FPL's labor payroll expense. First, OPC's starting point of disallowing \$26.1 million of payroll costs is based upon a fundamental error. Ms. DeRonne and Mr. Larkin both ignore the fact that the budget which contemplated normal payroll amounts of \$26.1 million also contemplated that there would not be service interruptions due to hurricanes. Unfortunately, there were major interruptions to millions of customers due to hurricanes resulting in a significant amount of budgeted costs not being recovered in base rates. Therefore Mr. Larkin and Ms. DeRonne start from a position of grave error in only addressing the expense side of the ratemaking equation. Tr. 1598 (Davis). Further details of this fundamental error are discussed with respect to Issue 6 above.

B. OPC's So-Called "Incremental Method" Errs In Excluding Numerous Clear And Proven Incremental Costs and Offsets

If the Commission determines that an adjustment to remove regular payroll is necessary, then it should consider types of payroll including backfill, catch-up and vacation buy-back as offsets to this amount, as well as the amounts associated with capital work in the amount of \$8.0 million and clauses in the amount of \$2.7 million shown by Ms. DeRonne as offsets to her proposed \$26.1 million gross labor cost disallowance.¹⁹ Not doing so would result in understating FPL's prudently incurred storm costs under the "incremental cost" method and potentially cause millions of dollars of under-recovery of storm costs. Tr. 1598 (Davis).

1. OPC Erroneously Excludes A Backfill and Catch-Up Work Offset of \$8.7 Million

¹⁹ Ms. DeRonne's proposed adjustments to the \$26.1 million gross labor cost disallowance include adjustments of \$2,730,000 for labor ordinarily charged to clauses and of \$8.0 million for labor ordinarily charged to capital. Tr. 959 (DeRonne). These adjustments would be correct, but incomplete as discussed in this Issue 8, if the Commission were to apply the 2004 Storm Cost Recovery Method to recovery of 2005 storm costs.

OPC's proposed exclusion of \$7.9 million for 2005 backfill and \$0.8 million for 2006 catch-up work as offsets to OPC's proposed \$26.1 million disallowance under its so-called "incremental cost" theory should be rejected for several reasons. First, these costs represent compensated overtime, temporary labor, and the cost of contractors needed to catch-up or reduce backlogs created by FPL employees being assigned to storm restoration activities. The work can not be performed during regular working hours or by contractors within the normal amount of budgeted work because all of that time is already assigned to activities necessary to meet current customer demands. If those demands did not exist, FPL would not have budgeted the cost in the first place. Tr. 1601 (Davis).

These amounts were carefully computed as described by FPL witness K. Michael Davis. The amounts were identified as unbudgeted costs associated with compensated overtime, temporary labor, and/or contractors and which were incurred to satisfy job accountabilities of other employees while they were assigned to storm duty or to reduce backlog created by employees working on storm restoration. Tr. 1602 (Davis). Mr. Davis detailed these amounts in Exhibit 122 attached to his rebuttal testimony. The documents which support these costs were provided in FPL's response to OPC's Third Request for Production of Documents, Question No. 43, in this Docket No. 060038-EI. Ignoring these incremental costs makes no sense, if one is adopting a "incremental cost theory", and is inconsistent with OPC's position that only incremental costs not recovered in base rates should be allowed. Tr. 1602 (Davis).

OPC's exclusion of catch-up and backfill offsets is directly contrary to the reasoning of the Commission's 2004 Storm Cost Recovery Order, which stated at page 24 in relevant part:

Although we do not believe that these types of costs [catch-up and backfill] fall into the category of "extraordinary," we believe that these costs could be considered incremental if we could determine that the specific expenditures supporting the \$9.0 million and \$7.0 million amounts quoted by witness Davis

were beyond regularly budgeted amounts. We also believe that these types of costs may have been incurred to facilitate restoration activities The burden is on FPL to demonstrate and document that there was such overtime, that it was caused directly by loss of personnel to storm assignments, and that it was not budgeted for.

As described above, in the present 2005 storm cost proceeding, FPL has carefully quantified and presented the evidence “that there was such overtime, that it was caused directly by loss of personnel to storm assignments, and that it was not budgeted for” and, accordingly, should be permitted by the Commission as an offset in the event that it is determined that a \$26.1 million regular payroll adjustment should be made. Tr. 1602 (Davis); Ex. 122.

2. OPC Erroneously Excludes A Nuclear Payroll Offset of \$2,490,800

In addition, if one were to adopt an “incremental cost” method, FPL’s nuclear payroll expected to be recovered through insurance in the amount of \$2,490,800 should not be included, as Ms. DeRonne has done so, in the \$26.1 million regular payroll adjustment. If it is, then it will be subtracted twice from the total amount of 2005 storm costs to be recovered: once through Ms. DeRonne’s claimed \$26.1 million payroll adjustment, and then again when insurance proceeds are removed from the total amount of 2005 storm costs. Tr. 1603 (Davis). OPC’s witnesses, whose positions are premised upon a false and utterly unproven premise of double recovery, are recommending a clear and proven double disallowance.²⁰

3. OPC Erroneously Excludes A Vacation Buy-Back Offset of \$1.2 million

Mr. Larkin claims that vacation buy-backs from employees are the result of the Company’s vacation policy and not “a direct result of storm restoration activities” (Tr. 913-14),

²⁰ Staff’s witness, Ms. Welch, agreed that the \$2,490,800 of nuclear payroll expected to be recovered through insurance should not be disallowed to the extent it was not charged to the Reserve. Tr. 1100-01 (Welch). No party has presented evidence that this amount is included in the amount charged to the Reserve and requested for recovery.

which Ms. DeRonne then excludes from being a \$1.2 million offset to OPC's \$26.1 million payroll disallowance. Ex. 85.

If one is seeking to implement an "incremental cost" approach this cost is plainly incremental and was, most emphatically, caused only by the occurrence of major late-season storms requiring storm restoration activities well into November. But for the storms there would have been no vacation buy-back. Tr. 1603-04 (Davis). There is no basis for excluding the \$1.2 million offset.

FPL purchased vacation from employees involved in the 2005 storm restoration activities since they were unable to use their earned vacation due to the timing and length of storm restoration activities. Hurricane Wilma caused severe damage to FPL's service territory on October 24, 2005 and many employees worked through November to make repairs to FPL's damaged infrastructure. As such, they were unable to take all the vacation they were entitled to and normal workloads will not enable employees to take these days in the future. Thus, customers benefited from having the employees perform storm restoration duties instead of taking vacation. Tr. 1603 (Davis).

Moreover, the implementation of the buy-back policy was specifically directed to avoid an extraordinary loss of the services of trained employees during 2006 due to excessive amounts of carryover vacation. These incremental benefits to customers plainly and directly caused the \$1.2 million in vacation buyback costs – which costs were determined specifically by identifying vacation buy-backs for employees that worked on storm restoration -- which should therefore be allowed as an offset to the \$26.1 million regular payroll adjustment, if the Commission determines this adjustment is necessary. Tr. 1604 (Davis).

4. OPC's Treatment of the Capital Offset Is Erroneously Understated By \$2.2 Million

OPC ignores yet another necessary offset that should be adopted if the Commission determines that the \$26.1 million regular payroll adjustment is necessary. Under FPL's adjustments to the approach approved in the 2004 Storm Cost Recovery Order shown on page 2 of Mr. Davis's Exhibit No. 121, there is an adjustment to remove regular payroll of \$26.1 million and another adjustment to remove the normal capital costs of \$63.9 million from the amount of storm costs to be recovered. Because the adjustment for normal capital costs includes a component for regular payroll, if both the regular payroll and capital adjustments are made, then the amount of regular payroll charged to capital will have been subtracted from the amount of storm costs to be recovered twice. Tr. 1604-05 (Davis).

As shown on Mr. Davis's Exhibit 123, the total amount of estimated capital expenditures of \$72.6 million has been recorded by FPL as of March 31, 2006 under the following categories: FPL regular payroll, contractors, materials, vehicles and other, including applied engineering. Of this amount, \$2.2 million has been categorized as FPL regular payroll which should be shown as an offset to the \$26.1 million regular payroll adjustment, as Mr. Davis has done on page 2 of his Exhibit 121.

5. OPC Erroneously Overstates Its Proposed "Applied Pensions and Welfare" Adjustment to Payroll

OPC proposes an additional adjustment reducing FPL's storm costs based on a claim that FPL has erroneously included \$9.2 million in "Applied Pensions and Welfare." Tr. 960-61 (DeRonne). Ms. DeRonne goes on to say that these costs are already included in base rates and "would not increase as a result of a storm event," and therefore, should not be included in the 2005 storm costs. *Id.* Ms. DeRonne's claimed adjustment is incorrect, and the supposition upon

which it is based is faulty, even if one were to implement the “incremental approach” advocated by OPC. Tr. 1606 (Davis).

First, Ms. DeRonne has incorrectly stated the amount of payroll overheads consisting of pension, welfare, payroll taxes and insurance which is appropriately related to the regular payroll and overtime pay included in FPL’s storm costs. As explained in detail by FPL’s Mr. Davis, the sum of payroll loadings included in the 2005 storm costs is \$8.4 million, not \$9.2 million. Tr. 1606 (Davis). This amount is shown on Mr. Davis’s Exhibit 124 to his rebuttal testimony.

The payroll overhead applicable to regular payroll included in the 2005 storm costs is \$4.4 million (\$26.1 million at 16.69%). The overhead rate used is the same overhead rate applied to regular payroll in the ordinary course of business. The payroll overhead applicable to overtime payroll included in the 2005 storm costs is \$4.0 million (\$60.3 million at 6.69%). The lower overhead applied to overtime payroll is based on the assumption that only social security taxes apply to overtime payroll. These amounts are also shown on Mr. Davis’s Exhibit 124 to his rebuttal testimony.

Consequently, if the Commission disallows recovery of any portion of the regular payroll, then the applicable payroll overheads associated with this amount should be computed and reduced using the appropriate percentage discussed above instead of removing the entire amount. The applicable percentage should also be applied to any regular payroll offsets approved by the Commission. Tr. 1607 (Davis).

For the above-stated reasons, FPL requests that (i) the Commission adopt FPL’s proposed Actual Restoration Cost Method, with a capital adjustment, pursuant to which it is unnecessary to address all of the proposed adjustments discussed in this Section 8 because total labor and payroll costs are correctly accounted for under FPL’s proposed methodology without the

necessity of considering such adjustments; and, in the alternative that (ii) if the Commission adopts the 2004 Storm Cost Recovery Method, that it treat any incremental cost adjustments to FPL's payroll and labor costs consistently with FPL's positions stated above in this Section, or discussed with respect to Issue 17, and as provided for in Exhibit 124 to Mr. Davis's testimony.

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?

Yes. FPL correctly quantified and included all regular payroll as a direct result of the 2005 storms for exempt, non-exempt and bargaining personnel, subject to an adjustment to remove normal capital costs. Because FPL tracks payroll costs by exempt, non-exempt and bargaining unit personnel, FPL does not separately quantify amounts of "managerial employees payroll expense." No adjustments should be made.

In this Issue 9, FPL will address the issue of exempt employees overtime expenses raised by OPC (joined by other intervenors) in its prehearing statement with respect to Issue 9.²¹

OPC witness Hugh Larkin, Jr. claims that certain exempt employee overtime pay should be removed from FPL's 2005 storm costs based upon an assertion that such employees' regular pay is "full compensation for all time that they are required to put in." Tr. 915-16 (Larkin). On the contrary, the record shows that the approximately \$0.8 million of such costs are reasonable and directly caused by the need to perform storm restoration duties and, accordingly, should be approved by the Commission. Tr. 1617 (Davis).

As FPL's witness K. Michael Davis explained, the salaries of the exempt employees who received the overtime pay that Mr. Larkin objects to are based on normal job requirements, not extraordinary storm restoration. Prohibiting any incentive payments made to employees who are

²¹ In addition, for convenience of reference, and consistent with OPC's and other parties assertion of claims in relation to Issue 8 in the Prehearing Order in this proceeding, FPL addressed in its brief above with respect to Issue 8 the points raised in this Issue 9 as relating to total payroll rather than being separated into "managerial" and "non-managerial" employee payroll, because the key accounting and legal principles are common to all employee payroll costs contained in the 2005 storm charges.

involved in storm restoration that do not get paid overtime is inappropriate. These payments were determined in a manner consistent with the manner in which overtime payments were computed for other employees and was limited to the amount necessary to avoid inequities.²² Tr. 1617 (Davis).

FPL's policy for paying overtime to these employees during certain storm restoration efforts is a reasonable and appropriate storm cost. In general, the decision to pay or not pay for overtime is primarily based on the length of the restoration effort. For Wilma, an 18 day restoration effort, many of FPL's employees worked sixteen hour days continuously for the entire restoration period. During storm work, it is possible for two people, who normally are in different paygrade classifications, to be performing the same function during the restoration period. As a result of their normal paygrade classification, one might be eligible for overtime while the other is not. It would not be reasonable for only one to be compensated for their extraordinary overtime. These overtime payments were limited to the amount necessary to avoid inequities, and accounted for only 1.3% of total storm related overtime. Tr. 1403-04 (Williams).

Moreover, the exclusion of overtime pay proposed by OPC would provide management level personnel with a disincentive to work on storm restoration. The nature of storm restoration is such that all available personnel, without regard to pay grade classification, are asked to report for storm duty to ensure the prompt restoration of service to FPL's customers. Tr. 1617 (Davis). OPC and other intervenor's opposition to recovery of these costs should be rejected by the Commission, and the costs should be approved for inclusion among FPL's 2005 storm costs for recovery in this proceeding.

ISSUE 10: WITHDRAWN

²² Staff's witness, Ms. Welch, agreed employees should be paid equal pay for equal work. Tr. 1101 (Welch).

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?

Yes. FPL's storm restoration costs only include the reasonable costs of removing vegetation as a result of the storms. Routine tree trimming is not charged to the Storm Reserve. No adjustments should be made.

FPL's Distribution Vice President Geisha Williams described FPL's management approach to ensuring that necessary resources were obtained to remove vegetation as a result of the 2005 storms, and that the resources are supervised and monitored so as to ensure that only the reasonably necessary costs of removing vegetation due to storms are charged to the Storm Reserve. Those measures are described below, and no party has asserted that FPL's storm vegetation management practices and management were incorrect. Rather, OPC has asserted using its so-called "incremental method" that FPL's storm tree trimming costs should be reduced by \$1.1 million solely because FPL's annual expenditures for regular tree trimming during 2005 were less than budgeted by that amount. As described below, OPC's witness Donna DeRonne admitted upon cross-examination that the budget variances she relies on can be caused by many different things other than storms, and that she had no idea what caused this budget variance (Tr. 1019-20 (DeRonne)), and there is therefore no reasoned basis for disallowing FPL's prudently incurred vegetation removal storm costs by this amount.

Ms. Williams explained FPL's management approach with respect to tree trimming crews, among other such resources, in detail. Ms. Williams stated that FPL participates with the EEI to gain access to other utilities, requests assistance from those companies based on similar mutual assistance agreements. Resource requests are made for line crews, tree trimming crews, patrol personnel, crew supervisors, material-handling personnel and in some cases, logistics support. Tr. 169-70 (Williams).

FPL also has a number of contractual agreements with line and vegetation contractors throughout the U.S. Many of these agreements are with contractors that FPL uses during normal operations. These contracts are competitively bid, and as a result, FPL has among the lowest labor rates for contractors in the industry. Depending on the severity of the storm and FPL's resource needs, a large number of additional line and vegetation companies can be contracted to provide additional support, pending release from other utilities for which they normally work. Where additional line and vegetation companies are needed, FPL negotiates rates with these new contractors on an as needed basis, prior to the commencement of work. *Id.* 169-70 (Williams).

FPL uses reasonable and efficient processes to deploy and manage storm restoration tree trimming resources. Deployment and movement of resources are controlled through the General Office Command Center, utilizing personnel tracking and outage management systems to monitor execution of the plan. Daily management of vegetation crews and other crews is performed by the field operations organization, which is responsible for effectively implementing FPL's restoration strategy. Decisions on opening staging sites to position the workforce in the most damaged areas are based on the timing of the arrival of external resources. Daily analysis of workload execution and restoration progress permits dynamic and effective resource management. This enables a high degree of flexibility and mobility in allocating and deploying resources in response to changing conditions and requirements. Another critical factor is FPL's ability to assemble trained and experienced management teams to direct field activities. As part of the storm organization, management teams include group leaders and crew supervisors to directly oversee field work. All of these resources are brought to bear in support of vegetation clearing and other storm restoration field work. *Tr.* 170 (Williams).

No party has challenged the reasonableness and effectiveness of FPL's work and cost management processes with respect to storm vegetation clearing. In light of the overwhelming evidence showing that FPL's costs were reasonable and prudently incurred, all such costs should be approved for recovery by the Commission.

The sole attack on these carefully managed costs was launched by OPC witness Donna DeRonne. Ms. DeRonne admitted upon cross-examination that she is not an expert in tree trimming. Tr. 1020. Rather, she simply asserts that because FPL spent \$1.1 million less on regular tree trimming than it budgeted, that this amount should be taken away from FPL's storm cost recovery. Ms. DeRonne's claim utterly lacks logic and should be rejected for several reasons. While relying entirely upon the budget variance as the basis for OPC's proposed disallowance, Ms. DeRonne had not even reviewed whether FPL's scope of tree trimming work changed in the course of 2005. *Id.* She had no knowledge concerning any FPL budget meetings concerning vegetation management where causes of the budget variance might have been discussed. Despite proposing removal of \$1.1 million using her incremental method, Ms. DeRonne admitted that she had no idea of the reasons for variances between budget and actual expense for tree trimming. Tr. 1021.

OPC's overall theory of denying storm cost recovery based upon the so-called incremental approach has been discussed elsewhere in this brief, and shown to be unsound and unnecessary because of the absence of any double recovery of costs by FPL. In addition, it is clear that at the detailed implementation level of OPC's disallowances using the so-called incremental method, there is an utter lack of logical connection between the costs sought to be disallowed and whether the budget variance was caused by the storm.

Where, as here, OPC's proposed adjustment is contrary to extensive evidence in the record that FPL's storm vegetation removal expenses were reasonably managed and prudently incurred, the Commission should allow FPL's storm costs and deny OPC's requested adjustment.

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?

Yes, the actual costs have been correctly quantified. No adjustments should be made.

As discussed above with respect to Issue 6, the appropriate methodology for booking 2005 storm damage costs to the Storm Damage Reserve is the Actual Restoration Cost Method. No party has suggested that any adjustment should be made to FPL's charges to the Storm Damage Reserve for company-owned fleet vehicles under that methodology.

For the reasons discussed in Issue 6, the Commission should reject the 2004 Storm Cost Recovery Method (and all other incremental cost methods). However, if the Commission nonetheless determines to use the 2004 Storm Cost Recovery Method (or any other incremental cost method), FPL has made three adjustments to properly reflect the incremental impact of fleet vehicle costs. These adjustments are summarized in Exhibit 121.

First, FPL has subtracted \$5,738,000 from the net 2005 storm recovery costs to remove fleet vehicle costs that are already included in base rates. This is the same figure that OPC has used, and there is no dispute about its calculation.

Second, FPL has offset \$2,767,000 against the \$5,738,000 base rate adjustment to reflect that fact that FPL has already removed that portion of fleet vehicle costs from its net storm recovery costs which constitutes normal capital expenditures. Without this adjustment, the capital portion of fleet vehicle costs would be inappropriately subtracted twice from the amount of recoverable storm costs. Tr. 1607-08 (Davis). OPC witness DeRonne contends that this

offset should not be made because the 2004 Storm Cost Recovery Order disapproved a similar offset that FPL proposed for 2004 fleet vehicle costs. However, the rationale for disapproving the offset in that order does not apply to FPL's computation of 2005 storm recovery costs. As noted by Ms. DeRonne, the Commission stated that "FPL does not differentiate between capital costs and operating expenses in its breakdown of charges to the Storm Reserve." In other words, the Commission concluded that the record was inadequate to support FPL's proposed offset for 2004. However, this year FPL has stated explicitly the basis for its offset: it has applied the same capital/O&M split for fleet vehicles utilized by the Company in the normal course of business in order to determine the amount related to capital that should be offset. Tr. 1608 (Davis). Moreover, in February 2006 FPL responded to OPC's Third Request for Production of Documents, Request No. 3 by producing work papers showing exactly how the capital/O&M split was calculated and how it was applied to the fleet vehicle costs. This was well before Ms. DeRonne's testimony was filed in April, so if she had any reason to dispute the calculation there was ample opportunity for her to do so. There is no legitimate reason not to approve FPL's 2005 capital cost offset, and disapproving it would be inappropriate.

Finally, FPL has offset \$1,200,000 against the \$5,738,000 base rate adjustment. This reflects the fact that FPL's actual 2005 fleet vehicle costs exceeded its 2005 budget by approximately \$1.2 million specifically associated with increased maintenance required on its fleet as a direct result of the 2005 storms. Tr. 1608 (Davis); 1408 (Williams). Nothing in the record disputes the appropriateness of this offset.

Taking these three adjustments into account, the proper net reduction for fleet vehicle costs if the Commission were to adopt the 2004 Storm Cost Recovery Method (or any other incremental cost method) would be \$1,771,000 rather than \$5,738,000 as OPC contends.

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?

Yes. FPL's has quantified and charged to the Reserve call center incremental costs directly related to storm restoration. No adjustment should be made.

No party has challenged the prudence of FPL's management or its costs for operating its call center with respect to storm restoration, and FPL charged only its incremental costs for call center activities to the Storm Reserve. Tr. 182 (Williams).

Nevertheless, based solely upon its so-called incremental cost theory, OPC witness Donna DeRonne asserts that FPL's 2005 storm costs should be adjusted by \$0.5 million because FPL came in under budget on its regular telecommunications costs during 2005 by that amount. Tr. 962-963 (DeRonne). This is a good example of the illogic and unfairness of OPC's "incremental cost" methodology.

The record shows that FPL's reduction in telecommunications costs compared with its budget was solely the product of good business management, and had nothing to do with the 2005 storms. As Mr. Davis explained, the \$0.5 million sought to be disallowed by Ms. DeRonne and OPC represents variances for multiple Business Units for local and long distance service, cellular service, leased lines, pagers, and equipment maintenance that were either greater or less than plan. These variances were not due at all to savings from storm restoration during 2005. Two examples of factors contributing to the variance are as follows: the Company was able to negotiate a lower contract rate with its long distance carrier, and it revised its cellular phone policy in mid-year 2005. Tr. 1608-09 (Davis).

OPC does not even pretend that there is or needs to be any logical linkage between its so-called incremental cost disallowances and imprudence. For example, OPC's "theory witness"

Mr. Larkin was specifically asked if he was “saying that if FPL had a productivity gain with a million dollars savings less than it had budgeted in an area, nothing to do with the storm” that the one million cost savings were due to storm costs and should be subtracted. He agreed that this is what he meant. Tr. 941-42 (Larkin). Such “incremental” based disallowances have nothing to do with FPL’s prudently incurred storm costs, and should not be accepted by the Commission as a basis for disallowing storm costs.

As Mr. Davis explained, OPC’s proposed telecommunications expense disallowance is a “good illustration of why FPL objects to making storm restoration cost adjustments based solely on budget variances without further analysis.” Tr. 1609 (Davis). Consistent with Mr. Larkin’s overall theory, OPC does not even attempt to offer any proof of imprudence by FPL concerning its telecommunications costs, or to present a reasoned measure of imprudently incurred costs that should be disallowed. Instead, OPC’s claim for a \$0.5 million adjustment would amount to no more than a half-million dollar penalty against FPL for effectively managing costs during 2005, solely because storms affected its service territory. Tr. 1609 (Davis) This and OPC’s other budget-variance based proposed adjustments should therefore be rejected by the Commission.

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?

Yes. FPL has identified an adjustment of \$422,576 and recommends that this amount be included as part of the final true-up process. No other adjustments should be made.

FPL’s storm-related advertising expenses are reasonable and necessary, and they would not have been incurred but for the storms. Tr. 1407 (Williams). They are highly volatile and extraordinary, so they are not amenable to inclusion in the cost of service for the purpose of setting base rates. Tr. 1612 (Davis). Storm-related advertising falls into two categories, both of which are properly treated as storm restoration costs.

Public outreach advertising includes communications designed to keep customers informed of the status of FPL's restoration efforts and to inform customers of the extraordinary dangers that exist during storm restoration. These communications meet a critical customer need for restoration and safety-related information after a natural disaster. Among other things, they keep customers informed of FPL's storm restoration status and the extraordinary dangers that exist during storm restoration. After the 2004 storm season, one key lesson FPL learned was that its customers want and expect FPL to communicate more often with them during storm events. This type of communication actually facilitates FPL's restoration efforts, and the associated costs would not have been incurred but for the storms.²³ Tr. 1407 (Williams); Tr. 1611 (Davis).

"Thank you" advertising is designed to recognize foreign crews that assisted FPL in restoring service to its customers. FPL uses this type of advertising to encourage those crews to continue providing support in the future. Given the likelihood of continued hurricanes impacting FPL's service territory and customers, this is a very prudent step. It is FPL's experience that other companies find this "thank you" advertising meaningful. For example, it helps those companies' regulators understand the long-term mutual benefits that result from allowing them to divert their manpower away from normal operations in their service areas in order to assist FPL. Tr. 1407 (Williams); 1611-12 (Davis).

Of the advertising costs that FPL originally included in its 2005 storm restoration costs, FPL has determined that \$404,627 was associated with image-enhancing employee campaign radio and web advertisements. That amount was reversed from the Reserve during March 2006. FPL also removed \$17,949 from the Reserve in March 2006 because it was found to relate to

²³ Staff's witness, Ms. Welch, agreed that public safety and outreach advertising should be encouraged, not discouraged. In addition, Ms. Welch agreed that storm-related advertising is an

conservation advertising. Tr. 1612 (Davis). These adjustments are shown on Exhibit 121. None of the remaining advertising costs charged to the Reserve are image-enhancing, and they all relate directly to FPL's storm restoration efforts.

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

Yes. Storms result in increases in uncollectible expense that FPL estimates based on incremental usage during the collection policy suspension period and incremental usage during the period where collection workers reduce the collection work backlog caused by the storms. No adjustment should be made.

FPL witness K. Michael Davis explained the reasons why FPL's uncollectible expense increase due to the 2005 storms were properly charged to the Storm Reserve, and are consistent with the Commission's reasoning in its 2004 Storm Cost Recovery Order. In summary, Mr. Davis explained that since FPL mobilizes a large portion of its workforce to restore service to customers as quickly and safely as possible, a majority of the resources that would be utilized to mitigate uncollectible bills are reassigned to storm restoration. Tr. 1613-14 (Davis).

Mr. Davis further explained that FPL's base rates assume that FPL's uncollectible account mitigation efforts are in place and are working. When these efforts are not performed because the responsible employees have been assigned to support storm restoration functions, delinquent customers receive additional days to pay and if they do not ultimately pay, the amount of uncollectible write-off expense becomes higher as a direct result of hurricane activity. Again, but for the restoration effort resulting from the storms, these additional costs would not have been incurred. *Id.*

Furthermore, Mr. Davis pointed to page 16 of the 2004 Storm Cost Recovery Order, where the Commission stated the following:

extraordinary expense, and thus, would not typically be included in the cost of providing service

Further, we find that there is a direct relationship between hurricane activity and the amount of uncollectible, or bad debt, expense incurred. We believe that bad debt expense is not excludable from recovery through the storm reserve simply because it is not a cost of repairing FPL's system and restoring service.

Tr. 1613-14.

Accordingly, it is clear that the Commission has acknowledged the cause and effect relationship between storms and increases in uncollectible accounts. Staff witness Kathy Welch upon cross-examination also confirmed her belief that the Commission allowed an offset for uncollectible accounts expense with respect to the 2004 storm costs because during storm restoration the bill collectors weren't able to go out and do the work they normally do, so FPL was not able to collect as much revenue as it normally does, causing it to write off more uncollectible expense. Tr. 1098.

FPL also provided detailed information in the record in this proceeding showing the specific computation of uncollectible accounts expense. This information had been provided by FPL in response to Staff's Second Set of Interrogatories, Question No. 92, which was admitted into evidence as Exhibit 125.

Where, as here, FPL has properly shown the clear causation of increased uncollectible account expense by storms, this linkage has clearly been acknowledged by the Commission and its Staff, and properly quantified by FPL, the record shows that there is no evidentiary basis for OPC witness Mr. Larkin's assertion that such costs are "difficult to directly relate to the effects of a storm." Tr. 915 (Larkin. OPC's proposed disallowance of \$3,582,000 in uncollectible accounts should be denied.

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?

for purposes of setting base rates. Tr. 1107-08 (Welch).

Yes. FPL removed capital costs at “normal cost” and recorded them to rate base. What is left after adjusting for insurance recoveries represents the operations and maintenance expenses the Company has incurred to restore service to its customers. No adjustments should be made.

FPL has 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. Tr. 437 (Davis). Each Business Unit was responsible for preparing an estimate of capital work as a result of storm damage to its assets. FPL estimated storm damages related to its Transmission and Distribution assets at normal cost utilizing the Company’s estimating systems. Storm damages to all other assets were estimated individually by each Business Unit. These estimates were then reviewed by FPL’s Accounting Department (Accounting) to ensure these costs are capital costs, not operating or maintenance costs. Accounting also ensured the correct amount of additions, retirements, removal, and salvage would be recorded on the Company’s books. Based on the estimates developed, the capital costs were adjusted out of storm-recovery costs and charged to rate base. Tr. 448-49 (Davis).

As FPL predicted in its direct testimony (Tr. 449), the capital estimates changed for a variety of reasons. There has been an increase in estimated capital costs. FPL recommends that the adjustment be included in a final true-up process and that any difference between what was estimated and the actual capital costs be charged or credited to the Reserve. Tr. 449, 1621 (Davis). The adjustments are reflected in the amounts shown on line 12 of page 1 of Ex. 121. Tr. 1621; Ex. 121 (Davis).

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**

If FPL's actual cost method, with the capital adjustment proposed by FPL, is approved by the Commission, it is unnecessary to separately take into account items (a) through (i).

If the Commission's 2004 Storm Cost Recovery Method is again approved by the Commission, then items (a) through (i) should be considered by the Commission. Specifically, as to (a) through (i) under the 2004 Storm Cost Recovery Method, there are various adjustments made to the amount of storm costs that can be recovered based on an assumption that such costs were already recovered through base rates (with which assumption FPL does not agree). Under the Commission's 2004 Storm Cost Recovery Method, these various adjustments were offset by other incremental costs and by amounts not recovered through base rates, but only up to the amount of the adjustments. Amounts not recovered through base rates in excess of the adjustments were not recovered, causing the Company to suffer a loss in base revenues greater than the offset permitted by the Commission, which it was not permitted (nor did FPL request) to

recover. It should be noted that the 2004 Storm Cost Recovery Method would result in the same amount of storm recovery in this proceeding as FPL's actual cost method, with a normal capital adjustment.

Therefore, if the Commission determines an incremental cost approach is appropriate, the following should be taken 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

As previously stated, if one were to utilize an incremental cost approach, under which adjustments are based on the theory that certain storm restoration costs have already been recovered through base rates, then base revenues not achieved due to service interruptions from hurricanes must be considered, as they were in the 2004 Storm Cost Recovery Order. FPL's base revenues not achieved due to the 2005 hurricanes were \$51,354,000.

FPL believes that it is very clear that if the incremental approach is applied by the Commission, then amounts not recovered through base rates due to the disruption of service caused by the 2005 storms should be recognized as an offset to adjustments offered by OPC based on claims of reduced base rate costs. In its 2004 Storm Cost Recovery Order, at page 16, the Commission stated:

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

In the event that the Commission decides to apply the 2004 Storm Cost Recovery Order method, it is clear that the Commission has authority to recognize amounts not recovered through base rates due to the disruption of service caused by the 2005 storms as an offset to adjustments. The securitization law which governs this proceeding, Section 366.8260(1)(n), Florida Statutes, expressly states that:

“Storm-recovery costs” means, at the option and request of the electric utility, and as approved by the commission ... costs incurred or to be incurred by an electric utility in undertaking a storm-recovery activity. Such costs shall be net of applicable insurance proceeds and, where determined appropriate by the commission, shall include adjustments for normal capital replacement and operating costs, lost revenues or other potential offsetting adjustments.

Section 366.8260(1)(n), Florida Statutes (2005) (emphasis added).

FPL’s base revenues not achieved due to the 2005 hurricanes were \$51,354,000. Tr. 770-71 (Morley); Exhibit 65. Accordingly, to the extent that the Commission makes adjustments to FPL’s storm costs utilizing the “incremental method” employed in the 2004 Storm Cost Recovery proceeding, the Commission should similarly in this proceeding order those adjustments to be offset up to the amount of \$51,354,000. This is necessary in order to avoid an improper disallowance under the incremental method of prudently incurred costs that would not be otherwise recovered from customers.²⁴

- 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)**

²⁴ OPC’s counsel asked Mr. Davis cross-examination questions with respect to FPL Base Revenue Variance Sheets for the months of July through November 2005 (Ex. 147), inquiring concerning FPL’s revenues for those months. Upon redirect examination, Mr. Davis referred to FPL’s Base Revenue Variance Sheet for the month of December 2005 which showed a cumulative deficit of \$41.5 million in revenues compared to FPL’s budget through the full year, as well as showing that FPL’s revenues were negatively affected by hurricanes for the year by about \$52 million. Tr. 605-6 (Davis); Ex. 149.

Incremental backfill costs of \$0.8 million are incremental costs that would not have otherwise been incurred in the absence of the 2005 storms, and they are not being recovered in base rates. These costs are also not being charged to the storm reserve by FPL. Under the 2004 Storm Cost Recovery Order Approach, an adjustment for the backfill work is appropriate since, otherwise, there would be no cost recovery for these incremental storm related costs.

Incremental backfill costs of \$0.8 million represents incremental overtime and contractor costs that were incurred because employees who would normally perform this work were unavailable because of storm restoration activities. Since these are incremental costs that would not have otherwise been incurred in the absence of the 2005 storms, they are not being recovered in base rates. These costs are also not being charged to the storm reserve by FPL. Under the 2004 Storm Cost Recovery Order approach, an adjustment for the backfill work is appropriate since, otherwise, there would be no cost recovery for these incremental storm related costs.

OPC's proposed exclusion of \$0.8 million for 2006 catch-up work (and \$7.8 million of 2005 backfill work, discussed in item (c) below) as offsets to OPC's proposed \$26.1 million disallowance under its so-called "incremental cost" theory should be rejected for several reasons. First, these costs represent compensated overtime, temporary labor, and the cost of contractors needed to catch-up or reduce backlogs created by FPL employees being assigned to storm restoration activities. The work can not be performed during regular working hours or by contractors within the normal amount of budgeted work because all of that time is already assigned to activities necessary to meet current customer demands. If those demands did not exist, FPL would not have budgeted the cost in the first place. Tr. 1601 (Davis)

These amounts were carefully computed as described by FPL witness K. Michael Davis. The amounts were identified as unbudgeted cost associated with compensated overtime, temporary labor, and/or contractors and which was incurred to satisfy job accountabilities of other employees while they were assigned to storm duty or to reduce backlog created by

employees working on storm restoration. Tr. 1602 (Davis). Mr. Davis detailed these amounts in Exhibit 122 attached to his rebuttal testimony. The documents which support these costs were provided in FPL's response to OPC's Third Request for Production of Documents, Request No. 43. Ignoring these incremental costs makes no sense, if one is adopting a "incremental cost theory," and is inconsistent with OPC's position that only incremental costs not recovered in base rates should be allowed. Tr. 1602 (Davis).

OPC's exclusion of catch-up and backfill offsets is directly contrary to the reasoning of the Commission's 2004 Storm Cost Recovery Order, which stated at page 24 in relevant part:

Although we do not believe that these types of costs [catch-up and backfill] fall into the category of "extraordinary," we believe that these costs could be considered incremental if we could determine that the specific expenditures supporting the \$9.0 million and \$7.0 million amounts quoted by witness Davis were beyond regularly budgeted amounts. We also believe that these types of costs may have been incurred to facilitate restoration activities The burden is on FPL to demonstrate and document that there was such overtime, that it was caused directly by loss of personnel to storm assignments, and that it was not budgeted for.

As described above, in the present 2005 storm cost proceeding, FPL has carefully quantified and presented the evidence "that there was such overtime, that it was caused directly by loss of personnel to storm assignments, and that it was not budgeted for" and, accordingly, should be permitted by the Commission as an offset in the event that it is determined that a \$26.1 million regular payroll adjustment should be made. *See, e.g.,* Tr. 1602 (Davis); Ex. 122.

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)

*FPL incurred catch-up costs of \$7.8 million due to storm restoration activities. These costs represent additional overtime hours or contractor work incurred until the catch-up work is completed. These incremental costs were directly caused by 2005 storms, are not recovered in base rates, and are not charged to the storm reserve by FPL. Like backfill, under the 2004 Storm

Cost Recovery Method, an adjustment is necessary, otherwise there would be no cost recovery of these incremental storm costs.*

FPL's additional points supporting inclusion of the \$7.8 million of catch-up work as an offset to OPC's proposed \$26.1 million regular payroll adjustment, in the event that an incremental approach is adopted by the Commission, are set forth in the preceding section b.

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

FPL's bill collectors help restore service to customers. Base rates assume bill collection is taking place. Because of storms, delinquent customers receive additional days of service causing uncollectible expenses to increase. But for the restoration effort, these additional costs would not have been incurred. Uncollectible accounts expense directly related to the 2005 storms of \$3.6 million should be allowed to be recovered consistent with the reasoning of the 2004 Storm Cost Recovery Order.

In this proceeding, FPL charged to the storm reserve \$3,582,000 in uncollectible accounts. FPL believes that these are properly included storm costs under either the Actual Restoration Cost method proposed by FPL, or the 2004 Storm Cost Recovery Method. Because these amounts have already been charged to the reserve, no adjustment is needed in the event that the Commission rules consistently with its 2004 Storm Cost Recovery Order and finds that such costs are recoverable storm costs.

Since FPL mobilizes a large portion of its workforce to restore service to customers as quickly and safely as possible, a majority of the resources that would be utilized to mitigate uncollectible bills are reassigned to storm restoration. Base rates assume that these mitigation efforts are in place and are working. Therefore, delinquent customers receive additional days to pay and if they do not ultimately pay, the amount of uncollectible write-off expense becomes higher as a direct result of hurricane activity. Again, but for the restoration effort resulting from the storms, these additional costs would not have been incurred. Therefore, uncollectible accounts expense directly related to the 2005 storms of \$3.6 million should be allowed to be

recovered, consistent with the reasoning of the 2004 Storm Cost Recovery Order, if that Order's methodology is adopted. Tr. 1613-14 (Davis).

Mr. Davis further explained that FPL's base rates assume that FPL's uncollectible account mitigation efforts are in place and are working. When these efforts are not performed because the responsible employees have been assigned to support storm restoration functions, delinquent customers receive additional days to pay and if they do not ultimately pay, the amount of uncollectible write-off expense becomes higher as a direct result of hurricane activity. Again, but for the restoration effort resulting from the storms, these additional costs would not have been incurred. *Id.*

Furthermore, the 2004 Storm Cost Recovery Order clearly found that there is a direct linkage between hurricane activity and uncollectible expenses that should be recovered as storm costs. The Commission stated on page 16 of that Order:

Further, we find that there is a direct relationship between hurricane activity and the amount of uncollectible, or bad debt, expense incurred. We believe that bad debt expense is not excludable from recovery through the storm reserve simply because it is not a cost of repairing FPL's system and restoring service.

Accordingly, it is clear that the Commission has acknowledged the cause and effect relationship between storms and increases in uncollectible accounts. Staff witness Kathy Welch upon cross-examination also confirmed her belief that the Commission allowed an offset for uncollectible accounts expense with respect to the 2004 storm costs because during storm restoration the bill collectors weren't able to go out and do the work they normally do, so FPL was not able to collect as much revenue as it normally does, causing it to write off more uncollectible expense. Tr. 1098.

Where, as here, FPL has properly shown the clear causation of increased uncollectible account expense by storms, this linkage has clearly been acknowledged by the Commission and its Staff, and properly quantified by FPL, the record shows that the Commission should approve inclusion of increased uncollectible account expense in FPL's recoverable storm costs, and reject OPC witness Mr. Larkin's assertion that such costs are "difficult to directly relate to the effects of a storm." Tr. 915 (Larkin).

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

See response provided for part c.

These costs are part of the catch-up amounts of \$7.8 million discussed in section (c) above. Accordingly, FPL refers the Commission to section (c).

f. Costs that would have otherwise been charged to clauses

Regular payroll charged to the storm reserve that would have ordinarily been charged to clauses of \$2.7 million should be allowed to be recovered through the storm reserve since they are not being recovered through a cost recovery clause or through base rates. Simply stated, they are not being recovered twice from customers and, therefore, should not be disallowed under the incremental cost methodology.

Regular payroll charged to the storm reserve that would have ordinarily been charged to clauses of \$2.7 million should be allowed to be recovered through the storm reserve since they are not being recovered through a cost recovery clause or through base rates. Simply stated, even under OPC's theory they are not being recovered twice from customers and, therefore, should not be disallowed under the incremental cost methodology. OPC has not contested this point. Tr. 959 (DeRonne).

g. Costs that would have otherwise been charged to capital

* Regular payroll charged to the storm reserve that would have ordinarily been charged to capital of \$8.0 million should be allowed to be recovered through the storm reserve since they are not

being recovered through base rates. These costs should not be disallowed if the 2004 Storm Cost Recovery Method is adopted.*

Regular payroll charged to the storm reserve that would have ordinarily been charged to capital of \$8.0 million should be allowed to be recovered through the storm reserve since they are not being recovered through base rates. Normal payroll, i.e. regular payroll, has a capital component and the assumption that all regular payroll charged to storm is related to operations and maintenance work is incorrect. It includes payroll dollars for employees that under normal working conditions would charge their time, or a portion of their time, to capital projects. Therefore, these costs should not be disallowed if the 2004 Storm Cost Recovery Method is adopted. OPC has not contested this point. Tr. 959 (DeRonne).

h. Vacation Buy-Backs

FPL purchased \$1.2 million of vacation from employees who were unable to use earned vacation due to their work supporting storm restoration. Many employees worked through November to make repairs to FPL's storm-damaged infrastructure. Normal workloads will not enable employees to take missed vacation days in the future. Customers benefited from these employees performing storm restoration duties instead of taking vacation, and compensation for vacation time should be permitted if the 2004 Storm Cost Recovery Order methodology is adopted.

FPL purchased \$1.2 million of vacation from employees involved in the 2005 storm restoration activities since they were unable to use their earned vacation due to the timing and length of storm restoration efforts. Hurricane Wilma caused severe damage to FPL's service territory on October 24, 2005 and many employees worked through November to make repairs to FPL's damaged infrastructure. As such, they were unable to take all the vacation they were entitled to and normal workloads will not enable employees to take these days in the future. Thus, customers benefited from having these employees perform storm restoration duties instead of taking vacation, and compensation for the value of the vacation time should be permitted if the 2004 Storm Cost Recovery Order methodology is adopted. Tr. 1603 (Davis).

If the Commission seeks to implement an “incremental cost” approach, vacation buy-back costs are plainly incremental and were caused only by the occurrence of major late-season storms requiring storm restoration activities well into November. OPC’s witness Mr. Larkin’s claim that vacation buy-backs from employees are the result of the Company’s vacation policy and not “a direct result of storm restoration activities” (Tr. 913-14) should be rejected.

Moreover, the implementation of the buy-back policy was specifically directed to avoid an extraordinary loss of the services of trained employees during 2006 due to excessive amounts of carryover vacation. These incremental benefits to customers plainly and directly caused the \$1.2 million in vacation buyback costs – which costs were determined specifically by identifying vacation buy-backs for employees that worked on storm restoration -- which should therefore be allowed as an offset to the \$26.1 million regular payroll adjustment, if the Commission determines this adjustment is necessary. Tr. 1604 (Davis).

i. Nuclear Payroll Expected to be Recovered Through Insurance

Under the 2004 Storm Cost Recovery Method, nuclear payroll expected to be recovered through insurance of \$2.5 million should not be included in the regular payroll adjustment. This is because these amounts are already removed through the adjustment for amounts expected to be recovered through insurance.

If the amounts are additionally removed through a payroll adjustment, this would result in the amounts being subtracted twice from the total amount of 2005 storm costs to be recovered, which would be unfair and incorrect under the 2004 Storm Cost Method. Tr. 1603 (Davis). As FPL’s witness Mr. Warner explained, the \$2.5 million of nuclear employee base salaries sought to be disallowed by OPC were never even requested in this proceeding. Tr. 391 (Warner).

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

Yes. Only landscaping restoration costs necessary to comply with local land use and zoning requirements have been charged to the Reserve. Failure to comply with code requirements would result in local jurisdictions initiating code enforcement actions.

All of the landscaping costs included in FPL's 2005 storm restoration costs are necessary to return landscaping to its pre-storm condition in order to be in compliance with local development orders and/or code requirements. FPL was in compliance with those requirements before the storms, and but for the 2005 storms, those costs would not have been incurred. As such, these costs should qualify under both FPL's proposed methodology and the incremental cost approach. Failure to comply with local development orders or code requirements would result in the local jurisdictions initiating enforcement actions. Tr. 1623-24 (Davis); 1332-33 (Jaindl).

This issue relates to Staff Audit Finding No. 2, which was sponsored by Staff witness Welch. Neither the audit finding nor Ms. Welch's testimony recommends disallowance of landscaping costs; they merely identify the amount of landscaping costs that would be removed from storm restoration costs if the Commission were to determine that such costs are not recoverable. No party has asserted that landscaping costs required by local zoning ordinances should be disallowed as storm restoration costs, and no party has presented any evidence that the landscaping costs included in FPL's 2005 storm restoration costs are not required by local development orders and/or code requirements.

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

Yes. Litigation and settlement costs that are directly related to 2005 storm restoration have been charged to the Storm Reserve. But for the 2005 storms, these costs would have not been incurred. Further, FPL is legally obligated to indemnify and hold harmless foreign crews against claims which are brought as a result of their providing assistance to FPL.

Litigation costs that are directly related to storm restoration should be recoverable. Tr. 1587 (Davis). Removal of these litigation costs from storm recovery would in effect attribute them to base rates. Since these litigation costs are extraordinary in nature, it is highly unlikely they would be recognized for recovery in setting base rates because it has been the Commission's practice in setting base rates to eliminate non-recurring costs. To disallow these costs for both storm recovery purposes and in a base rate proceeding would prohibit FPL from recovering prudently incurred costs. Tr. 1589 (Davis).

FPL notes that, on further review of its 2005 property damage and personal injury costs charged to the Storm Reserve, FPL has removed \$2.2 million of these costs from recovery during March 2006. The remaining \$0.6 million of estimated 2005 property damage and personal injury costs are a direct result of storm restoration. Tr. 1615 (Davis). This adjustment is shown on Exhibit 121.

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?

Yes. FPL included contingencies in the 2005 storm cost estimate consistent with its standard project management practices. Contingencies formally recognize uncertainty concerning factors such as scope of work, material costs, contractor availability and pricing, or the length of time for completion. Any unused contingency will be reflected in the final true-up process proposed by FPL. The only remaining contingency for 2005 storm costs is \$7,478,495. No adjustments should be made.

In accordance with Section 366.8260(2)(a)2., Florida Statutes, FPL's request for recovery of storm costs included both "the known storm-recovery costs" and an "estimate [of] the costs of any storm-recovery activities that are not yet completed, or for which the costs are not yet known." Due to some uncertainty regarding the ultimate cost of repairing the 2005 storm damages, FPL's estimate of storm costs included contingency portions for amounts not yet

known. Tr. 1571 (Davis). FPL believes it is prudent to minimize the risk of having to come back to this Commission and request an increase in storm recoveries.²⁵ Tr. 1614 (Davis).

The inclusion of contingency portions of estimates is a normal practice when estimating the costs of any major project such as a construction project. FPL did the best job possible in identifying the work to be performed and in estimating the cost of performing that work. Tr. 1614-15 (Davis). Indeed, in preparing their estimates, FPL Business Units are required to use the most accurate, up-to-date information available at the time of preparing their estimates, such as known costs, bids, quotes, contracts, invoices, subject matter experts, etc. Tr. 1570-71 (Davis). Nevertheless, it was necessary that FPL's estimate of overall costs include a relatively small contingency factor until the uncertainties associated with the 2005 storm costs are resolved. Tr. 1614-15 (Davis).

The contingency portion of the estimate has changed as actual costs become known and will be eliminated when all costs are known. The original amount of contingency included in FPL's filing was \$44.5 million and the amount as of February 28, 2006 was \$26.3 million. Also in March 2006, the accrual for corporate contingencies associated with Hurricanes Dennis and Rita was eliminated and more actual costs from Hurricanes Katrina and Wilma became known, further reducing the contingency portion of estimated costs to \$7.5 million.²⁶ Tr. 1615 (Davis)

²⁵ It is important to remember that a contingency is included to quantify a risk that is more often than not asymmetrical. Cost estimates are often understated because the severity of the damage is underestimated, there is damage that has yet to be identified, or the resources required to repair the damage or their cost is underestimated. If the cost is overestimated, it is readily addressed in the final true-up process; however, the same may not be said for costs that have been underestimated. Tr. 1571 (Davis). It is clearly in the best interests of FPL and its customers to avoid significant understatements. Tr. 1572 (Davis).

²⁶ The majority of this amount, \$6.9 million, is associated with Hurricane Wilma distribution follow-up restoration work being performed by contractors. The \$7.5 million contingency represents only 0.8% of FPL's total 2005 storm cost estimate. Tr. 1406 (Williams).

Ex. 121; Tr. 1406 (Williams). The amount of contingencies FPL estimates at this time will change when actual costs become known. Therefore, FPL recommends that the adjustment for contingency amounts, along with any unused contingency for Hurricanes Katrina and Wilma, should be reflected in the final true-up process. Tr. 1615 (Davis).

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

Yes. There should be a final true-up when all work has been completed and all costs are known.

FPL witness K. Michael Davis proposed that a final true-up of 2005 storm related costs be performed when the actual costs for outstanding projects are known. Tr. 1627. In contrast, OPC's witness Ms. DeRonne asserted that FPL should establish a hard cut-off date precluding charges to the Storm Reserve for projects for which physical construction has not commenced as of December 31, 2006. Tr. 990. FPL's proposed approach should be approved, and OPC's claim rejected, for several reasons.

First, on page 22 of its 2004 Storm Cost Recovery Order, the Commission clearly stated its policy against setting an arbitrary cut-off date for completion of storm work:

As a policy, setting an arbitrary cut-off date based on the calendar year or the absence of "foreign" utilities may give a perverse incentive for utilities to rush the work and to retain foreign utilities or outside contractors in a less cost effective manner. Depending on the nature and extent of the damage caused by a hurricane, permanent repair may require less than several weeks or more than one year. Therefore, we find that a case-by-case review is a better policy."

Ms. DeRonne's proposed arbitrary cut-off that would exclude storm repair projects where work has not been initiated prior by December 31, 2006 should be rejected because it would create precisely the perverse incentive referred to in the Commission's 2004 Storm Cost Order. Ms. DeRonne admitted upon cross-examination, however, that the better approach is to perform

work when it is most economic, whether that is before or after December 31, 2006. Ms. DeRonne was asked whether, for example, FPL should take its nuclear plants off line before December 31, 2006 solely to bring repairs within the scope of her proposed cut-off date in this case. She responded that "I think the company should do them [the repairs] under the most economic means it can do so." Tr. 1039-40. Consistent with the reasoning of the Commission's 2004 Storm Cost Recovery Order, FPL's witnesses Mr. Davis and Ms. Williams pointed out that there are still projects remaining to be completed from the 2005 storm season as of March 31, 2006 that would fall past OPC's asserted December 31, 2006 cut-off date. Tr. 1627 (Davis); Exhibit 107. There are many reasons for the extended timing including when plants come down for outages, and availability of contractors and other resources. Tr. 1627 (Davis)

Accordingly, FPL recommends that a final-true-up be conducted for 2005 storm costs when final costs for the 2005 storm repair projects are known and can be compared and reconciled against the estimates. At a minimum, any cut-off date for 2005 storm charges to the Reserve should recognize the projects listed by Ms. Williams in Exhibit 107, and when the actual costs for these projects are known, any necessary adjustments to true-up these estimates should be allowed. Tr. 1627 (Davis).

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?

Yes. An estimate for the total cost of replacing other entities' poles has been appropriately charged to the Reserve. Reimbursements will result in appropriate credits to the Reserve. FPL has estimated the total amount to be billed and the portion relating to normal capital costs, and has credited the Reserve for the difference. However, FPL recommends that the actual amount be reflected in the final true-up of 2004 and 2005 storm costs.

The provisions of the joint use agreements between FPL and other companies that own poles provide that when a pole owner replaces another's pole, it is entitled to be reimbursed for

all reasonable costs and expenses that would not otherwise have been incurred if the owner had made the replacement. Preparation of this billing requires FPL to complete a survey of the actual poles that were replaced. As of March 31, 2006, FPL has not completed its survey of the poles replaced in 2005 but has estimated that the amount to be reimbursed by third parties will total \$10.6 million. As such, FPL has identified the estimated capital amount at normal cost associated with these poles to be \$4.2 million and credited the estimated difference of \$6.4 million to the 2005 storm costs. This adjustment is shown on page 1 of exhibit 121. When the survey has been completed, any difference between the estimated and actual amounts will be adjusted accordingly. The effect of any adjustment will be reflected during the true-up of 2005 storm costs. Tr. 1619-20 (Davis).

The amount to remove from the 2005 storm costs should be \$6,407,769. This amount was determined by subtracting the estimated normal cost of capital for these poles of \$4,156,615 from the total estimated amount of reimbursement of \$10,564,384. FPL utilized its standard work management system to calculate the normal cost of these poles would be and as discussed above, has made an adjustment to capital for these estimated amounts.²⁷ Tr. 1620 (Davis).

When the actual amount of normal cost of capital for all capital projects is determined, they will be recorded to plant-in-service. Therefore, when the normal cost of capital related to the actual reimbursement from third parties is determined, it will be credited to plant-in service. The effect of this adjustment will result in the elimination of the capital costs associated with these third party poles from FPL's books and records. As such, they will not be included in FPL's rate base in future rate proceedings. Tr. 1621 (Davis).

ISSUE 23: WITHDRAWN

²⁷ To the extent FPL has already made a credit to the Storm Reserve for amounts billed to other companies over the amount capitalized, Staff witness Ms. Welch agreed that it would not be appropriate to reduce FPL's storm costs by that same amount. Ex. 157, at p. 62.

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?

No.

FPL opposes OPC's proposed adjustment to remove an estimated \$245,025 in Employee Assistance Costs. FPL employees are fully committed to storm restoration and report to work immediately after a storm passes. They can do so only because the Company provides assistance for things such as roof tarps, ice, water, etc. that allow the employee to immediately leave his or her home and report to work. If the Company does not provide this assistance, the employee is going to have to take care of these issues before reporting for storm duty which could impact their ability to report to work as quickly as they otherwise would delaying the start of restoration. These costs would not have been incurred, but for the need to restore service due to outages caused by the 2005 storms as soon as possible. Therefore, under either an incremental cost approach or FPL's proposed methodology, these costs are appropriate for recovery as they are directly related to storm restoration and are not a cost that would be budgeted or reflected in base rates. Tr. 1403 (Williams), 1611-12 (Davis).

While an insurance policy might not directly cover employee assistance costs, such costs are often subsumed within the overhead costs allowed in the policy. If not, because there is an obvious customer benefit, they would still be chargeable to the Storm Reserve. Tr. 1582 (Davis).

FPL also opposes OPC's proposed adjustment to remove an estimated \$316,250 associated with Repair Costs Under Warranty. FPL has included this amount in its 2005 storm costs because the warranty claim is being contested by the manufacturer. If FPL is successful in recovering an amount under the warranty, then FPL will adjust the 2005 storm costs by this

amount. Until this has been finalized, FPL believes this amount has been appropriately included in the 2005 storm costs and should not be adjusted at this time. Tr. 1608 (Davis).

If the Commission determines that this amount should be removed from storm cost recovery, then FPL requests that specific provision be made to allow FPL to charge the Storm Reserve to the extent any of the costs are not recovered through the warranty. Tr. 1609 (Davis).

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?

The appropriate amount of 2005 storm related costs to be charged against the Storm Reserve, subject to a determination of prudence in this proceeding, is \$816,016,000 (rounded) as adjusted in the final true-up. (See issue 42).

The \$816,016,000 of 2005 storm related costs to be charged against the Reserve is shown on exhibit 20.

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

Consistent with its approach to 2004 storm costs, FPL has charged the full amount of its storm costs to the Reserve as of March 31, 2006, including an estimate for uncompleted work. When all work has been completed and final costs are known, a final true-up should be performed.

All projects and associated costs directly related to restoring FPL's facilities to their pre-storm condition should be charged to the Reserve, whether or not they are now known and regardless of when they are completed. FPL attempts to identify storm follow-up projects quickly, in order to restore storm-affected facilities to their pre-storm condition as soon as possible. FPL's performance with its 2004 storm follow-up work shows that FPL has successfully achieved this goal. Nonetheless, there are unique circumstances and good business reasons to delay the timing of restoring FPL's damaged generating unit facilities to later dates that coincide with planned overhaul schedules. There are many reasons for the extended timing,

including when plants come down for outages and the availability of contractors or other resources. Tr. 1406-07 (Williams); 1627 (Davis); 391-92 (Warner).

The establishment of an arbitrary cut-off date as OPC witness DeRonne proposes would be especially problematic and inappropriate for FPL's nuclear units. After a storm strikes, FPL's priority is to return its low-cost nuclear units back to service as safely and quickly as possible. The units can sometimes be brought back online without repairing all storm-related damage. However, the repairs are still critical to ensure the long-term reliability of plant operations. FPL endeavors to make those repairs at the earliest possible opportunity, but due to the nature of nuclear operations it may take several years before the units can be fully restored to pre-storm conditions. The high replacement power costs incurred when a nuclear unit is off-line dictate that damage assessment and repairs to certain equipment only be performed during refueling outages, which occur approximately every 18 months. Frequently, when the need for a repair is identified during one refueling outage, the repair work will have to be planned during the ensuing operating cycle and then performed in the subsequent refueling outage. Further complicating the final accounting for storm-related repairs to FPL's nuclear units is the process of working with FPL's nuclear property insurer, NEIL. This process entails identifying the damage scope and cost, waiting until the actual repair costs are known, submitting a formal claim for the repair costs, and then allowing NEIL to audit the claim. It is not feasible to complete all of these tasks prior to December 31, 2006. Tr. 391-92 (Warner).

Exhibit 107 provides a listing of projects for the 2005 storm season that are yet to be completed, their total current estimated costs, and their project start and completion dates. At a minimum, FPL should be permitted to charge the final, actual cost of these projects to the Reserve when they are ultimately completed. Because of FPL's limited opportunities even to

inspect some components of its nuclear units, it should be permitted to charge to the Reserve the cost of repairs to those units that are related to the 2005 storm season until 2008. Tr. 1627 (Davis); 391-92 (Warner).

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?

Yes. FPL's pole inspection and maintenance program was reasonable, and produced excellent results. Pole related outages during non-storm events have been negligible for over a decade, contributing only about 0.1% of all outages annually. Pole performance during the 2004 and 2005 storm seasons also shows that FPL's pole inspection and maintenance program is reasonable and has produced excellent results.

This issue is structured to address allegations concerning inspections of poles for both deterioration and overloading, and for both transmission and distribution poles. However, there is no evidence in the record supporting any allegations that FPL inadequately inspected its poles for overloading. Moreover, with the limited exception of allegations concerning FPL's Conservation-Corbett 500 kV line and Alva-Corbett 230 kV line that are specifically the subject of Issue 33 below, there is no evidence in the record concerning any allegations that FPL inadequately inspected its transmission poles. Therefore, the discussion below addresses the adequacy of FPL's program for inspecting distribution poles for deterioration.

At the outset, FPL notes that this issue relates to FPL's historical inspection and maintenance practices. It could have been raised in the 2004 Storm Cost Recovery Docket, but was not. FPL's inspection and maintenance practices did not change significantly between 2004 and 2005, and no intervenor testimony focuses on differences between those years. FPL finds it curious that historical inspection and maintenance practices that were deemed acceptable last

year and that have not changed significantly since then, are now suddenly the subject of close scrutiny.

FPL's Strong Pole Performance

Inspection of poles for deterioration is primarily, if not exclusively, an issue for wood poles. FPL has approximately 1.1 million distribution poles in its service territory, 94% of which are wood. Tr. 191 (Williams). When evaluating the success of an inspection program for such a large number of poles, the proper, valid focus must be on overall performance of the pole population. Anecdotal evidence that a particular pole or small group of poles appears to be deteriorated cannot meaningfully support a conclusion that the inspection program is inadequate, any more than anecdotal evidence that a particular pole or small group of poles is not deteriorated proves the program to be adequate. FPL's pole inspection program has produced excellent pole performance for many years under both non-hurricane and hurricane conditions. Tr. 1386 (Williams).

Exhibit 104 (Document GJW-7) shows historical non-hurricane outages related to distribution pole conditions from 1993-2005. As can be seen, these outages were negligible, averaging just 125 customer outages per year. This is a miniscule 0.14% of FPL's total yearly outages. *Id.* Clearly, FPL's poles have performed extremely well in non-hurricane conditions. By the same token, the opportunity for significant reductions in FPL's customer outages via improvements in pole performance is very limited.

The performance of FPL's distribution poles in hurricane conditions has likewise been strong. For each of the last two years, when FPL's service territory was impacted by an unprecedented seven hurricanes, the percentage of poles that had to be replaced due to these storms was less than 1% per year. In February 2006, Davies Consulting, Inc. ("Davies") prepared

an independent analysis for FPL that addressed the impact of hurricanes of varying strength on pole replacements for FPL and ten other utilities. For FPL, the Davies study used pole failure rates (*i.e.*, percentage of poles replaced) from Hurricanes Andrew (1992), Charley, Frances and Jeanne (2004), and Katrina and Wilma (2005). It compared that data to pole failure rates for the other utilities resulting from Hurricanes Hugo (1989), Floyd (1999), Isabel (2003) and Ivan (2004), as well as Katrina and Wilma. The Davies results are depicted on Exhibit 105. They show that (i) there is a strong correlation between the percentage of poles requiring replacement and the strength of the storms, and (ii) FPL's pole replacement rates have been consistently lower than those of other utilities for storms of comparable strength (FPL's pole-performance curve on Exhibit 105 is the right-hand one, indicating that for any particular hurricane category, FPL had a lower failure rate than the average for the other ten utilities). Tr. 1387 (Williams).

FPL's Comprehensive and Effective Three-Pronged Pole Inspection Program

OPC witness Byerley ignores these overwhelmingly favorable statistics about FPL's distribution pole performance and criticizes individual elements of FPL's pole inspection program as being insufficiently detailed or comprehensive. None of his criticisms are valid.

FPL's distribution pole inspection program consists of three initiatives. First, FPL has a targeted initiative of intensive pole inspections that are performed by a contractor (Osrose) in certain geographic areas with high populations of older, creosote poles. Second, FPL routinely conducts visual inspections of its feeder poles in conjunction with its Thermovision initiative (which detects "hot spots" on electrical equipment). Finally, FPL's line crews perform careful hazard assessments of poles on which they are preparing to do work. Together, these three pole inspection initiatives help ensure FPL's exemplary pole performance. Tr. 1387-88 (Williams). KEMA's Dr. Brown testified that FPL's Pole Inspection Program is appropriate, especially in view of FPL's relatively young pole population. Tr. 1286-87.

Mr. Byerley suggests that FPL should extend the Osmose initiative to the entire FPL pole population on a regular inspection cycle. His only support for this proposal is a bulletin of the Rural Utilities Service ("RUS"), but he concedes that RUS bulletins are not applicable as standards for investor-owned utilities such as FPL. Tr. 847 (Byerley). Moreover, his proposal is demonstrably unrealistic and inappropriate for FPL.

FPL endeavors to provide reliable electric service at the lowest possible cost for its customers. Each year, FPL reviews and evaluates numerous reliability initiatives before selecting the ones that deliver the best value to customers, optimizing the balance between reliability and cost. FPL has been extremely successful in applying this balance, as base rates are considerably lower than they were seven years ago, reliability has improved, and reliability results compare favorably to other utilities within the state as well as nationally. FPL's selective implementation of the Osmose initiative is consistent with this approach. The Osmose initiative provides very thorough pole inspections, at a higher cost per pole. Accordingly, FPL has limited its application to areas where there is a population of older, creosote poles that particularly warrant close inspection. For areas with newer poles, however, the higher cost per pole for an Osmose-type inspection cannot be justified. Tr. 1286-87 (Brown); 1388-89 (Williams). This is consistent with the practices of the utilities that participated in KEMA's survey of pole inspection practices, which found that none of the participants had across-the-board systematic pole inspection practices and that those with the broadest programs focused on older, vulnerable pole populations. Tr. 1286-87 (Brown).

Mr. Byerley next criticizes the pole inspections performed as part of FPL's Thermovision initiative, claiming that they are ineffective in identifying pole deterioration because they are visual and do not involve the same detailed physical contact with the pole that is part of the

Osmose initiative. This criticism is unwarranted. First of all, Mr. Byerley's suggestion that visual inspections cannot identify pole deterioration is belied by the fact that his "windshield survey" of FPL's facilities in Palm Beach County -- which constitutes his only direct information on pole deterioration in FPL's system -- was also a visual inspection. Tr. 833-34 (Byerley). Mr. Byerley clearly did not find a visual inspection inadequate for his purposes, yet criticizes FPL's reliance on the very same technique. Moreover, the individuals who conduct visual pole inspections as part of FPL's Thermovision initiative are experienced in evaluating the condition of poles. They have been involved in the Thermovision initiative for many years, and their FPL experience averages 24 years. Tr. 1389 (Williams). Lastly, Mr. Byerley incorrectly concludes that the pole inspections performed as part of FPL's Thermovision initiative must not have been effective, because they did not identify as high a percentage of deteriorated poles as the Osmose initiative. In reaching this erroneous conclusion, he ignores the differences between the two initiatives that make it much more likely for deteriorated poles to be inspected under the Osmose initiative (*i.e.*, the Thermovision initiative targets feeders that are inspected more frequently and have a high percentage of deterioration-resistant concrete and CCA poles, whereas the Osmose initiative is intentionally targeted at pole populations that are known to be older). Mr. Byerley concedes that these differences would make it more likely for the Osmose initiative to encounter deteriorated poles. Tr. 849-52.

Finally, Mr. Byerley unfairly claims that the inspections conducted by FPL's linemen through hazard assessments before they perform work on poles cannot "truly be classified as pole inspections." These inspections are indeed thorough, and they are an important adjunct to FPL's systematic inspection initiatives discussed above. Tr. 1285-86 (Brown). FPL's work practices require checks to be performed prior to climbing or working on a pole. This would

include work performed in a bucket truck, if that work might result in additional stress on the pole. The hazard assessment includes visual checks for issues like buckling at the ground line, unusual angle in respect to the ground, cracks, holes, hollow spots, shell rot, decay, knots, soil conditions, and burn marks. A hammer test from the ground level all the way around the pole up to six feet from ground is performed to check for decay pockets. Additionally, a screwdriver is used to prod the pole as near the ground level as possible to identify decay. Finally, in order to check the pole's stability, it is rocked back and forth by a pike pole or pulled with a rope. If any issues are identified, they are noted on hazard assessment forms, which are evaluated for appropriate corrective action by a joint local safety committee of FPL and bargaining unit representatives. Tr. 211-12, 1390-91 (Williams). Mr. Byerley criticized the documentation of the hazard assessments and how they are dispositioned, but admitted that he was unfamiliar with the hazard assessment forms and did not know how or by whom decisions are made to disposition them. Tr. 851-52. Perhaps this ignorance of the facts explains Mr. Byerley's otherwise mystifying conclusion that the hazard assessments are not truly inspections.

OPC's Other Unjustified Criticisms

Beyond his unfounded criticism of FPL's distribution pole inspection program, Mr. Byerley makes three other misguided assertions about FPL's distribution poles.

First, Mr. Byerley seizes on references in the KEMA report and FPL internal documents to "pole deterioration" as proof that FPL inadequately maintained its distribution poles and that some of them broke as a result. This is a complete misunderstanding of those references. As used by both KEMA and FPL, the term "pole deterioration" simply indicates that there was visible evidence of deterioration on a broken pole when it was inspected as part of FPL's post-hurricane forensics efforts. The forensics teams made simple, binary determinations of whether

or not they saw deterioration. It is expected that wooden poles will deteriorate over time, but so long as they continue to meet applicable strength requirements, there is no reason to take them out of service. The National Electrical Safety Code (“NESC”), as well as FPL’s internal standards, expressly recognize and allow for the natural fact of pole deterioration. Pole deterioration is like wear on a car tire, which is designed to wear over time. Almost all car tires show signs of wear, but that does not mean they are deemed unsafe or require replacement; only when the wear exceeds established limits does one need to replace the tire. Tr. 1391-92 (Williams).

Second, Mr. Byerley made a “windshield survey” of a small portion of FPL’s system in Palm Beach County, which he says helped him to conclude that FPL has an inadequate pole inspection and maintenance program. In fact, the “windshield survey” provided no credible basis for that conclusion. It covered far too small an area and was conducted with no sampling protocols that would allow its results to be statistically meaningful or even to provide useful qualitative insights. Moreover, Mr. Byerley ignored pole ownership, as some of his pictures are of non-FPL facilities. Tr. 831 (Byerley); 1392-93 (Williams). The only value of the “windshield survey” is as proof that poles can continue to perform effectively even when they have visible evidence of deterioration. As Mr. Byerley acknowledged, the photographs he took showing visible deterioration are of poles that withstood Hurricane Wilma, notwithstanding their “deteriorated” condition. Tr. 834 (Byerley); see also Tr. 1393 (Williams).

Finally, Mr. Byerley incorrectly concludes that some of the poles he observed may have been set at too shallow a depth, because the “birthmarks” were located 8-10’ above the ground line, rather than at or slightly above eye level. While historically it was a fairly common rule of thumb that “birthmarks” would be placed on poles at a distance from the end of the pole that

would allow them to be viewed at eye level when the pole is set, Mr. Byerley conceded that he did not know whether FPL uses this convention. Tr. 853-55. In fact, pole manufacturers today place their “birthmarks” at different locations on the pole. FPL’s distribution poles are typically set at depths of five to seven feet, depending on the length of the pole installed. That may or may not put the “birthmark” at eye level, depending on the pole manufacturer. Tr. 1393-94 (Williams).

OPC’s Invalid and Grossly Overstated Pole Replacement Cost Calculation

Based on his conclusion that FPL’s distribution pole inspection program was inadequate, Mr. Byerley proceeds to estimate the amount of FPL’s 2005 storm restoration costs that he contends resulted from breakage of deteriorated creosote poles and associated conductor damage during Hurricane Wilma. For all of the reasons just discussed, Mr. Byerley’s conclusion is utterly and irredeemably flawed. FPL’s pole performance has been exemplary in both non-hurricane and hurricane conditions, and none of Mr. Byerley’s criticisms of FPL’s pole inspection and maintenance practices can withstand scrutiny. There is absolutely no record basis for the Commission to disallow *any* of the 2005 storm restoration costs due to alleged inadequacies in FPL’s pole inspections.

Moreover, Mr. Byerley’s replacement cost calculation is necessarily premised upon the assumption that poles for which visible deterioration had been reported in fact broke because of that deterioration. As discussed above, FPL’s forensics teams recorded the presence of deterioration on a broken pole irrespective of the role, if any, that deterioration may have played in causing the pole to break. Simply put, there is no record evidence indicating that any pole failed due to deterioration, an essential element of OPC’s position that the replacement pole costs estimated by Mr. Byerley should be disallowed. To the contrary, the only record evidence is the

unsurprising fact that certain poles showed a level of deterioration, which is a natural and expected reality for any wood pole population. Tr. 1395 (Williams).

Finally, even if one accepted Mr. Byerley's insupportable conclusion that FPL's pole inspection program was inadequate and overlooked the absence of any established link between the reported presence of deterioration and pole breakage, his pole replacement calculation is based on faulty assumptions that result in a gross overstatement of the replacement costs. Mr. Byerley amended his prepared testimony at the hearing to revise his pole replacement calculation, but failed to address effectively its many flaws:

- (1) Overestimating the number of FPL distribution poles replaced by 557. Mr. Byerley's amended testimony uses the figure of 6,925 FPL-owned poles that failed and were replaced after hurricane Wilma. He took this number from a preliminary forensics team report on hurricane Wilma (Exhibit 152), but ignored an updated report (Exhibit 153) that corrected the number to 6,368 by removing broken street light poles that were erroneously included in the original total. Tr. 811, 861-66 (Byerley).
- (2) Assuming that 45% of FPL's poles that broke during hurricane Wilma were creosote, when the correct figure was 28%. Mr. Byerley's 45% came from a chart on Exhibit 153 that applies to both FPL and Bell South poles, whereas the correct 28% figure comes from a different chart on the same page that applies specifically to FPL poles. Tr. 866-69 (Byerley).
- (3) Using \$6,800 as the cost of replacing a pole in storm recovery conditions (i.e., \$1,700 normal replacement cost times a "storm recovery" multiplier of four). Mr. Byerley acknowledged on cross-examination that he has no way of knowing what FPL's actual storm recovery multiplier would be. Tr. 871. He also acknowledged that he applied that multiplier to the entire \$1,700 normal replacement cost, even though the normal replacement cost contains a substantial proportion of material costs and he has no basis for assuming that materials will cost four times as much in storm restoration conditions. Tr. 872. In fact, Mr. Byerley agreed that it would not be surprising if FPL has actually put contracts into place that allow it to acquire poles for storm restoration at or near the normal pole cost. *Id.* FPL currently estimates the replacement cost for poles in storm recovery conditions to be approximately \$2000, based on its 2005 storm restoration costs. Tr. 1396 (Williams).
- (4) Grossly overestimating the amount of conductor repair cost that is associated with broken poles. Mr. Byerley's approach is to use the 2004 relationship between total conductor replacement costs (Account 365) and total pole replacement costs (Account 364) to estimate the amount of conductor damage that would be associated with pole breakage.

This results in a gross overstatement of the associated conductor damage, because Account 365 includes the costs for *all* conductor restoration costs, whether or not they were associated with pole breakage. In contrast, FPL estimates that approximately 90% of damage to conductor during a storm results from wind, trees, and debris. Additionally, most conductor that is replaced due to pole breakage is attached to feeder poles, which are overwhelmingly newer CCA poles, rather than the creosote poles for which Mr. Byerley calculates his pole replacement costs. FPL commonly splices and reuses conductor attached to fallen poles. For all these reasons, Mr. Byerley's conductor-to-pole cost ratio of 88% is substantially overstated and a more reasonable 10% ratio should be used. Tr. 873-74 (Byerley); 1397, 1438-39 (Williams).

Combining the effects of these adjustments to Mr. Byerley's pole replacement calculation, the total cost should be approximately \$1.8 million instead of \$18.3 million.²⁸ Moreover, even this \$1.8 million figure would be inflated, because Mr. Byerley's disallowance is premised upon the notion that the "deteriorated" poles which broke in Hurricane Wilma should have been detected and replaced earlier by more aggressive inspections. If one were to follow this logic, then the cost of the earlier more aggressive inspections, and of the pre-storm detection and replacement of poles, should be netted against the amount he calculates for replacing the poles post-storm in order to arrive at the true incremental cost of not replacing the deteriorated poles before the storm. Tr. 812 (Byerley); Tr. 1397-98 (Williams).

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?

*Yes. The reasonableness of FPL's approach to managing vegetation is supported by excellent operating results, demonstrating improved performance over time. This performance has been

²⁸ During the hearing, counsel for the FRF posed a series of questions to FPL witness Williams that apparently were intended to develop a "total restoration cost per replaced pole." If FRF or other parties intend to suggest that such a statistic is meaningful as a measure of the incremental restoration cost resulting from a pole failure, they are wildly off base. As Ms. Williams explained, much of FPL's storm restoration activity relates to seemingly simple but very time consuming rework of connections and other equipment one customer at a time – what she described as "hand-to-hand combat." Tr. 1431-32. This rework is necessary (and expensive) irrespective of the number of poles that fail during a storm, which means that simply dividing broad measures of restoration cost by the total number of failed poles would drastically overstate the cost associated specifically with pole failure.

achieved despite some difficult challenges. Tree density in FPL's service territory is twice the national average. Additionally, Florida's climate and twelve-month growing season result in some of the highest tree re-growth rates in the nation. FPL's vegetation management program is an important component of FPL's overall maintenance and reliability program, which has also achieved excellent results.*

This issue is structured to address allegations concerning vegetation management for both transmission and distribution systems. However, there is no evidence in the record supporting allegations that FPL's vegetation management has been inadequate with respect to the transmission system. Therefore, the discussion below addresses the adequacy of FPL's vegetation management program for its distribution system.

As with the Issue 27, this issue could have been raised in last year's storm proceeding but was not. Please see discussion of this point in Issue 27.

FPL's Effective Vegetation Management Program

As is the case for FPL's distribution pole inspection program discussed in Issue 27 above, the large size of FPL's distribution system dictates that a proper evaluation of FPL's vegetation management program should focus on the overall results it achieves. FPL's vegetation management performance (*i.e.*, the percentage of total outages represented by vegetation-related outages) has been and remains in line with other utilities in the state as well as nationally. Most recently, vegetation-related outages have decreased: by 21% in 2004, and by another 31% in 2005. As a result, vegetation-related outages in 2005 were 45% lower than in 2003 and were 14% lower than in 1999. This performance has been achieved despite some difficult challenges. Tree density (trees per mile) in FPL's service territory is twice the national average. Additionally, Florida's climate and 12 month growing season result in some of the highest tree re-growth rates in the nation. Tr. 1398-99 (Williams).

Moreover, FPL's vegetation management program is only one component (albeit an important one) in FPL's overall maintenance and reliability program. Ultimately, it is the results of FPL's overall program that matter most to customers, as they are interested in reducing outages from whatever cause. FPL's overall maintenance and reliability program has achieved excellent results. The most relevant reliability indicator for customers is the overall SAIDI, which reflects both the average frequency and average duration of outages from all causes. FPL's overall SAIDI compares favorably within the state and ranks FPL in the top quartile nationally. Tr. 1399 (Williams).

OPC witness James Byerley offers no meaningful criticism of FPL's vegetation management program. His testimony on this issue covers only a couple of pages and makes essentially two points, neither of which is valid or supported by the evidence.

First, Mr. Byerley points to an increase in vegetation-related outages in the 1999-2003 period and suggests that this increase shows FPL's vegetation management program "may not be adequate." Tr. 815. He completely ignores the 31% reduction in FPL's vegetation-related outages in 2005. He vainly attempts to dismiss the 21% reduction in 2004 as unrepresentative because FPL followed the Commission's standard practice of excluding hurricane outages from the results. He further ignores the fact that FPL's vegetation-related outages in 2004 were below the national average and that FPL's overall reliability improved throughout the 1999-2003 period. In short, Mr. Byerley has seized upon one narrowly defined measure of reliability because it shows a brief period of declining performance, ignores all evidence to the contrary of FPL's strong and improving reliability performance, and then concludes that FPL's vegetation management program "may be inadequate." This is simply conjecture and could not legitimately support the disallowance OPC seeks. *Id.*

Mr. Byerley's second point is even weaker. He notes that FPL prepared a report in November 2005 (Exhibit 82) that reviewed some of the forensics data from the 2005 hurricane season and evaluated possible countermeasures that could be taken prospectively to harden FPL's distribution system against future storms. Among those possible countermeasures were three alternative plans for additional vegetation management on FPL's lateral lines. The report concludes that those three alternatives would cause FPL to incur more incremental costs than it would save in reduced restoration costs. Ex. 82, at pp. 26-28. From this prospective evaluation in November 2005 of the cost-effectiveness of incremental vegetation management activities, Mr. Byerley makes a stunning leap backward in time to conclude that FPL must have decided before the 2005 hurricane season not to undertake adequate vegetation management and instead preferred to repair the vegetation-related damage caused by hurricanes. This is completely unfounded speculation on Mr. Byerley's part and cannot possibly constitute evidence of FPL's prior vegetation management decisions. Moreover, as FPL witness Geisha Williams describes in her rebuttal testimony, the report on which Mr. Byerley relied was a preliminary and tentative effort, which was prepared before the effects of hurricane Wilma were known and which was abandoned in favor of KEMA's comprehensive review and FPL's Five Point "Storm Secure" Plan. Tr. 1402-03. Again, Mr. Byerley's unfounded speculation could not possibly support the disallowance OPC seeks.

OPC's Invalid and Grossly Overstated Pole Replacement Cost Calculation

Similar to Issue 27 concerning FPL's inspection of distribution poles, Mr. Byerley calculates pole replacement costs for hurricane Wilma that OPC says should be disallowed because of allegedly inadequate vegetation management. Again, OPC's proposal is fatally flawed at several levels.

First, OPC's disallowance proposal is premised on Mr. Byerley's conclusion that FPL's vegetation management program "may be inadequate." As discussed above, there is no credible support for that conclusion. In fact, the reality is just the opposite: FPL has a strong program that deals effectively with the special challenges of vegetation management in Florida and is part of an overall reliability program that delivers excellent results for FPL's customers.

Second, Mr. Byerley's proposal misunderstands FPL's use of the term "preventable" in categorizing vegetation-related pole damage. He correctly quotes the definition of "preventable" to be "standard trimming would have eliminated tree contact with distribution equipment." However, FPL often must seek permission from the owners of trees in order to trim them, and that permission is often denied. Mr. Byerley fails to recognize that damage caused by vegetation that could be trimmed using standard trimming practices is categorized as "preventable" even when it has not been trimmed because permission to do so has been refused. Clearly, it would be unfair to penalize FPL for damage caused by vegetation that it has been denied permission to trim, but that is exactly what Mr. Byerley's calculation would do. Mr. Byerley also fails to accept reality – when hurricanes strike, vegetation outages will occur, even if 100% of FPL's lines are cleared to standard. FPL's experience over the last two storm seasons confirms this reality. Tr. 1400 (Williams).

Finally, even if one accepted Mr. Byerley's insupportable conclusion that FPL's vegetation management program was inadequate and one overlooked his misunderstanding of how FPL has used the term "preventable," Mr. Byerley's calculation of pole replacement costs is again grossly overstated because of faulty assumptions. Most of those assumptions are the same as he used in his pole-inspection calculation for Issue 27, and they have the same fatal flaws that

are discussed for that issue. There is, however, one further assumption that Mr. Byerley used for his vegetation-management calculation that is even more out of touch with reality.

Mr. Byerley develops the percentage of FPL's broken poles from Hurricane Wilma that he contends were the result of "preventable" vegetation-related damage (*i.e.*, 12%) as follows. He determines from Exhibit 83 that 24% of broken poles in Hurricane Wilma were due to trees (*i.e.*, vegetation-related damage). This does not tell him, however, which of those broken poles resulted from "preventable" vegetation-related damage. To derive that information, he looks not to data on pole breakage in Hurricane Wilma, but rather to data on *conductor* breakage in hurricane *Katrina*. Tr. 815-16 (Byerley); Ex. 82, at page 11. Mr. Byerley admitted on cross-examination that he had no basis to infer that conductor breakage in Hurricane Katrina is a suitable proxy for pole breakage in Hurricane Wilma. Tr. 875.

If there were no other source of information available on "preventable" vegetation-related pole breakage in Hurricane Wilma, then perhaps Mr. Byerley could be excused for stretching so far and implausibly for a proxy. However, the opposite is the case: this precise statistic is reported in the KEMA report (Exhibit 15), on page 78. There, KEMA concludes that "there were only a few preventable tree related pole breakages (3 in total)" Mr. Byerley was aware of this statistic. He did not use it because he felt it was "unreasonable," but acknowledged on cross-examination that he had no information or statistics to support that feeling. Tr. 876. Apparently, the KEMA statistic is "unreasonable" to Mr. Byerley only because he does not like how low it is. In short, Mr. Byerley's estimate that 12% of the broken poles in Hurricane Wilma were due to "preventable" vegetation-related damage is completely unsupported and implausible.

Combining the effects of the adjustments to Mr. Byerley's "preventable" vegetation-related pole replacement cost calculation, his figure of \$10.6 million would be reduced to a

negligible amount (approximately \$10,000).²⁹ Moreover, even that figure may be high because Dr. Richard Brown of KEMA testified that further review of the forensics data has convinced him that there were really *no* FPL poles broken as a result of “preventable” vegetation-related damage during Hurricane Wilma. Tr. 323. And, of course, any calculated amount of “preventable” vegetation-related pole replacement costs would need to have netted against it the incremental cost of whatever more extensive vegetation management program Mr. Byerley has in mind. Tr. 1401-2 (Williams).

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?

This issue is essentially identical to Issue 27. FPL’s position from Issue 27 applies here equally. There is no basis for penalizing FPL under Chapter 350, as the FRF has proposed.

Other than the cut-off date, this issue is identical to Issue 27. The arguments presented in support of FPL’s position on Issue 27 apply with equal force here and are incorporated by reference.

FPL understands that Issue 30 has been included to accommodate the FRF’s position that FPL should be penalized under Chapter 350 of the Florida Statutes for the performance of its poles in the 2005 storm season and that such penalties should continue up through the date of hurricane Wilma. The FRF’s position is patently absurd regardless of the cut-off date used. Section 350.127 provides that “the commission may impose upon any regulated company that is found to have *refused to comply with or willfully violated* any lawful rule or order of the commission, or any statute administered by the commission.” (Emphasis added). As explained

²⁹ Tr. 1401 (Williams). See footnote under Issue 27 concerning FRF’s fallacious “total

in Issue 27, FPL's pole population has performed well in both non-hurricane and hurricane conditions, and FPL has a strong program for inspecting those poles. FPL has not refused to comply with or willfully violated any requirement of the Commission regarding pole performance; to the contrary, FPL is in full compliance with all such requirements. The FRF has presented absolutely no evidence to the contrary.

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?

This issue is essentially identical to Issue 28. FPL's position from Issue 28 applies here equally. There is no basis for penalizing FPL under Chapter 350, as the FRF has proposed.

Other than the cut-off date, this issue is identical to Issue 28. The arguments presented in support of FPL's position on Issue 28 apply with equal force here and are incorporated by reference.

FPL understands that Issue 31 has been included to accommodate the FRF's position that FPL should be penalized under Chapter 350 of the Florida Statutes because of alleged deficiencies in its vegetation management program leading up to the 2005 storm season and that such penalties should continue up through the date of hurricane Wilma. The FRF's position is patently absurd regardless of the cut-off date used. Section 350.127 provides that "the commission may impose upon any regulated company that is found to have *refused to comply with or willfully violated* any lawful rule or order of the commission, or any statute administered by the commission." (Emphasis added). As explained in Issue 28, FPL's vegetation management performance has been and remains in line with other utilities in the state as well as nationally. This performance has been achieved despite difficult challenges in FPL's service territory. FPL has not refused to comply with or willfully violated any requirement of the

restoration cost per replaced pole" approach to measuring the cost of a failed pole.

Commission regarding vegetation management; to the contrary, FPL is in full compliance with all such requirements. The FRF has presented absolutely no evidence to the contrary.

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?

None. FPL's actions in building, inspecting and maintaining Conservation-Corbett were reasonable based upon available information. FPL reasonably concluded that the loose and missing bolts discovered in 1998 were caused by excessive conductor vibration and that reducing the vibration eliminated the cause of the bolt loosening. From 1999 to 2003, FPL conducted several detailed inspections, which confirmed FPL's expectation that this issue had been resolved. Essentially all damage to Alva-Corbett transmission structures was the direct result of Conservation-Corbett structures collapsing.

FPL's transmission system is well designed and maintained. KEMA confirmed that FPL's transmission lines are designed in accordance with the requirements of the NESC, including extreme wind requirements. Tr. 257 (Brown); Ex. 15, at p. 45. It also found that FPL has a comprehensive maintenance program for the lines consisting of climbing inspections, visual inspections and special assessments, which are performed on regular cycles. Ex. 15, at p. 39. By designing its transmission lines to NESC extreme wind requirements and performing regular maintenance on those lines, FPL has ensured that the transmission system is extremely resilient in hurricane conditions. For example, there were only 100 transmission structure failures as a result of Hurricane Wilma, out of a total of 64,000 structures in the FPL system. This means that only about 0.16% of the transmission structures failed, which is very good performance in the face of Wilma's strong winds. Tr. 1330 (Jaindl).

The focus of this issue is on particular transmission structures within this small percentage of failed structures: 30 structures in the Conservation-Corbett 500 kV line, and six

structures in the adjacent Alva-Corbett 230kV line. While FPL is actively investigating ways to prevent recurrence of those failures, there is absolutely nothing in the record that would support a conclusion that FPL's pre-hurricane actions with respect to those lines were imprudent or otherwise would justify an adjustment to FPL's recovery of the costs associated with their repair.

Conservation-Corbett

There was a substantial amount of testimony devoted to the failure of the Conservation-Corbett transmission structures, which covered a wide range of topics. It is important to recognize, however, that at the end of the day the dispute over the reasonableness of FPL's actions really focused on a single topic: FPL's response to the discovery of loose and missing cross-brace bolts on certain of the transmission structures in 1998. Originally, the KEMA report had raised a question about the appropriateness of manually tightening the nuts on these cross-brace bolts at the time of installation, but Dr. Brown of KEMA subsequently confirmed that manual tightening is the industry standard and appropriate for this application. Tr. 265-67. OPC witness James Byerley concurred that manual tightening of the nuts is consistent with the industry standard and applicable construction guidelines. Tr. 791. Mr. Byerley suggested in his testimony that FPL should have used locknuts rather than regular nuts on the cross-brace bolts, but conceded that it is "not unusual" within the industry not to use them. Tr. 792. FPL witness Jaindl explained that since 1978 FPL has not employed locknuts on "weathering steel" transmission structures of the sort used in Conservation-Corbett, relying upon vendor recommendations and its own experience to determine that locknuts were unnecessary. She said that 98% of the 3,100 weathering steel transmission structures that FPL installed after 1978 do not have locknuts and that FPL has never had a problem with nuts loosening on any of those

structures other than at Conservation-Corbett.³⁰ The Conservation-Corbett line was built in the mid-1990's, after FPL had nearly twenty years of positive experience with building weathering steel transmission structures without locknuts. *Id.*

Thus, there was a general (if not entirely explicit) consensus at the hearing that FPL's actions in building the Conservation-Corbett transmission structures were not imprudent. No one disputed the adequacy of FPL's inspection and maintenance of those structures before the discovery of loose and missing bolts in 1998. We can now turn our attention to that discovery.

FPL became aware of the loose/missing bolt issue in early 1998 as the result of an outage investigation and follow-up inspections for an insulator failure on one of the Conservation-Corbett transmission structures. During those inspections, FPL observed excessive vibration on the conductors. FPL also noted that some of the structure bolts appeared loose and that two were missing. Tr. 1320 (Jaindl).

FPL determined that the root cause of the loose/missing bolts was the excessive conductor vibration, which in turn was caused by steady, light winds blowing over the conductors ("Aeolian vibration"). Tr. 1320, 1346, 1372 (Jaindl). The vibration caused some of the nuts on the bolt to loosen from the snug tight specifications before the weathering steel patina could "lock" them in place. The excessive conductor vibration was confirmed by field measurements in a 1998 study that FPL performed jointly with the Georgia Institute of Technology's National Electric Energy Testing Research and Application Center (NEETRAC)

³⁰ Tr. 1337-39. Ms. Jaindl also explained that the 1972 construction drawing referenced in Mr. Byerley's amended testimony was inapplicable to the Conservation-Corbett transmission structures, and that the Rural Utilities Service bulletin referenced in his amended testimony (i) does not apply to investor-owned utilities such as FPL, and (ii) in any event, its specification of locknuts is for galvanized steel and steel finishes other than the weathering steel used in the Conservation-Corbett structures. *Id.*

and Dulmison Products (the provider of the original wire-type spacer damping system for the conductors). Tr. 1320 (Jaindl).

FPL took immediate and aggressive action to address the loose/missing bolt issue. In early 1998, the bolt status was inventoried for each structure in the accessible area, and FPL immediately replaced the missing bolts. After NEETRAC had determined that there was excessive conductor vibration causing the bolts to loosen, FPL took action in late 1998 to tighten the loose bolts. FPL changed out the corona rings on the insulators and added dampers to reduce the vibration. The addition of these dampers reduced the conductor vibration to within industry standard limits. After a follow-up conductor condition analysis was complete, FPL installed additional vibration damping upgrades on the entire line in 1999. Tr. 1320-21 (Jaindl).

While FPL reasonably determined that reducing the conductor vibration to within industry-standard limits would eliminate the driving force that loosened the nuts on the cross-brace bolts, it did not rely solely on that determination to conclude that the loose/missing bolt issue was fully resolved. In addition to the regularly scheduled 10% sampling inspections, FPL increased the frequency of inspection on the Conservation-Corbett line after the repairs in 1998/1999. Follow-up helicopter inspections on the line were performed in 2001 and 2003 to ensure that there was no evidence of a continuing vibration problem, which included an inspection of the bolts. All the line insulators were Thermovisioned in 2003, and the condition of the structures was confirmed visually as part of that inspection. All these inspections were in addition to the regularly scheduled climbing inspections that were conducted on 10% of the structures in 2002 and FPL's routine ground patrols of Conservation-Corbett. Tr. 1324-25 (Jaindl). KEMA's Dr. Brown characterized this extensive series of inspections as "very aggressive and appropriate," and concluded that as a result of those inspections, he has a high

degree of confidence that there was no problem with loose or missing bolts on any of the Conservation-Corbett structures as of the last inspection in 2003. Tr. 275-79.

In other words, FPL had a reasonable hypothesis in 1998: that the reduction of conductor vibration to within industry standard levels had solved the loose/missing bolt issue. It then tested that hypothesis frequently and aggressively by inspecting the bolts to be sure that they were not still coming loose. Based on the confirmation provided by the inspections, FPL reached a logical and supportable conclusion that the loose/missing bolt issue was solved. That conclusion is unassailable from any vantage other than 20/20 hindsight.

There are three additional points about Conservation-Corbett that warrant further attention.

First, counsel for FIPUG asked about inspections of the Conservation-Corbett line following the 2004 storms season. Ms. Jandl explained that routine ground patrols were performed, but no special inspections were scheduled. This was a reasonable decision on FPL's part for two reasons. Conservation-Corbett was on the periphery of the storm-affected area in 2004 and did not experience hurricane-force winds. Therefore, there would have been no reason to expect the sort of damage that such winds can cause. Moreover, FPL would have had no reason to expect that the presence of strong winds would correlate to the conductor vibration problem it had addressed in 1998/1999. As discussed above, that problem resulted from Aeolian vibration of the conductors, which requires steady, light winds. Gusty, strong winds of the sort experienced in hurricanes and tropical storms do not cause *more* Aeolian vibration; rather, they are not conducive to generating that form of vibration at all. Tr. 1372 (Jandl).

Second, the Office of the Attorney General ("AG") observed that FPL is not sure today exactly what caused the loose/missing bolts found in the post-Wilma inspection of the

Conservation-Corbett line and suggests that therefore FPL could not reasonably have relied upon its visual inspections of the bolts from 1999 through 2003 as confirmation that the transmission structures were intact. This reasoning is a *non-sequitur*. FPL cannot possibly be held responsible for taking steps to address conditions or phenomena that it did not know existed. What FPL did know was that it had experienced bolt loosening in connection with a particular conductor vibration problem; that it solved that problem; and that it confirmed via numerous inspections that the cross-brace bolts were no longer loosening as they had before. This is all FPL can legitimately be held responsible to do; suggesting imprudence because FPL did not also anticipate unknown problems sets an impossibly high standard that could be met only with the application of 20/20 hindsight.³¹

Finally, Mr. Byerley references a 1998 internal FPL document entitled “1998 Analytical Techniques, 500 kV Structure Fastener Problem” that refers to the loosening of structure bolts as an “independent problem.” He concludes from this statement that the bolts “should have been addressed separately and effectively” from the conductor vibration problem. Tr. 795. Mr. Byerley completely misreads the 1998 study. By “independent problem,” the author of the study simply meant that the loose and missing bolts were another problem, in addition to insulator damage, both of which were caused by excessive conductor vibration. FPL knew at the time that conductor vibration, and not independent structural vibration, was the culprit because the NEETRAC measurements performed in March 1998 looked at vibration on both the conductors

³¹ The Office of the Attorney General also suggested that FPL’s visual inspections would not necessarily allow the inspectors to determine whether a nut would be able to rotate on its bolt freely. This ignores the reality of FPL’s repeated inspections throughout the period 1999-2003. If a nut were indeed loose on its bolt at the time of one inspection and there was any significant driving force to create further loosening, that nut would be either missing or backed so far off the bolt by the time of subsequent inspections that its condition would be apparent.

and structures. NEETRAC concluded from those measurements that the vibration of the conductor was excessive whereas the structural vibration was within the expected range.³²

Alva-Corbett

There is really no separate issue about the reasonableness of FPL's actions with respect to the Alva-Corbett line. It is adjacent to the Conservation-Corbett line, and some of the failed transmission structures from that line collapsed on top of it. KEMA concludes that the failure of Alva-Corbett structures likely resulted from the impact of the Conservation-Corbett structures. Ex. 15, at p. 41.

Mr. Byerley speculates that perhaps deterioration of some of the poles in the Alva-Corbett line contributed to the failure of Alva-Corbett structures, but there is no support for his speculation. In May 2005, FPL conducted a climbing inspection on the Alva-Corbett 230 kV line. Deterioration of the poles in the Alva-Corbett transmission structures would have been observed during that inspection. However, no problems were reported during the inspection on any of the six transmission poles that required replacement as a result of Hurricane Wilma. Tr. 1322 (Jaindl). Moreover, Mr. Byerley's "evidence" of deterioration in the Alva-Corbett structures is so thin as to be non-existent. He relies primarily on observations of deterioration in two poles that he found in the vicinity of Alva-Corbett. However, he has no evidence that those two poles were even part of the Alva-Corbett line at the time of Hurricane Wilma. One of the poles he observed was lying on the ground at the time he saw it, but he acknowledges that he has no way of knowing whether it was in service at the time of Hurricane Wilma. Tr. 839. His

³² Tr. 1322-23 (Jaindl). For similar reasons, FPL decided not topeen (*i.e.*, damage) the threads of cross-brace bolts in 1998. FPL reasonably understood the nuts to have loosened on the bolts due to excessive vibration, which was no longer present. In hindsight, peening the threads may have turned out to be useful, but at the time it was rightly perceived to be an unnecessary step that would have complicated future maintenance on the transmission structures because the nuts would have to be cut off rather than simply unscrewing them. Tr. 1322, 1360 (Jaindl).

second observation was of a stub of a pole adjacent to the Alva-Corbett line. FPL has confirmed that this stub does not illustrate transmission structure damage from Hurricane Wilma but rather was abandoned in place after damage from Hurricane Frances (September 2004). Tr. 1328 (Jaindl). Mr. Byerley concedes that he has no reason to dispute FPL's conclusion about the origin of this pole stub. Tr. 839-40.

In summary, FPL responded reasonably to the loose/missing bolt issue discovered on the Conservation-Corbett line in 1998. There is no basis to find FPL imprudent or otherwise justify an adjustment to FPL's recovery of the costs associated with its repair of the line after Hurricane Wilma. The Alva-Corbett line was an "innocent bystander" damaged by the collapse of the Conservation-Corbett line and hence there is likewise no basis for any adjustment to FPL's recovery of its repair costs.

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?

Yes. Section 366.8260(1)(n) expressly provides that "[s]torm-recovery costs shall include the costs to finance any deficiency or deficiencies in storm-recovery reserves until such time as storm-recovery bonds are issued...." The jurisdictional amount of un-recovered pre-tax 2005 storm-recovery costs proposed by FPL includes monthly interest at a commercial paper rate, consistent with the method approved by the Commission in the 2004 Storm Cost Recovery Order, Order No. PSC-05-0937-FOF-EI.

In accordance with Section 366.8260(1)(n), FPL should be authorized to accrue and collect interest on the amount of 2005 storm-related costs approved for recovery in this proceeding. The interest charges included in the recovery of the 2004 and 2005 storm costs were calculated by multiplying the average monthly unrecovered balance by the current estimated after-tax commercial paper rate as allowed by the 2004 Storm Cost Recovery Order, at page 34. Therefore, these charges represent the estimated interest expense associated with the debt the

Company would incur or has incurred to cover the net-of-tax storm costs. Tr. 429 (Davis).

There is no record evidence to the contrary.

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?

No. FPL is regulated on a cost-of-service basis. Such costs are a part of the costs to provide electric service and are not recovered in base rates. Accordingly, all such costs should be recovered in this proceeding. Requiring FPL to bear a portion of reasonable and prudently-incurred costs would be inconsistent with Florida regulatory law and policy and would require the Commission to unwind the 2005 Stipulation and 2005 Settlement Agreement.

It is axiomatic under Florida law and well established principles of utility regulation that regulated utilities are entitled to the opportunity to earn a "reasonable" rate of return on their investment. In the case of storm restoration costs, rates are not set and have never been set on the basis of the full value of expected future storm restoration costs. Indeed, in the 2005 Settlement Agreement, the parties agreed that zero value of expected restoration costs would be reflected in base rates and that 100% of prudently incurred storm costs would be recovered through a surcharge and/or securitization. Staff witness Joseph Jenkins' proposal to arbitrarily assign 20% of costs to FPL shareholders clearly violates the principle that prudently incurred costs are recoverable by completely ignoring the fact that such costs are not otherwise recovered through base rates. Tr. 1667-68 (Dewhurst).

The only testimony in support of the Commission ordering FPL to absorb a portion of the reasonable and prudently incurred storm restoration costs was submitted by Mr. Jenkins. Yet in his three and a half pages of written text, unsubstantiated by any exhibits or analysis and unsupported by any other evidence in the record, Mr. Jenkins fails to provide any sound basis for such an unprecedented and draconian action and, instead, makes several significant concessions, any one of which would support the outright and unequivocal rejection of his recommendation. Specifically, he agrees that for the Commission to accept his recommendation, it would have to

depart from longstanding principles of utility regulation in Florida (Tr. 1251-55; 1263) -- a departure from the same principles that also apply elsewhere in the country (Tr. 1261), and that the Commission would have to override the 2005 Settlement Agreement (Tr. 1256) unanimously approved by the Commission in Order No. PSC-05-0902-S-EI, Docket Nos. 050045-EI and 050188-EI (issued September 14, 2005). Similarly, Mr. Jenkins acknowledges that the Commission overtly encourages settlement agreements (Tr. 1277), and that the Commission has never before to his recollection overridden a base rate settlement agreement. Tr. 1274-75.

On each of these points, FPL witness Moray Dewhurst fully agrees. Tr. 1714-15. In addition, Mr. Dewhurst notes the chilling effect that such an unprecedented and unanticipated action by the Commission would have on utilities' willingness to enter into settlement agreements in the future (Tr. 1676), and on the negative cost impact to customers of all Florida utilities due to the increase in the cost to attract capital as investors' perceptions of regulatory risk in Florida are jarred, if not completely rewritten. Tr. 1671-72. As Mr. Dewhurst explained, where investors took comfort in last year's decision that resulted in the recovery of reasonable and prudently incurred storm costs, that confidence would be shattered by a Commission action that completely reversed course, not only with respect to overriding a base rate settlement for the first time in its history, but also in effectively reversing a regulatory decision issued a mere eight months ago, in September 2005. Tr. 1676.

Mr. Dewhurst further notes that Mr. Jenkins' proposal would introduce perverse incentives relative to storm restoration that would be fundamentally inconsistent with the overarching public policy interests that favor rapid restoration of electric service following the impact of a Hurricane.

In the immediate aftermath of a storm with extensive outages, customers' interests are best served by focusing on the safe and rapid restoration of power. Thus,

while cost is always important, the goal of storm restoration is *not* cost efficiency. In practice, a trade-off often exists between rapid restoration and restoration cost. For example, in general, the greater the number of outside crews brought in to assist with restoration efforts, the faster service can be restored to our customers, but the higher the unit cost. Many other practical techniques are used to speed up restoration activities that also involve incremental cost compared to normal operations. Under Mr. Jenkins' proposal, a utility's financial incentives would suggest interests that diverge significantly from those of customers. While it will never be possible to completely harmonize customer and utility interests, I believe it is poor public policy to deliberately introduce a significant financial incentive to act contrary to customers' best interests, particularly at such a critical time.

Tr. 1672-73.

In last year's review of the 2004 storm costs in Docket No. 041291-EI, the Commission addressed a similar proposal that FPL should "share" a portion of the reasonable and prudently incurred storm restoration costs. But the Commission found no ambiguity in the provisions of the 2002 Stipulation and Settlement and no other sound legal or policy rationale upon which to force a regulated utility to absorb prudently incurred storm restoration costs. Specifically, the Commission concluded in the 2004 Storm Cost Recovery Order:

. . . As noted above, paragraph 13 of the Stipulation specifically states that FPL would have the opportunity to petition this Commission for recovery of prudently incurred storm costs in excess of the amount in the Storm Reserve and amounts paid through insurance. In addition, paragraph 3 states, "Effective on the Implementation Date, FPL will no longer have an authorized Return on Equity (ROE) range for the purpose of addressing earnings levels, and the revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels." Finally, while paragraph 8 specifies that FPL may petition for a base rate increase only in the event its base rate earnings fall below a 10% ROE, the Stipulation is silent with respect to what return level FPL may be brought back to as a result of its requested rate relief. For these reasons, we believe FPL is within its right to petition for recovery of all reasonable and prudently incurred storm-related costs to maintain the return it was otherwise entitled to earn.

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

(emphasis added). In addition to the same provisions³³ that existed in the 2002 Stipulation and Settlement upon which the 2004 Storm Cost Recovery Order was predicated in part, the 2005 Settlement Agreement includes an additional provision that even more explicitly provides for the recovery of prudently incurred storm restoration costs:

FPL will be permitted to recover prudently incurred costs associated with events covered by Account No. 228.1 and replenish Account No. 228.1 to a target level through charges to customers, that are approved by the Commission, that are independent of and incremental to base rates and without the application of any form of earnings test or measure.³⁴

2005 Settlement Agreement, Ex. 130,

13. (emphasis added). The signatories to the 2005 Settlement Agreement unanimously recommended its approval to the Commission and the Commission unanimously approved the agreement.

A major tenet of Mr. Jenkins' proposal was his belief that "the utility's earnings should be affected to some degree by weather and economic variations." Tr. 1254. Yet, Mr. Jenkins readily agreed that under the 2005 Settlement Agreement, the Company's earnings are affected by weather and economic variations through the Revenue Sharing Incentive Plan in that Agreement (Tr. 1268), and further acknowledged that, under paragraph 16 of the 2005 Settlement Agreement, "the revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels." Tr. 1272-75. *see* Ex. 130, at ¶16.

³³ Similar to the 2002 Stipulation and Settlement, the 2005 Settlement Agreement likewise provides that FPL "will continue to operate without an authorized Return on Equity (ROE) range for the purpose of addressing earnings levels, and the revenue sharing mechanism herein described will be the appropriate and exclusive mechanism to address earnings levels. . . ." Ex. 130, par.16.

³⁴ Paragraph 13 of the 2002 Stipulation and Settlement provides in part that "[i]n the event there are insufficient funds in the Storm Damage Reserve and through insurance, FPL may petition the FPSC for recovery of prudently incurred costs not recovered from those sources."

Significantly, the only intervenor to actively and directly endorse and support Mr. Jenkins' proposal, instead of the 2005 Settlement Agreement, was the AG.³⁵ As a threshold matter, the AG's position on Issue 35, which it failed to reveal until the very last witness took the stand, should be deemed to be "No position" in accordance with the plain requirements of the Procedural Order issued in this docket.³⁶ The AG failed to take a position at the time of the pre-

³⁵ It was interesting to observe at the hearing that the AG was the only party to participate in the examinations of Mr. Jenkins and Mr. Dewhurst on the subject of Mr. Jenkins' recommendation. In both instances, all other Intervenor removed themselves from the counsel table during these examinations.

³⁶ Subsection V.A(4) of the Procedural Order states:

A statement of each question of fact, question of law, and policy question that the party considers at issue, along with the party's position on each issue, and, where applicable, the names of the party's witness(es) who will address each issue. Parties who wish to maintain "no position at this time" on any particular issue or issues should refer to the requirements of subsection C, below;

(emphasis in original). Subsection C, entitled "Waiver of Issues", provides:

Any issue not raised by a party either before or during the Prehearing Conference shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the Prehearing Conference shall demonstrate each of the following:

- (1) The party was unable to identify the issue because of the complexity of the matter.
- (2) Discovery or other prehearing procedures were not adequate to fully develop the issue.
- (3) Due diligence was exercised to obtain facts touching on the issue.
- (4) Information obtained subsequent to the Prehearing Conference was not previously available to enable the party to identify the issue.
- (5) Introduction of the issue would not be to the prejudice or surprise of any party.

Specific reference shall be made to the information received and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall take a position on each issue by the time of the Prehearing Conference or by such later time as may

hearing conference, failed to provide a reason to the Pre-hearing Officer to support taking no position at this time, and failed to obtain a ruling from the Pre-hearing Officer to allow the AG to continue to take “no position at this time.” Tr. 1720-24. Although the cross examination of Mr. Dewhurst by the AG on this subject was permitted at the hearing, it became clear that the AG had elected not to disclose even a summary of its true position in an effort to “surprise” FPL at hearing. Such a reason hardly constitutes the required showing of “good cause” and, in fact, is precisely contrary to the express purpose of the Procedural Order’s requirements that parties take positions by the time of the pre-hearing conference (except with leave of the Pre-hearing Officer) so as to not “prejudice other parties or confuse the proceeding.” The AG is subject to the same rules of procedure as all parties in this case and should not be rewarded for its efforts to avoid disclosure of its position. Therefore, in accordance with the clear and unambiguous terms of the Procedural Order, the AG should be deemed to have waived any right to take a position on Issue 35 in its brief.

With respect to its now apparent position, the AG attempted through cross examination to suggest that the absence of the modifier “all” or “100 percent” in front of the phrase “prudently incurred costs” or, alternatively, that the absence of the word “sharing” from the clause “any

be permitted by the Prehearing Officer. If a party is unable through diligence and good faith efforts to take a position on a matter at issue for that party, it shall explicitly state in its Prehearing Statement why it cannot take a position. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain “no position at this time” prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue, and the party’s position shall be shown as “no position” in the Prehearing Order. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement. Commission staff may take “no position at this time” or a similar position on any issue without making the showing described above.

form of earnings test or measure” should be construed by the Commission as permitting something less than full recovery of the reasonable and prudently incurred storm restoration costs. Such a reading stretches credulity beyond absurdity. To agree with such an interpretation requires one to accept, at a minimum, the postulations that: (1) in agreeing to remove the then-existing accrual from base rates, FPL was at the same time agreeing to take on the risk of having to bear some yet unspecified portion of prudently incurred storm restoration costs; (2) the absence of the word “all” is more significant than the absence of the word “some” as a potential modifier in the clause “recover prudently incurred costs”; (3) that the term “measure” itself does not comprehend the concept of “share” or “sharing”; and (4) putting aside any other legal or regulatory constraint, non-confiscatory “sharing” could even be attempted without some type of earnings test, which itself is specifically precluded under the 2005 Settlement Agreement and, indeed, was not raised during the hearing. None of these theories bears up under even modest scrutiny.

As an initial observation, the record is clear that allowing base rates to be held constant was possible in part due to shifting all storm restoration cost recovery to methods “in addition to and independent of base rates.” Further, contrary to the tortured nuances that the AG attempted to tease from the plain language of the 2005 Settlement Agreement during the hearing, it is a matter of English construction that the implied article in the clause “recover prudently incurred costs” would be “the” as in “the prudently incurred costs.” Similarly, any implied modifier of that clause would be “all” in the absence of some qualified diminution. Tr. 1751 (Dewhurst). And, as noted by Mr. Dewhurst, the term “measure” would include the concept of sharing. *Id.* 1751. Indeed, it would include any other means, mechanism or approach such as “sharing” that imposes costs and an associated reduction in earnings on the Company, given that the Reserve

(emphasis in the original.)

sharing mechanism in the 2005 Settlement Agreement was to be “the appropriate and exclusive mechanism to address earnings levels.” Ex. 130, at ¶16. Mr. Jenkins himself conceded that the impact of his recommendation would be equivalent to a disallowance of costs, albeit a disallowance of costs associated with things the Company did correctly, and that it would have a negative earnings impact on the Company. Tr. 1263-64.

The AG’s theory is equally problematic from the standpoint of fundamental regulatory law. Putting aside whether an earnings test should, or even could, be lawfully applied to storm restoration costs under any circumstances, it is at least patently clear that to propose the sharing of prudently incurred costs between shareholders and customers requires at least an *attempt* by the proponent to consider the earnings of the utility to avoid the action being declared confiscatory, *ab initio*. No such test was sponsored by anyone in the case, including Mr. Jenkins. The reason no such test was or could have been proposed is that the 2005 Settlement Agreement perpetuated the Revenue Sharing Incentive Plan from the 2002 Stipulation and Settlement, where revenue sharing --not “cost sharing”-- was agreed by all parties to be the exclusive mechanism to address earnings. Ex. 130.

But with or without the 2005 Settlement Agreement, the answer is the same. FPL is entitled to recover the prudently incurred storm restoration costs in addition to and independent of base rates. Tr. 54-55; Tr. 1667-68 (Dewhurst). The Commission has established and consistently endorsed an overall framework that acknowledges that all reasonably and prudently incurred costs associated with restoring service after tropical storms and hurricanes are necessary costs of doing business in Florida and as such are properly recoverable from customers.³⁷

³⁷ See, e.g., Order No. PSC-93-0918-FOF-EI, Docket No. 930405-EI, (issued June 17, 1993) at pp. 5-6 (authorizing self-insurance for storm losses in the absence of commercial insurance and instructing FPL, in part, that “FPL has shown no reason to believe that the Commission will require a utility to book exorbitant storm losses without recourse. ... The

In sum, the AG's position is not supported by the language of the 2005 Settlement Agreement or by longstanding regulatory principles and law in the state of Florida. Indeed, that recovery of *all* prudently incurred storm restoration costs outside of base rates is the proper construction of the agreement, and reflects the intent of the AG itself, is evident in the transcript of the proceeding at which the 2005 Settlement Agreement was unanimously presented by the parties to the Commission for its approval.

MR. LITCHFIELD: Mr. Chairman, I apologize, Mr. Kise reminded me that I had wanted to clarify one point in Subsection B. In the last sentence of that -- I'm sorry, yes, it is at the bottom of Subsection A [of paragraph 10], where it reads that parties to the stipulation are not precluded from participating in such a proceeding, nor precluded from challenging the amount of such target level, or whether recovery should be accomplished either through Section 366.8260, Florida Statutes, or through a separate surcharge.

The intent of the parties is that intervenors in that docket could debate and assert one over the other, but it is not contested that recovery would be had through one or the other, if that is clear. Or both. Yes, fair enough. Or both. It is the method, but not the fact of recovery.

August 24, 2005 Hearing Transcript, at p. 1641 (emphasis added). In the Matter of Petition for Rate Increase by Florida Power & Light Company, Docket No. 050045-EI; and 2005 Comprehensive Depreciation Study by Florida Power & Light Company, Docket No. 050188-EI.

Commission will expeditiously review any petition for deferral, amortization or recovery of prudently incurred costs in excess of the reserve"); Order No. PSC-95-1588-FOF-EI, Docket No. 951167-EI, (issued Dec. 27, 1995) at p. 3 (granting FPL's request for an increase in the Storm Reserve accrual and acknowledging that "FPL has experienced a catastrophic loss from Hurricane Andrew and that the potential for another loss of this magnitude exists. ... FPL may petition the Commission for emergency relief if FPL experiences a catastrophic loss"); Order No. PSC-98-0953-FOF-EI, Docket No. 971237-EI, (issued July 14, 1998) at p. 3 (rejecting FPL's proposed increase in the annual accrual, but acknowledging that "[i]n the event FPL experiences catastrophic losses, it is not unreasonable or unanticipated that the Reserve could reach a negative balance. ... In cases of catastrophic loss, FPL continues to be able to petition the Commission for emergency relief, as reflected in Order No. PSC-95-1588-FOF. ... [T]he costs of storm damage incurred over and above the balance in the Reserve and the costs of the use of the lines of credit would still have to be recovered from ratepayers.").

If Mr. Kise's understanding had been anything to the contrary, he would have so stated. He did not do so because, in fact, it was clearly understood and clearly expressed in the agreement that *full* recovery of prudently incurred storm costs was to be had through one or both methods of recovery.

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

The amount of reasonable and prudently incurred 2005 storm related costs that should be recovered from customers is \$816,016,000 (rounded) (provided on KMD-4) plus interest in accordance with Section 366.8260, Florida Statute (2005) in the amount of \$11,490,000 for a total of \$827,507,000, as adjusted in the final true-up. (See Issue 42).

The \$816,016,000 of reasonable and prudently incurred 2005 storm related costs is shown on Ex. 20. This is a fall out issue.

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?

FPL believes that establishing a storm damage Reserve level of approximately \$650 million is reasonable at this time.

Consistent with past Commission orders, a Reserve level should be large enough to withstand the storm damage from most but not all storm seasons.³⁸ The Company proposes a Reserve level of \$650 million to support future storm restoration activities. Tr. 64 (Dewhurst).

³⁸ See, e.g., Order No. PSC-95-0264-FOF-EI, Docket No. 930405-EI, (issued Feb. 27, 1995) at p. 2 (“Staff believes that both FPL and its customers would be better insured if the accrual amount were increased such that the Storm Fund is likely to grow which in turn would decrease dependence on special assessments to address unpredictable weather events”); Order No. PSC-95-1588-FOF-EI, Docket No. 961167-EI, (issued Dec. 27, 1995) at p. 2 (“a self-insurance program has two fundamental characteristics that are interrelated: an annual accrual amount and an emergency relief mechanism to prevent insolvency in the storm fund. The annual accrual needs to be sufficiently low so as to prevent unbounded storm fund growth and yet large enough to reduce reliance upon emergency relief mechanisms in the event of catastrophic weather events.”); Order No. PSC-98-0953-FOF-EI, Docket No. 971237-EI, (issued July 14, 1998) at pp. 4-5 (“[W]e believe ... that a reasonable level for the Reserve is \$370 million in 1997 dollars. ... In cases of catastrophic loss, FPL continues to be able to petition the Commission for

Although a Reserve of \$650 million is not necessarily what the Company would project as an adequate Reserve level going forward, weighing a number of factors including (i) an expected average annual cost for windstorm losses of approximately \$73.4 million (jurisdictional) as determined by FPL's outside expert Mr. Harris, (ii) the possibility that Florida is in the midst of a much more active hurricane period relative to average levels of activity over the much longer term, (iii) the potentially diminished availability of non-T&D property insurance, (iv) the impact of the recent severe and unprecedented storm seasons on customer bills in the near term, and (v) the opportunity to revisit this issue in future proceedings, establishing a Reserve level of approximately \$650 million is reasonable at this time. Tr. 64-65 (Dewhurst).

Based on the current value of FPL's T&D assets, a Reserve balance of \$650 million would be adequate to cover uninsured losses for several storm seasons if FPL experiences \$73.4 million in annual retail storm losses. However, based on long-term historical data, there is a greater than 1 in 6 probability that storm losses could deplete the Reserve in any of the first five years and FPL would need to return to the Commission to seek a special assessment to pay for storm restoration costs. Of course, if Florida is facing extremely active hurricane seasons for the next several years the possibility of deficits in the Reserve is much higher. Tr. 631-32 (Harris); Ex. 27.

Stephan Stewart, who testified for OPC and AARP, believes that a \$200 million Reserve is reasonable. FPL disagrees. Mr. Stewart calculates FPL's average annual storm damage for the years 1990 to 2005 as \$147.12 million. He concludes that since a \$150 million Reserve would cover the expense level of 13 of the last 16 years, it is "consistent with the Commission

emergency relief, as reflected in Order No. PSC-95-1588-FOF-EI"); Order No. PSC-02-1850-PAA-EI, Docket No. 021164-EI, (issued Dec. 27, 2002) at pp. 1-2 ("Simply using CPI to inflate

doctrine of most but not all storm seasons.” Due to the projected increase in hurricane activity over the next decade or so, he includes a \$50 million “safety margin” raising the approved Reserve to \$200 million. Mr. Stewart recommends that any Reserve Deficiencies resulting from excessive losses could be handled by a separate surcharge or an additional securitization. Tr. 1046.

Mr. Stewart misunderstands the sense in which the phrase “adequate to cover most but not the most extreme years” has been interpreted. Indeed, with Mr. Stewart’s average annual loss of \$147.1 million per year, the Storm Reserve would last for approximately one year, on average. Therefore, it would be expected to fund losses to FPL’s system for perhaps one “season,” but not “seasons” as he asserts. Tr. 1678 (Dewhurst); 634 (Harris); 1060 (Stewart). In Order No. PSC-98-0953-FOF-EI, Docket No. 971237-EI (issued July 14, 1998) the Commission agreed that the Reserve level should be large enough to absorb another “Andrew type event,” and that a “reasonable level for the Reserve is \$370 million in 1997 dollars.” The Commission recognized that even this level would not cover all realistically possible events but would afford a high degree of protection against any one bad year. Tr. 1676-77 (Dewhurst).

Simply escalating the cost of Hurricane Andrew from \$370 million in 1997 dollars would be equivalent to a Reserve level of approximately \$460 million in 2006 dollars, when adjusted for actual historical inflation. A Reserve level of \$650 million recognizes that FPL’s system has grown by 30% to 40% since 1997 and gives some recognition to the conclusion of many meteorological experts that we are in a multi-decadal cycle of more frequent and intense tropical storms and hurricanes.³⁹ Additionally, the historical target Reserve level assumed an ongoing

the target level, the Reserve target would be approximately \$416 million in 2002 dollars”).

³⁹ Mr. Stewart agrees that the \$370 million in 1997 dollars would need to be adjusted to account for inflationary factors and system growth, and he also agrees that the general consensus

annual accrual to help maintain the Reserve, but there is no such ongoing accrual under the current rate agreement. Tr. 1677 (Dewhurst). Mr. Stewart admits that he does not expect his suggested Reserve level of \$200 million would protect against another Andrew-type event. Tr. 1067 (Stewart).

Other things equal, Mr. Stewart's recommended lower Reserve level will lead to greater rate volatility. In the extreme, with no Reserve and an annual process with an annual surcharge, customers could see rates fluctuate from year to year by the equivalent of \$0 to \$8 per month on the typical 1,000 kWh bill. In addition, a smaller Reserve will, other things equal, mean more frequent regulatory proceedings, each of which carries an administrative cost and burden for all parties. Tr. 1677-78 (Dewhurst).

Contrary to Mr. Stewart's assertions, the passage of securitization legislation does not change the framework for recovery of storm restoration costs. Rather, it provides the Commission with an additional tool to use. On the positive side, securitization provides the ability to replenish the Storm Reserve more rapidly than through an annual accrual or a surcharge. However, transaction costs associated with securitization bonds are higher than those associated with a surcharge. It clearly would not be cost effective to issue bonds in small amounts on a continuing basis. Because large debt issuances tend systematically to be cheaper (per dollar issued), more frequent, smaller issuances will result in higher, not lower costs to customers over the long run.⁴⁰ If FPL is to securitize, it is best to take advantage of this

is that we are in a period where there are going to be more storms. Yet, he still recommends a Reserve level that is a fraction of what the Commission decided was reasonable in 1997 dollars. Tr. 1068-69 (Stewart).

⁴⁰ Mr. Stewart did not do any analysis of the transaction costs associated with multiple bond issuances, nor did he analyze the transaction costs or fees associated with FPL returning to the Commission regularly to recover deficits through a surcharge or other special assessment. Tr. 1069-70 (Stewart).

opportunity to replenish the Reserve to a reasonable level of \$650 million. Tr. 1678-80 (Dewhurst).

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?

FPL proposes a funded Reserve of \$650 million, and that the Reserve should be used for all of the purposes provided for in and consistent with Rule 25-6.0143, Florida Administrative Code for Account No. 228.1, Accumulated Provision for Property Insurance.

The express function of Rule 25-6.0143 is to facilitate provision of self-insurance under the direction of the Commission for losses caused by uninsured hazards, including, but not limited to, storm restoration costs not covered by insurance.⁴¹ Tr. 439-40 (Davis); Rule 25-6.0143, Florida Administrative Code; Order No. PSC-98-0953-FOF-EI, Docket No. 971237-EI, (issued July 14, 1998) at p. 6 (“We take this opportunity to make it clear that, consistent with Rule 25-6.0143, Florida Administrative Code, this Reserve and fund is also available to cover retrospective assessments incident to FPL’s property insurance for its nuclear facilities.”) OPC’s suggestion that the securitization statute, Section 366.8260, Florida Statutes, altered the permissible uses of the funds accumulated in Account No. 228.1 is undermined by the language of the statute itself. Pursuant to Section 366.8260(1)(l), the proceeds of the bonds may be used to “replenish the storm-recovery reserve to the level that existed before the storm or storms, or such other level as the commission may authorize in a financing order.” Section 366.8260(1)(p) defines “storm-recovery Reserve” as “an electric utility Storm Reserve or such other similar Reserve established by law or rule or pursuant to order of the commission.” There is no

⁴¹ According to Rule 25-6.0143(1), Account No. 228.1 (the Reserve) is available to “provide for losses through accident, fire, flood, storms, nuclear accidents and similar type hazards to the utility’s own property or property leased from others, which is not covered by insurance.”

language that indicates an intent on the part of the legislature to restrict the permissible uses of the funds held in the Reserve as defined by Rule 25-6.0143(1), Florida Administrative Code.⁴² A funded Reserve of \$650 million is and should be available for all of the purposes provided for in, and consistent with, Rule 25-6.0143 and Section 366.8260.⁴³ Tr. 464 (Davis).

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?

Yes. This statutory standard adopted by the legislature in Section 366.8260(2)(b)2.b., Florida Statutes (2005), is met by FPL's proposal, a primary benefit of which is to immediately replenish the Reserve and to "smooth out" the significant rate impact of an extreme sub-period of storm activity, making it a useful tool for recovery of existing deficits and replenishment of the Reserve.

Section 366.8260(2)(b)2.b., Florida Statutes, provides that the Commission, in a financing order, shall:

Determine that the proposed structuring, expected pricing, and financing costs of the storm recovery bonds are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers as compared with alternative methods of financing or recovering storm-recovery costs.

⁴² Indeed, to limit the uninsured hazards for which the funds in Account No. 228.1 are available would undermine the rate case Stipulation and Settlement negotiated and signed by OPC and all other parties to Docket No. 050045-EI, which provides in part that "[t]he fact that insufficient funds have been accumulated in Account No. 228.1 to cover costs associated with events covered by that Account shall not be evidence of imprudence or the basis of a disallowance." Ex. 130, ¶10. There is no limitation on the events covered by Account No. 228.1.

⁴³ The Commission has recognized that the probability of other uninsured events (such as nuclear retrospective assessments associated with FPL's insurance of its nuclear facilities) is far lower than the likelihood of uninsured losses from storms, and thus, has not required that FPL provide analyses of the appropriate Reserve balance necessary to cover such other hazards. See, e.g., Order No. 98-0953-FOF-EI, Docket No. 971237-EI (issued July 14, 1998), at p. 5.

Although intervenors questioned the proposed amount of the Reserve and certain charges to the Reserve, Mr. Dewhurst's testimony as to the mitigation of rate impacts was not challenged:

A primary benefit of securitization is the ability to immediately replenish the Reserve and to "smooth out" the rate impact of an extreme sub-period of storm activity making it a useful tool for recovery of existing deficits and replenishment of the Reserve.

In contrast to storm-recovery bonds, a surcharge is well suited for funding annual expected losses and maintaining the Reserve because it can be adjusted over time if actual storm losses are significantly higher or lower than expected over an extended period. A short-term, temporary surcharge can be a cost-effective means to collect a deficit over a short time frame, although the impact to customer bills will be greater. Further, one cannot achieve the same bill smoothing impact, as with securitization, simply by extending the surcharge. To do so would not be cost effective because deficits over a longer time frame must be financed with a balanced mix of debt and equity to maintain credit quality.

Thus, practical circumstances then existing will determine whether securitization or a more conventional short-term surcharge is preferable. In light of the significant impact of the 2004 and 2005 storm seasons and the need to quickly replenish the Reserve in preparation for potentially more active storm seasons in the coming years, the Company's recommendation is that the issuance of storm-recovery bonds is preferable at this time to conventional surcharge recovery for storm costs.

As provided in Document No. MPD-1, the monthly charge associated with the issuance of storm-recovery bonds in the Company's primary recommendation is estimated to be \$1.58 for a typical (1,000 kWh) residential bill over the life of the bonds. The Company's alternative recommendation, which provides for recovery over a three-year period in a more traditional manner, would have an initial monthly customer impact of \$6.84 for a typical (1,000 kWh) residential bill as shown in Document No. MPD-2. The impact will decline to \$5.19 for a typical (1,000 kWh) residential bill once the surcharge for the 2004 storm season has been collected. Thus, while the more traditional approach to cost recovery reflected in FPL's alternative recommendation certainly is workable, the issuance of storm-recovery bonds would avoid or significantly mitigate rate impacts to customers while at the same time more quickly positioning the Company to respond to another potentially active storm season.

Tr. 70-71. Likewise, Mr. Dewhurst indicated that the Company had considered, but rejected, three other alternatives for storm cost recovery: 1) continuation of the current Storm Restoration Surcharge to recover the 2004 storm deficit and 2005 storm restoration costs and to replenish the

Reserve; 2) keeping the current Storm Restoration Surcharge for recovery of 2004 storm costs in place, establishing a new surcharge for 2005 storm restoration costs, and utilizing securitization to replenish the Reserve; and 3) keeping the current Storm Restoration Surcharge for recovery of the 2004 storm costs in place while utilizing securitization to recover all 2005 storm restoration costs and to replenish the Reserve. For the reasons presented by Mr. Dewhurst, none of which was contested, the proposed method of financing the recovery of storm costs and the replenishment of the Reserve is preferable to these alternatives. Tr. 71-74. Initial rates under the alternative method would on average be more than four times the level of the proposed Storm Charge. By contrast, the vast majority of customers - in excess of 99% - would see some decrease in their electric bills under securitization. Tr. 773. The Commission has used rate stability as one of the criteria in assessing the rate impacts of proposed electric charges (Docket No. 980002-EG, Order No. PSC-98-0403-FOF-EG; Docket No. 900001-EI, Order No. 23906; Docket No. 010001-EI, Order No. PSC-01-1665-PAA-EI). More specifically, the Commission has previously recognized that avoiding or reducing the need for a special assessment in the case of a major storm should be a component of a storm recovery policy (Docket No. 930405-EI, Order No. PSC-95-0264-FOF-EI). Tr. 763 (Morley). FPL's proposal meets the statutory standard set forth in Section 366.8260(2)(b)2.b., Florida Statutes.

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?

FPL's primary recommendation is that the unamortized balance of 2004 storm costs be added to any amounts to be securitized, so as to enhance the rate impact "smoothing" benefit of issuing bonds.

If securitization is approved, the unamortized balance of 2004 storm costs should be included in the amount to be securitized. Tr. 55-57 (Dewhurst), 431-32 (Davis). As a result, the current 2004 storm surcharge would terminate with the implementation of the proposed Storm Charge. Tr. 768 (Morley). There is no record evidence contesting this recommendation.

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

The total amount of storm-related costs that the Company should be authorized to recover through storm-recovery financing is \$1,690.2 million, which includes the proposed \$650 million replenishment of the Reserve, 2005 jurisdictionalized unrecovered storm-recovery costs of \$826.9 million, 2004 jurisdictionalized unrecovered storm-recovery costs of \$213.3 million.

As shown in Mr. Dewhurst's testimony (Tr. 56), FPL proposes to finance the costs incurred for storm restoration with the issuance of storm-recovery bonds which would be used to finance the after-tax equivalent of the following estimated amounts:

	<u>\$ Millions</u>
2004 Jurisdictionalized Unrecovered Storm-Recovery Costs	213.3
2005 Jurisdictionalized Unrecovered Storm-Recovery Costs	826.9
Replenishment of Reserve	<u>650.0</u>
Total Storm –related Costs Subject to Storm Recovery Financing	1,690.2
Less: Income Taxes at 38.575%	<u>(652.0)</u>
After-tax Storm-related Costs Subject to Storm Recovery Financing	
Financing	<u>1,038.2</u>
Estimated Up-front Bond Issuance Costs	11.4
Rounding	<u>.4</u>
Bond Issuance Amount	<u>1,050.0</u>

Therefore, the Commission should authorize issuance of \$1,050 million in storm-recovery bonds to finance the after-tax value of \$1,690.2 million of storm-related costs subject to storm recovery financing of \$1,038.2 million plus estimated upfront bond issuance costs of approximately \$11.4 million) and the recovery of associated income taxes of \$652 million. Tr. 57 (Dewhurst). Bonds are issued for the after-tax value of costs subject to financing to recognize the tax benefit received when storm restoration costs are deducted for income tax purposes. Thus, the bond proceeds available after the payment of upfront bond issuance costs provides approximately \$1,038 million to reimburse the Company for the after-tax equivalent unrecovered storm costs estimated at \$638 million and provide approximately \$400 million to replenish the fund (the after-tax equivalent of a \$650 million Reserve). The estimated 2005 jurisdictionalized unrecovered storm-recovery costs of \$826.9 million, and estimated 2004 jurisdictionalized unrecovered storm-recovery costs of \$213.3 million are discussed at length in the testimony of Mr. Davis and Ms. Williams. *Id.*

The actual balance of unrecovered storm-recovery costs on the date the bonds are issued will be influenced by several factors including: actual versus forecast surcharge collections for the existing surcharge, actual versus projected commercial paper rates, differences resulting from the actual versus estimated bond issuance date, as well as changes in estimated 2005 storm-recovery costs. The Commission should find that any differences between the estimated and actual balances for unrecovered 2004 and 2005 storm-recovery costs will be reflected in the amount of replenishment of the Reserve. Thus, if the actual balance of unrecovered 2004 and 2005 storm-recovery costs on the date the bonds are issued is below the estimated July 31, 2006 balance, the resulting balance in the Reserve will be higher and vice versa. Tr. 60 (Dewhurst). FPL recommends that the Commission address the adjustments shown on Exhibits 119 and 121

through a final true-up process in light of remaining uncertainties relative to the 2004 and 2005 storm costs and differences between other estimates and the actual costs discussed in the testimony of Company witnesses. Tr. 1583-84, 1596 (Davis). Thus, while the amount of the Reserve may be affected through the adjustments and variances described above, the amount of the bond issuance will not. This has the practical value and meets the important goal of allowing the issuance to move forward while still providing an accounting and recovery mechanism which will ensure that only actual costs incurred will be recovered by the Company. Such an approach also is consistent with Section 366.8260(2)(a), which contemplates that a financing order may be issued based on estimated storm-recovery costs.

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?

The total amount of storm-related costs proposed for recovery through a traditional surcharge or other form of recovery is approximately \$1.7 billion, which includes the 2005 storm costs, proposed replenishment of the Reserve and the remaining balance of 2004 unrecovered storm costs. If the 2004 storm surcharge is continued, the recovery amount in this proceeding should be reduced accordingly. If FPL's primary recommendation is rejected, the Commission should authorize FPL to recover approximately \$1.5 billion through a conventional surcharge.*

Assuming the 2004 Storm Restoration Surcharge is continued and collected from customers, the total amount of storm-related costs proposed for recovery through a traditional surcharge or other form of recovery is approximately \$1.5 billion, which is the sum of the 2005 storm-recovery costs and FPL's proposed replenishment of the Reserve. Ex. 18.

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.**

In the event that the Commission decides not to approve the requested storm-cost financing, the Commission should grant FPL's alternative request, as detailed in Dr. Rosemary Morley's testimony. If the alternative request is approved, then the allocation of costs to the rate classes should be consistent with the manner in which equivalent costs were treated in the last filed cost of service study as provided by FPL in Exhibits 57 and 58.

If the Commission determines that the storm restoration costs should not be securitized and instead should be recovered through another means, a surcharge should be implemented to allow FPL to recover its reasonably and prudently incurred 2005 storm restoration costs over approximately three years and a separate surcharge should be implemented to collect \$650 million toward replenishment of the Reserve over three years (or until such time as the applicable revenue requirements have been collected) for bills rendered on and after June 15, 2006. Approval of these surcharges would result in an initial monthly charge of \$6.84 for a typical 1,000 kWh residential customer bill. This charge would decline to \$5.19 once the 2004 Storm Restoration Surcharge ends. Tr. 60-61 (Dewhurst).

The surcharges should be allocated based on the allocation of equivalent costs in the last filed cost of service study in Docket No. 050045-EI. Tr. 752-54, 760, 775-76 (Morley); Ex. 57-58, 61. FPL's proposed allocation appropriately treats each functional category of storm costs (e.g., distribution, transmission, and production). Tr. 752 (Morley). For example, the proposed storm charge allocates distribution-related storm costs in the manner in which equivalent costs were allocated in the last filed cost of service study. This is accomplished on the basis of a total distribution plant in service allocation factor which recognizes each element of distribution costs and incorporates the specific allocation methods outlined in the last filed cost of service study.

Ex. 4, at p. 000158. No party filed testimony proposing an allocation method other than that proposed by FPL.

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?

No adjustment is necessary since FPL would calculate interest on the storm costs on an after-tax commercial paper rate basis.

No adjustment is necessary, because the tax benefits associated with the transaction have been provided to customers through FPL's proposal as much as is possible. FPL's witness Mr. Davis explained that FPL has either received or will receive federal and state income tax benefits for the storm restoration costs incurred. Tr. 395.

Moreover, the Company has reduced the storm-recovery financing amount for the federal and state benefits at the statutory tax rate of 38.575% to reflect all tax benefits related to the storm recovery costs. Tr. 395 (Davis) As the Storm Charge is collected from customers, the income tax benefit will reverse and income taxes will become payable as revenues are recorded. Therefore, the amount ultimately paid by customers will include the correct amount of taxes. Tr. 395-96 (Davis).

In the event of a storm loss, FPL would charge the pre-tax jurisdictionalized storm costs to the Reserve and would withdraw cash from the fund on an after-tax basis. In addition, a proportional amount of the deferred income tax asset associated with the Reserve will be reversed and a current tax benefit for storm losses incurred will be established. This is consistent with the past treatment of such charges, as described by the Commission in Order No. PSC-98-0953-FOF-EI, Docket No. 971237-EI (issued July 14, 1998), at pp. 4-5:

FPL also has approximately \$152 million, net-of-tax, in a funded Reserve. It should be noted that the after tax amount in the fund equates to approximately

\$247 million in storm costs. This is true because the amounts contributed to the fund are not tax deductible until actual storm costs are incurred, i.e., the difference between the \$152 million and \$247 million is the tax benefit realized when FPL takes a deduction for the expenses.

Accordingly, under FPL's proposal, taxes are properly accounted for and charged to customers, and customers receive the proper benefit of applicable tax deductions.

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

Yes. Section 366.8260(1)(e)(1) defines "financing costs" to include "any income taxes resulting from the collection of storm-recovery charges in any such case whether paid, payable, or accrued.

Recovery of income taxes is a "financing cost" eligible for recovery under Section 366.8260, Florida Statutes. See Section 366.8260(1)(e)1., Florida Statutes. The Storm Bond Tax Charge, which is also a storm-recovery charge under the statute, covers the income taxes associated with the revenues collected to repay the storm-recovery bonds and will be collected and retained by the Company. Tr. 430 (Davis).

Although the Special Purpose Entity ("SPE") will be structured to be a separate bankruptcy-remote entity, it will be treated as a division of FPL for tax purposes. Therefore, FPL will be responsible for the payment of all income taxes due on the Storm Bond Repayment Charge. As such, FPL will need to collect from its customers an amount that, after payment of income taxes, is sufficient to yield an amount equal to the Storm Bond Repayment Charge. In addition, FPL will be required to collect and remit amounts sufficient to pay gross receipts taxes, sales taxes, and regulatory assessment fees as well as pay the franchise fees and revenue taxes imposed by the cities and counties in which its customers receive service.⁴⁴ Tr. 430-31 (Davis).

⁴⁴ There will be no tax remitted to the government at the time of securitization. As monies are collected from customers based on usage, FPL will retain the portion of the charge that is to

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?

Yes. Recovery of taxes is provided for in Section 366.8260, Florida Statutes, and is an integral part of recovery of storm costs.

Taxes assessed on the storm recovery charges are “financing costs” included in the “storm-recovery charge” pursuant to Section 366.8360(1)(e) and (1)(m), Florida Statutes. Pursuant to Section 366.8260(2)(b)2.e., a Commission’s financing order “shall” provide for recovery of estimated financing costs, as well as include a formula-based mechanism to “ensure the timely payment of storm-recovery bonds and financing costs and other required amounts and charges payable in connection with the storm-recovery bonds.”

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?

No. Under the servicing agreement, FPL commits to service the storm recovery property in material compliance with applicable law and regulations and using the same degree of care and diligence that it exercise with respect to the collection of its other charges.

FPL’s application and the proposed form of servicing agreement prohibits FPL from resigning as servicer unless FPL determines that it can no longer legally perform its servicing functions. Tr. 136 (Dewhurst), Ex. 35. FPL’s billing and collection functions are subject to the regulatory oversight of the Commission, including the power of the Commission under Section 366.8260(15) of the Florida Statutes to subject FPL to “such penalties or remedies as the Commission determines are necessary.” Tr. 1706 (Dewhurst).

ISSUE 49: WITHDRAWN

pay the taxes owed on the collections and the after-tax amount will be remitted to the SPE to cover the debt service. Tr. 576 (Davis). The utility’s federal income tax rate is 38.575 percent. Tr. 577 (Davis). Though FPL Group entities remit federal income taxes on a consolidated basis, federal income taxes of the utility are calculated on a stand-alone basis so that customers are insulated from any tax issues associated with non-regulated businesses. Tr. 578 (Davis).

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

To obtain the requisite bankruptcy opinions, FPL must be paid an amount that is deemed to cover its actual costs. FPL as the initial servicer should be paid its upfront costs incurred to make necessary system modifications to enable FPL to bill and collect the Storm Charges and an annualized amount equal to 0.05% of the initial principal amount of the storm-recovery bonds for the ongoing cost of servicing the bonds. This rate is at the lower end of a range of such fees that have been approved in other utility securitizations, and attempting to track actual costs likely would not be cost effective.

FPL provided a detailed estimate totaling \$350,000 of the up-front costs to make necessary system modifications to support the servicing of the storm bonds included in Exhibit 8. See Exhibit 4, at pp. 000248 and 000249. Additionally, FPL provided a detailed explanation of the differences between the collection requirements for the Storm Bond Repayment Charge and the Storm Bond Tax Charge and collections of other local, municipal, and state taxes in response to Staff's 4th Set of Interrogatories, No. 209. See Exhibit 4, at pp. 000260-000261. These costs will only be incurred as a result of the issuance of storm-recovery bonds and therefore the estimated cost of \$350,000 should be included in the amount of up-front bond issuance costs to be financed. FPL should be reimbursed from bond proceeds for actual costs incurred. The actual costs incurred will be subject to review by the Commission subsequent to the financing.

An appropriate ongoing fee for the role of servicer is 0.05% of the initial principal amount of storm-recovery bonds. This amount is at the lower end of the range of typical servicing fees for other transactions as reflected in discovery provided to staff, and may be even more conservative taking into consideration that FPL will perform at least semi-annual true-up adjustments, rather than annual true-ups. Tr. 74-75; Ex. 4 at p. 00047. FPL addressed the necessity for including a servicer set-up fee of \$350,000 in the Estimated Up-front Storm Recovery Bond Issuance Costs provided in Document MPD-3. This service set-up fee was

based on the difference between tracking, reporting and remitting payments for franchise fees and local and municipal taxes identified in response to Staff's 4th Set of Interrogatories, Nos. 198 and 209. Ex. 4 at p. 248-49 and 260-61. The recovery of costs in base rates for the tracking, reporting and remitting of existing payments to taxing authorities for franchise fees and local and municipal taxes would not address the additional costs necessary to enable FPL's existing CIS-II computer system to support the servicing of the storm bonds. Ex. 4, at p. 260-61.

To obtain the requisite bankruptcy opinions to effectuate the securitization, FPL as servicer must be paid an amount that is deemed to cover its actual costs of performing these functions during the term of the financing. Tr. 674 (Olson). Instituting a system capable of tracking the actual costs of servicing for purposes of permitting a reconciliation of incremental amounts in excess of actual costs incurred simply would not be a cost-effective endeavor, particularly given the conservative nature of FPL's estimate. Ex. 4 at p. 00047. There is no record evidence that proposes a system or means to track actual incremental costs, or that supports such an action as cost effective. OPC asked several questions in discovery on this topic, but filed no testimony supporting its position. This is an instance in which reason and reality should govern theory and not the converse.

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

To obtain the requisite bankruptcy opinions, FPL must be paid an amount that is deemed to cover its actual costs. FPL should recover the up-front costs to bill and collect the Storm Charges and annual fees paid by the SPE under the servicing agreement. Separate tracking and identification of such costs is not likely to be cost effective; however, if FPL is required to do so, any excesses or deficiencies should be credited to or withdrawn from the Reserve.

FPL incorporates by reference the discussion under Issue 50 above. If the Commission determines that FPL should institute some means of separately identifying and tracking actual annual costs of the servicer functions, then any excess servicing fees relative to costs incurred

should be credited to the Reserve and any shortfalls in servicing fees collected relative to costs incurred should be withdrawn from the Reserve, where costs incurred include the cost to separately identify, track, and report actual costs.

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

To obtain the requisite bankruptcy opinions, FPL must be paid an amount that is deemed to cover its actual costs. FPL as Administrator should be paid the actual costs incurred to set up the SPE from bond proceeds and an annual fee of \$125,000 plus expenses to perform the administrative functions necessary to maintain the SPE. This amount is comparable to the administration fees paid in similar transactions. Attempting to track actual costs likely would not be cost effective.

FPL estimates the up-front costs to establish and set up the SPE will be approximately \$15,000 as included in Ex. 8. These costs will only be incurred as a result of the issuance of storm-recovery bonds and therefore the estimated cost of \$15,000 should be included in the amount of up-front bond issuance costs to be financed. FPL should be reimbursed from bond proceeds for actual costs incurred. The actual costs incurred will be subject to review by the Commission subsequent to the financing. An appropriate up-front and ongoing fee for the role of administrator is \$125,000. FPL provided materials in discovery in support of its reasonable estimate, taking the average of fees from similar sized transactions that have already occurred, as reflected on companies' annual forms 10-K. Ex. 4 at p. 391. Instituting a system capable of tracking the actual costs of administration of the SPE for purposes of permitting a reconciliation of incremental amounts in excess of actual costs incurred simply would not be a cost-effective endeavor, particularly given the conservative nature of FPL's estimate. There is no record evidence that proposes a system or means to track actual incremental costs, or that supports such an action as cost effective. OPC asked several questions in discovery on this topic, but filed no

testimony supporting its position. This is an instance in which reason and reality should govern theory and not the converse.

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

To obtain the requisite bankruptcy opinions, FPL must be paid an amount that is deemed to cover its actual costs. FPL should recover up-front costs incurred to establish the SPE and the annual fees paid by the SPE under the administration agreement. Separate tracking and identification for these expenses is not likely to be cost effective. If FPL is required to separately identify and track actual costs, any excesses or deficiencies should be credited to or withdrawn from the Reserve.

FPL incorporates by reference the discussion under Issue 52 above. If the Commission determines that FPL should institute some means of separately identifying and tracking actual costs of the administration functions, then any excess administration fees relative to costs incurred should be credited to the Reserve and any shortfalls in administration fees collected relative to costs incurred should be withdrawn from the Reserve, where costs incurred include the cost to separately identify, track, and report actual costs.

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?

Upon repayment in full of the Storm Bonds and all related financing costs, any remaining amounts held by the SPE (exclusive of the amounts in the capital subaccount, representing the equity contribution, and any interest earnings thereon) should be remitted to FPL and added to the Reserve if the amount is insignificant and the process of applying a credit to customer rates is not cost effective due to customer billing program changes.

Any remaining amounts following repayment of the Storm Bonds and any related financing costs will be remitted to FPL and added to the Reserve, or in the alternative, applied as a credit to customer rates if it is cost effective to do so. Tr. 459 (Davis). In the event more than \$10 million remains in the Collection Account after all storm recovery bonds have been retired,

FPL would apply that amount as a credit to customer bills allocated in the same manner as the allocation of the Storm Charge. If less than \$10 million remains in the Collection Account, FPL would credit any remaining amount to the Reserve. There is no record evidence to the contrary.

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

In accordance with Section 366.8260(2)(b)5., Florida Statutes, within 120 days after the bond issuance, FPL shall file supporting information on the actual upfront bond issuance costs. The Commission shall review such costs to determine compliance with Section 366.8260(2)(b)5., Florida Statutes; however, if FPL has selected the lowest cost qualified provider for bond issuance services as a result of competitive solicitation, FPL should be deemed to have satisfied the statutory standard.

Upfront bond issuance costs, which will be financed from the proceeds of the storm-recovery bonds, include the fees and expenses to obtain the financing order, as well as the fees and expenses associated with the structuring, marketing and issuance of each series of storm-recovery bonds, including counsel fees, structural advisory fee, underwriting fees and original issue discount, rating agency and trustee fees (including trustee's counsel), accounting and auditing fees, printing and marketing expenses, stock exchange listing fees and compliance fees, filing fees, and the statutorily authorized costs of any financial advisor and counsel retained by the Commission.⁴⁵ Upfront bond issuance costs include reimbursement to the Company for amounts advanced for payment of such costs. Tr. 76-77 (Dewhurst).

The Company reviewed several stranded cost recovery securitization filings made by other utilities and developed an estimate of upfront bond issuance costs with the assistance of our financial advisor. The Company estimates the upfront bond issuance costs associated with its

⁴⁵ Interest rates on the bonds are not issuance costs under Section 366.8260, Florida Statutes. Tr. 132 (Dewhurst); Section 366.8260(2)(b)5., Florida Statutes.

recommended \$1,050 million in storm-recovery bonds to be approximately \$11.4 million.⁴⁶ Tr. 77, Ex. 8 (Dewhurst); Tr. 676-77 (Olson).

The proceeds of the storm-recovery bond issuance will be used to pay (or reimburse the Company for) the actual upfront bond issuance costs incurred. If the actual upfront bond issuance costs are below the \$11.4 million estimated in the financing order, then the difference will be added to the Reserve and vice versa. Tr. 78 (Dewhurst).

Not later than 120 days following issuance, the Company will file with the Commission a reconciliation of actual upfront bond issuance costs with estimated amounts provided for in the storm-recovery bond issuance. The Commission shall review such costs to determine compliance with Section 366.8260(2)(b)5., Florida Statutes, and may require the Company to make a contribution to the Reserve in accordance with that section; however, if FPL has selected the lowest cost qualified provider for bond issuance services as a result of competitive solicitation, FPL should be deemed to have satisfied the statutory standard. Actual upfront costs should also satisfy the statutory standard if they are substantiated by documentation and fall within the estimates submitted to Staff as part of the Preliminary Bond Structuring Information as described in FPL's proposed financing order. Tr. 78 (Dewhurst).

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

FPL's testimony and exhibits provide support for the conclusion that FPL's estimated ongoing financing costs will be reasonable, and that they are consistent with similar rate reduction bond transactions.

⁴⁶ These numbers are subject to change, as the costs are dependent on the timing of issuance, market conditions at the time of issuance, the outcome of competitive pricing solicitations for certain fees and other events outside the control of the Company, such as possible litigation, possible review by the SEC and rating agency requirements. Tr. 77 (Dewhurst).

In addition to debt service on the storm-recovery bonds (and any swap or other hedging costs), there will be expenses that will be incurred throughout the life of the Bonds in order to support the ongoing operation of the SPE. These ongoing costs are estimated at \$850,000 annually, as set forth in Exhibit 8, and include servicing fees, legal and accounting costs, trustee fees, rating agency fees, administrative costs, the costs of funding any reserves (such as replenishment of the capital account) and miscellaneous other fees associated with the servicing of the storm-recovery Bonds. The SPE will also have at least one independent director or manager to oversee its operation, and they will receive a fee for their services and will be entitled to indemnification. Tr. 78-79 (Dewhurst).

Certain of these ongoing costs, such as the administration fees and the amount of the servicing fee for FPL (as the initial servicer) may be determinable, either by reference to an established dollar amount or a percentage, on or before the issuance of any series of storm-recovery bonds. Tr. 79 (Dewhurst). For example, as long as FPL is the servicer, the servicing fee will be an annualized amount equal to 0.05% of the initial principal amount of the storm-recovery bonds. This is the amount most commonly specified for the servicing fee in rate reduction bond transactions. Tr. 674 (Olson). Other ongoing costs will vary over the term of the storm-recovery bonds. Because ongoing costs are recovered through the Storm Bond Repayment Charge, disparities will be resolved periodically through the true-up mechanism. Tr. 79 (Dewhurst).

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?

Yes, for the reasons explained with respect to Issue 56 above.

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?

While the standard set in Section 366.8260(2)(b)5 does not apply to ongoing costs, FPL's testimony and exhibits provide support for the conclusion that FPL's estimated ongoing financing costs will be reasonable, and that they are consistent with similar rate reduction bond transactions.

Section 366.8260(2)(b)5., Florida Statutes, by its terms applies only to issuance costs and not ongoing costs. While there is no statutory standard that applies to ongoing costs, FPL's testimony and exhibits provide support for the conclusion that FPL's estimated ongoing financing costs are reasonable. Tr. 78-79, Ex. 8 (Dewhurst), 674-76 (Olson). Adjustments made in the true-up process must ensure the Storm Bond Repayment Charge is adequate to recover, among other things, the costs of the servicer for the storm recovery bonds and the ongoing costs of administering the SPE and servicing the storm recovery bonds including, without limitation, trustee fees, expenses and indemnities and rating agency expenses. Tr. 457 (Davis).

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

Normally an assessment of whether bonds should be sold through a competitive bidding process or a negotiated sale would be made near the time of issuance based on factors such as issue size, complexity of issue, and current market conditions. Given the size of this offering, the risk premium that underwriters would require in a competitive bidding process would likely be greater than the underwriting fee in a negotiated sale. Therefore, a negotiated sale likely is preferable under the circumstances.

Mr. Olson discussed the price discovery process of negotiated sales in some detail. Tr. 649-50. Both the Company's proposal and the approach advocated by Saber Partners on behalf of Staff contemplate that the bonds will be issued through a negotiated sale. Mr. Noel suggests that a negotiated sale will be the preferable path to take in connection with the storm-recovery bonds, concluding that "costs to ratepayers likely would be higher with a competitive offering." Tr. 1117-18 (Noel). Although it is not now, nor will it ever be, possible to know with certainty

which method will produce a lower cost financing, the Company reasonably believes that a negotiated sale is likely preferable under the circumstances. Tr. 1902-04 (Dewhurst). However, the Company has indicated that it is amenable to pursuing a competitive sale. Tr. 56 (Dewhurst). To that end, the public auction process and arm of State government that typically sells government bonds could be used if that is the direction the Commission would prefer to take. In any event, the Commission should confirm in the financing order that the Company should pursue a negotiated sale. If the Commission or its financial advisor are of a contrary view, the Commission should so state in its financing order.

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?

No additional terms, conditions or representations are necessary. The utility asset-backed bond market is mature and highly liquid, and trading spreads are extremely tight. Issuing a financing order in substantially the form submitted by FPL will enable an efficient, low cost transaction. If the Commission wishes particular statements regarding the quality of the securities to be included in the offering documents, such statements should be included in the financing order as findings of fact or conclusions of law.

No additional terms, conditions or representations are necessary. The utility asset-backed bond market is mature and highly liquid, and trading spreads are extremely tight. Tr. 1475-76 (Olson). Issuing a financing order in substantially the form submitted by FPL will enable an efficient, low cost transaction. If the Commission wishes particular statements regarding the quality of the securities to be included in the offering documents, such statements should be included in the financing order as findings of fact or conclusions of law. Tr. 1710 (Dewhurst). Including an absolute lowest cost standard is not a meaningful addition to the securitization process and, indeed, was considered and rejected by the legislature.

Saber Partners advocates that the Commission employ what they call “best practices” in the securitization process. These “practices” may reflect Saber Partners’ experience in Texas;

but they do not necessarily or uniformly reflect “best practices” in the management of securitization transactions. Other jurisdictions, such as California, have determined that customers can be protected through an active commission oversight procedure, but one that does not exercise its authority through a third-party financial advisor. Tr. 1479, 1508-11 (Olson). Saber Partners has a strong financial interest in convincing this Commission to allow Saber Partners to oversee the securitization process in ways that would give it effective control of the issuance, without corresponding legal or financial accountability. To that end, Saber Partners’ witnesses have alleged that the Company’s proposal seeks to exclude Commission involvement. Nothing could be further from the truth. FPL welcomes and encourages the direct involvement of Commissioners in overseeing the securitization process. Tr. 1664 (Dewhurst). As Mr. Dewhurst explains, the Commission has a decision to make as to the nature of the involvement it wishes to have in the issuance of the securities. Tr. 125. FPL will work cooperatively within whatever framework the Commission wishes to institute. However, the Commission should recognize that FPL, and not Saber Partners, has ultimate legal responsibility for the offering and marketing documents and therefore should allow FPL to make the final call on precisely what it can or should say in those documents relative to the issuance. Tr. 1701-02 (Olson); Tr. 1500-01 (Dewhurst).

If the Commission believes it appropriate to include certain representations as to the risk or quality of the securities to be made in the offering documents, e.g., that the state’s obligations under the state pledge and true-up mechanism, and as a so called “payor of last resort,” constitute an effective state “guarantee” of the securities, or that any “credit risk” associated with these securities has been effectively eliminated, then the Commission should make those findings of fact and conclusions of law in the financing order issued in this docket and the Company will

recite those findings in the relevant sections of the offering documents describing the Commission's Actions. Tr. 1710 (Dewhurst). The Commission, however, should not expect the Company to adopt such representations as its own in the offering documents for which FPL has legal responsibility, unless FPL is confident that such statements do not result in incremental legal liability. A review of the many financing orders of which the Commission agreed to take administrative notice (Tr. 8) reveals that only a few orders, specifically those cited by Mr. Fichera in his direct testimony, include any such findings, and even fewer orders contain all such provisions. These orders were issued only in jurisdictions in which Saber Partners served as the financial advisor.

If the Commission decides to take an active role in overseeing the bond issuance process, the Commission should maintain its own decision making authority, and not leave that authority to be exercised through others. To that end, FPL has suggested a process in response to new Sub-Issue 74 (b).

Saber Partners advocates the inclusion of a "lowest cost" standard in the financing order. Saber Partners states that inclusion of the standard is: (1) a necessary addition to ensure that the lowest cost financing is obtained; and (2) permissible, even if not required, under Section 366.8260. Neither of these contentions is accurate or supported by the record in this proceeding.

FPL does not dispute low cost as a desirable objective, but does not agree that it is a necessary or permissible standard to apply to the proposed securitization. Tr. 1684 (Dewhurst). The standard proposed by Saber Partners is an absolute test (the term lowest by definition means that it is not possible to have a lower), but it is not verifiable – that is, given the practical circumstances of securities issuance, it will be impossible to know with absolute assurance that the *lowest* possible cost has been achieved. *Id.* The Company certainly can attest as to the steps

that were taken in an effort to achieve lowest cost, but no one can ever be 100 percent satisfied that, in fact, lowest cost was obtained. Tr. 1683-85 (Dewhurst); Tr. 1488 (Olson). Indeed, even Mr. Fichera for Saber Partners could only indicate that “you either believe it [that you obtained lowest cost], or you don’t believe it,” but could not say how one could be 100 percent certain. Ex. 160, at p. 73 (Fichera deposition).

In addition, as Mr. Dewhurst explained, an absolute lowest cost standard, fails to recognize that lowest cost, while the most important single objective in the process, is not the only one. Further, it fails to recognize that mechanical application of a lowest cost standard could result in inappropriate transfer of economic risk to FPL. Tr. 1684-89 (Dewhurst). Mr. Dewhurst’s testimony on these points was uncontroverted. Further, as Mr. Olson testified, a lowest cost standard does not provide any greater assurance to the Commission as to the relative merits of a transaction and, in fact, could lead to less desirable results. Tr. 1488-91 (Olson).

Saber Partners simply points to the financing orders in Texas as models of their “best practices” in general, and of the lowest cost standard in particular. But it is significant that the Texas legislation’s lowest cost standard is not the standard adopted by the Florida legislature. As evidenced by Exhibit 134, the Florida legislature chose not to adopt an inherently unverifiable standard, expressly considered and rejected language almost identical to the Texas statute during the course of the legislative process. As can be seen on Exhibit 133⁴⁷ section 2(b)2.c. of this version of the bill provided that the Commission in a financing order was to “[e]nsure that the marketing, structuring, pricing, and financing costs of the storm recovery bonds will result in the lowest cost of the funds and the lowest storm recovery charges that are consistent with market conditions and the terms of the financing order.” This language is very similar to the language in

⁴⁷ Committee Substitute 1 for House Bill 303, p. 11 of 32, from the Florida Legislature website www.leg.state.fl.us.

the Texas statute referenced by Ms. Klein in her testimony. Tr. 1231. In the next version of the legislation, however, shown in Exhibit 134⁴⁸ the section including this "lowest cost" standard is gone. The "lowest cost" standard is also not present in Senate Bill 1366 (a companion to House Bill 303), which ultimately passed the House and Senate and was signed by the Governor. Senate Bill 1366 is codified at Section 366.8260, Florida Statutes. Instead, the legislature elected to impose a more objective standard, requiring the Commission is to "[d]etermine that the proposed structuring, expected pricing, and financing costs of the storm-recovery bonds are reasonably expected to result in lower overall costs or would avoid or significantly mitigate rate impacts to customers"

Saber Partners asserts that even though the statute authorizing securitization of storm-recovery costs does not have an expressly stated lowest-cost requirement, it can be applied because "the Florida statute specifically authorizes the Commission to specify the degree of flexibility afforded to utilities in establishing the terms and conditions of storm-recovery bonds and to add whatever conditions it considers appropriate. It also authorizes the Commission to employ an advisor and counsel to assist in the performance of its responsibilities." Tr. 1235 (Klein).

As addressed above, the legislative history reflects that the Florida Legislature expressly considered and rejected a lowest cost standard. Thus it should not be applied through some other construct or interpretation of another subsection of the legislation. Rather, the requirement that the Commission specify the degree of flexibility afforded to utilities in establishing the terms and conditions of storm-recovery bonds relates to establishing parameters in the financing order for the utility to move forward with the issuance. This includes such things as maximum maturities,

⁴⁸ Committee Substitute 2 for House Bill 303, p. 10 of 31.

amortization schedule, payment dates, redemption provisions, and the use of swaps or other derivative. This provision was clearly not intended to give the Commission authority to apply a different and inconsistent standard to the financing than the one set forth in Section 366.8260(2)(b)2.b. (reasonably expected to result in lower overall costs or avoid or significantly mitigate rate impacts).

Even putting aside the fact that the legislation declined to adopt the lowest-cost standard advocated by Saber Partners' witnesses, Section 366.8260(2)(b)2.j. stating that the Commission may "[i]nclude any other conditions that the commission considers appropriate," cannot fairly be construed to encompass application of a lowest cost standard given that the same subsection also states that such conditions may "not otherwise [be] inconsistent with this section." (emphasis added). The lowest cost standard Saber Partners proposes is clearly inconsistent with the standard expressed in Section 366.8260(2)(b)2.b. -- reasonably expected to result in lower overall costs or avoid or significantly mitigate rate impacts. Florida's statutory standard is a forward-looking standard, whereas the lowest cost standard suggested by Saber Partners is one that cannot practicably be determined in advance of the financing -- or ever.

Equally unpersuasive is Saber Partners' suggestion that the ability of the Commission to employ an advisor or counsel to assist in the performance of its responsibilities somehow authorizes the Commission to apply a lowest cost standard. Tr. 1235 (Klein). But clearly the Commission's decision to engage (or not to engage) financial advisors and legal counsel pursuant to the legislation can have no bearing on the legislative standards to be applied in this, or any matter before the Commission.

Moreover, Saber Partners neglects to note that the scope of the duties of the financial advisor are explicitly prescribed by the legislation. Specifically, according to the flush left

language after Section 366.8260(2)(b)2.j., "[i]n performing the responsibilities of this subparagraph and subparagraph 5., the commission may engage outside consultants or counsel." (emphasis added). In reviewing the responsibilities described in the referenced subparagraphs, it is clear that the Commission may engage outside consultants or counsel in performing its responsibilities related to issuance of a financing order and review of the upfront bond issuance costs, and that the costs of such counsel and consultants may be paid from the bond proceeds. But the legislation does not authorize the use of counsel and consultants after issuance of the financing order, to be paid from bond proceeds. Indeed it would be a perverse result if consultants and counsel could be engaged to assist the Commission in recommending and developing a financing order that purports to establish a post-financing order and issuance process in which the same consultant and counsel are to have significant roles as key participants, or even co-equal decision makers, and to be paid for such roles from the bond proceeds. The legislature would not have sanctioned such a result. For these same reasons, it cannot fairly be maintained that the Florida storm cost recovery legislation contemplates that the Commission can or should delegate, either directly or indirectly, its decision-making authority to a financial advisor to oversee or veto any aspect of the issuance process. Otherwise, the legislation would have authorized the use of counsel and consultants even after the issuance of the financing order, to be paid for from the bond proceeds.

There is no reason for the Commission to attempt to apply an unverifiable standard – particularly one that obviously was considered during the legislative process but not included in the final legislation. Thus, the Commission is not required by statute to conclude, and would never know regardless of any certification required or provided, whether in fact the financing had achieved the absolute lowest cost. Rather, the Commission will be able to verify, whether

through its own active involvement or through conducting due diligence on the Company's actions, that all reasonable steps will have been taken that can reasonably be calculated to lead to a low cost, efficient transaction. That is all that can practicably be achieved, and all that should be required. Moreover, it can and will provide more than sufficient confidence in the process and the results.

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

Documents submitted with the Petition include a Storm-Recovery Property Sale Agreement, Administration Agreement, and Storm-Recovery Property Servicing Agreement, Indentures, and Limited Liability Company Agreement. The substance of the agreements should be approved in connection the financing order, subject to changes as part of the Commission Pre-Issuance Review Process. The agreements themselves require Commission approval of amendments. Forms of legal opinions should be delivered for review as requested by the Commission, but should not be subject to Commission approval.

Most of the transaction documents have been on file with and subject to review by the Staff's financial advisor since January 13, 2006. See Ex. 33-39. Specifically, FPL submitted in connection with its Petition a form of each of the Storm-Recovery Property Sale Agreement, the Administration Agreement, and the Storm-Recovery Property Servicing Agreement, which set out in substantial detail certain terms and conditions relating to the transaction structure, including the proposed sale of the bondable storm-recovery property to the SPE, the administration of the SPE, and the servicing of the Storm Bond Repayment Charges and the storm-recovery bonds. Ex. 34-36. FPL also submitted a form of the Indenture between the SPE and the indenture trustee, which sets forth the security and terms for the bonds, and a form of the Limited Liability Company Agreement with FPL as the sole member, which constitutes the organizing document of the SPE. Ex. 33, 37. FPL also submitted with its testimony and petition a summary of the financing documents, as well as a form of Master Definitions. Ex. 38, 39. The

substance of the form of each of the agreements should be approved in connection with issuance of the financing order, which agreements would be executed substantially in the forms submitted to the Commission, subject to changes as part of the Staff Pre-Issuance Review Process set forth in FPL's form of financing order attached as Exhibit B to FPL's petition.

It is not clear that Commission approval on the legal opinions is necessary or advisable. First, FPL has already submitted the form of its tax opinion in discovery. Second, the remaining opinions are intended to satisfy rating agency and investor requirements, and will be in substantially the same forms provided in other transactions. However, FPL has no objection to providing copies for Commission review and comment and, upon request, will submit forms of any legal opinions to be delivered in connection with the transaction.

Despite having had the above-referenced documents for more than two and a half months at the time they filed testimony in this matter, the Saber Partners' witnesses provided no comments on the specific terms of the documents, but rather furnished only the most general of platitudes relative to ensuring adequate customer protections without specific comment on any particular document. Tr. 1190-92 (Fichera). To underscore the lack of familiarity Saber Partners has with the actual documents submitted, note that despite Mr. Fichera's contention that the Commission should have the right to block any amendments (Tr. 1191), the agreements themselves provide that subsequent amendments require Commission approval. *See* Ex. 33, at 52-53; 34, at 17-18; 35, at 23-24; and 36, at 6. Thus, FPL has always contemplated the Commission would have such rights and, further, that all such documents and opinions would be subject to such additions, deletions, and modifications as may be necessary to reflect the pricing, structure, and similar terms of the issuance of the Bonds and such other final terms as may be reasonably be left to negotiation prior to the proposed date for the launch of the sale of a series of

bonds, including such final terms as may be required by the rating agencies, recent SEC reporting requirements and clerical changes. Tr. 683, 1493 (Olson); Tr. 1703 (Dewhurst). There is no record evidence to support a delay in approving the forms of the agreements.

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

Yes. FPL believes that the proposed Staff Pre-Issuance Review process will enable the Commission, through its Staff, to ensure that any issuance of bonds pursuant to the financing order is in compliance with that Order. If the Commission wishes to take a more active role in the pre-issuance process, it should adopt a procedure consistent with FPL's proposal submitted in response to new sub-issue (b) under Issue 74.

FPL's proposed process in its initial filing provides full scope for the Commission to assure itself that each step of the structuring and marketing process is reasonably designed to produce an appropriate result, and that the issuance of storm-recovery bonds is consistent with the terms of the financing order. Mr. Fichera's contention that the FPL's proposal "seems designed to limit the ability of the Commission's staff and financial advisor to participate actively and in advance in all aspects of structuring, marketing and pricing storm recovery bonds" (Tr. 1193) is not well founded. Mr. Fichera is not precise in articulating his contention, choosing instead to merely call for a more active role for the Commission and, hence, Saber Partners. To the contrary, FPL's proposed process, as filed, does not preclude active involvement and extensive input from the Commission through the development of the structuring, marketing and pricing process if it so chooses. Mr. Dewhurst describes this at length in his rebuttal testimony, noting where appropriate, however, a few key differences relative to Saber Partners' approach.

The process is designed for efficient execution, however, so that all input will be received and evaluated *prior* to moving to the next step. While the process outlined in the financing order does not include all of the interaction contemplated by FPL for the structuring, marketing and pricing process, I have included on

Document No. MPD- 9 a time line which lays out with greater specificity each of the transaction steps on which FPL would intend to confer with the Commission and its representatives. I believe it is crucial to have agreement on each decision (or notice of disagreement, if that were to occur) *prior* to implementation. In contrast, we see no such clarity in Saber Partners' proposed process, nor do we observe that it is listed as a best practice.

For example, with respect to pricing, to which Mr. Fichera specifically refers in his testimony, our proposal contemplates consultation with Staff forty eight hours in advance of expected pricing, at which time market conditions will be clear enough that a reasonable range of pricing can be estimated. We would expect to have the Commission, acting through its staff, agree that, if we are able to execute within that range, that we should execute the transaction, or if not, to indicate what alternative they propose. Our intent here is to preclude the possibility of "second guessing" – i.e., waiting until we see how the deal prices before determining whether or not it meets the Commission's chosen standard – which we do not believe is in either customers' or FPL's interests. If the Commission feels that forty eight hours is not close enough to be able to make a fair assessment of the expected pricing range we would be happy to move it up to twenty four hours. The amount of lead time is not so important as ensuring that everyone is in agreement *prior* to actual pricing.

Tr. 1696-97. Notwithstanding the involvement of the Commission as contemplated in FPL's filing, the Company would have ultimate decision making responsibility consistent with standard regulatory practice. Tr. 1701-02 (Dewhurst). As Mr. Dewhurst explains:

Under this approach, where Staff's or Saber Partners' input differs from FPL's . . . the burden is on FPL to evaluate the differences and, where it chooses to depart from the input, to justify its choice. We will be ultimately accountable to the Commission if we exercise poor judgment. Under these circumstances it would be foolish, I believe, for FPL to overlook and fail to implement any proposal which holds out the prospect of a lower cost deal without adversely affecting any other interest. But the responsibility for moving forward should rest, appropriately, with FPL, the sponsor of the financing and the legal owner of the issuer.

Tr. 1698. A process that employs "co-equal decision making," as advocated by Saber Partners, by definition does not lend itself to the type of collegial, collaborative process described by Mr. Fichera. Mr. Olson, who has had been involved in several issuances conducted pursuant to

various forms of issuance processes testified that the approach advocated by Saber Partners is, in his experience, one that leads to “friction and inefficiency.” Tr. 1484.

Nevertheless, if the Commission decides to take an even more active role in directing and overseeing the bond issuance process, FPL submits that the Commission should maintain its own decision making authority, and not leave that authority to be exercised through others such as its financial advisor. Tr. 1663, 1701-02 (Dewhurst). Specifically, the Company has proposed a process in response to Sub-Issue 74 (b) that contemplates active and direct Commission involvement that does not delegate either expressly or implicitly its decision making authority to others.

In any event, however, there are limits to the authority the Commission should exercise. The Commission should not make decisions that ignore FPL’s responsibilities under federal securities law. FPL as the parent of the issuer bears ultimate responsibility for the accuracy and completeness of the disclosures and representations made in bringing the debt to market. Accordingly, under all circumstances, FPL must have final authority to determine the exact wording of disclosure, and this should be made clear in any final order the Commission issues deciding how decision-making authority will be executed. Tr. 1499-1501 (Olson); Tr. 1702 (Dewhurst).

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?

Yes. Documents submitted with the Petition include a Storm-Recovery Property Sale Agreement, Administration Agreement, and Storm-Recovery Property Servicing Agreement, Indentures, and Limited Liability Company Agreement. The substance of the agreements should be approved in connection the financing order, subject to changes as part of the Commission Pre-Issuance Review Process. The agreements themselves require Commission approval of amendments. Forms of legal opinions should be delivered for review as requested by the Commission, but should not be subject to Commission approval.

FPL incorporates herein by reference the discussion under Issue 62.

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

Yes. The draft issuance advice letter will provide the most current and up-to-date information concerning the final terms and conditions that only becomes available as the launch date for a bond series becomes very near.

FPL submitted a draft Issuance Advice Letter in connection with its petition for approval storm cost recovery. Such draft Issuance Advice Letter should be approved in substantially the form proposed by FPL. In accordance with FPL's proposed Staff Pre-Issuance Review Process, at least five business days prior to the expected launch date, FPL will submit to Staff a revised draft Issuance Advice Letter, reflecting the preliminary bond structuring information for the proposed issuance, including expected and final maturities, over-collateralization levels, any other credit enhancements; and reflecting revised estimates of the upfront bond issuance costs proposed to be financed from proceeds of the bonds and estimates of debt service and other ongoing costs (including the taxes recoverable through the Storm Bond Tax Charge) for the first collection period. Tr. 683 (Olson).

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

Yes. The Initial True-up letter as proposed by FPL will provide Staff, acting at the Commission's direction, information necessary to ensure that any proposed issuance complies with the financing order.

FPL submitted a draft Initial True-Up Letter in connection with its petition for approval of storm cost recovery. This draft Initial True-Up Letter should be approved in substantially the form proposed by FPL. In accordance with FPL's proposed Staff Pre-Issuance Review Process, at least five business days prior to the expected launch date, FPL will submit to Staff a revised draft of the Initial True-Up Letter, which will include the projected initial Storm Bond

Repayment Charges and Storm Bond Tax Charges for each customer class resulting from the preliminary bond structuring information and the application of the formula approved in the financing order, as well as the draft tariff sheets implementing the storm charges. Tr. 683-84 (Olson).

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?

A financing order in the form submitted with the Petition, including the proposed findings of fact and conclusions of law, contains provisions consistent with the statute and necessary to facilitate triple-A credit ratings, providing the requisite investor confidence in the storm-recovery bond issuance, and resulting in an efficient and cost-effective financing. If the Commission wishes to take an active role in directing and overseeing the issuance process, it should employ the approach recommended by FPL in response to sub-issue 74(b).

There is nothing inherently mysterious about the storm-recovery bonds that FPL proposes to issue pursuant to Section 366.8260, Florida Statutes. Utility asset-backed or rate reduction bonds ("RRB") have become very efficient over time and new issue pricing has less risk and reward than it used to. Tr. 1474-76, 1509 (Olson); Ex. 40, at pp. 1-2. In fact, in an era of tightened spreads and increased market liquidity, it is less likely that the incremental costs and additional time associated with the activist approach will be justified. Tr. 1473-74, 1509-10 (Olson). In that regard, it is significant to note that there is continuing experimentation in the market in this regard, with a menu of available options. Tr. 1478-80, 1510-11 (Olson). As Mr. Olson testified, in 2005 alone, there were several different approaches, like a "menu" of options.

Id. Mr. Olson went on to state:

Even after their 2005 transactions, both the Texas and New Jersey Commissions continue to reconsider and experiment with their review processes. The New Jersey Board of Public Utilities experimented with the Saber-recommended process on one small transaction in 2005, but for its upcoming transaction it reverted to the financial advisor that it had employed in prior transactions. The Texas Commission, in an open meeting on February 23, 2006 regarding the application of AEP Texas Central for a financing order, authorized its executive

director to hire Saber Partners as financial advisor on that upcoming transaction at fees capped at \$500,000 (including \$100,000 for legal expenses), an amount equal to roughly half of that paid in the 2005 Texas securitization transaction and a third of that paid in the 2004 transaction. The scope of services for this upcoming Texas transaction is not yet determined, to my knowledge.

Tr. 1479-80 (Olson).

FPL's proposed financing order complies with the provisions of Section 366.8260, Florida Statutes, and contains the relevant and necessary findings of fact and conclusions of law to facilitate a AAA (or equivalent) credit rating from the relevant bond rating agencies. Despite allegations to the contrary, FPL has more than adequate incentives to seek and obtain a low cost, efficient financing. Tr. 1693-95 (Dewhurst); Tr. 1484 (Olson). Moreover, FPL has a very strong reputation with the financial community and in the capital markets. Ex. 160, at p. 156 (Fichera deposition). The Commission can, without taking direct responsibility for the issuance of the bonds, assure itself through the Staff pre-issuance review process proposed by FPL that the issuance will result in an efficient, low cost transaction. Tr. 1694-95 (Dewhurst).

In the event that the Commission wishes to take an active and direct role in overseeing the issuance process, it should Reserve its decision making authority to itself or the pre-hearing officer, as appropriate, and not delegate or otherwise leave that authority to be exercised directly or indirectly by others. FPL has proposed a more detailed approach reflecting this concept in its response to Sub-Issue 74(b).

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?”

Yes. This statutory standard adopted by the legislature in Section 366.8260(2)(b)2.b., Florida Statutes (2005), is met by FPL's proposal, a primary benefit of which is to immediately replenish the Reserve and to “smooth out” the significant rate impact of an extreme sub-period of storm activity, making it a useful tool for recovery of existing deficits and replenishment of the Reserve.

Issue 68 is simply a more detailed expression of Issue 39. FPL incorporates by reference the discussion presented above with respect to Issue 39. The proposed structure, and expected pricing and financing costs are reflected in FPL's overall proposal. To the extent that actual pricing and financing costs differ relative to the estimates reflected in FPL's proposal to the extent that the average retail per kWh Storm Charge would be projected to exceed the rate included in the current surcharge, the Company recommends that the amount of the bonds issued be adjusted, ultimately affecting the amount of the Reserve but maintaining the benefits of rate stabilization, as discussed more fully in Issue 75. FPL incorporates by reference the discussion under Issue 75. In addition, FPL recommends the same approach to account for differences between the estimated and actual balances for unrecovered 2004 and 2005 storm-recovery costs be reflected in the amount of replenishment of the Reserve. Thus, if the actual balance of unrecovered 2004 and 2005 storm-recovery costs is below the estimated July 31, 2006 balance, the resulting balance in the Reserve will be higher and vice versa. Tr. 59-58 (Dewhurst). Issuance of storm-recovery bonds of the proposed structure, expected pricing and financing costs is reasonably expected to avoid or significantly mitigate rate impacts to customers as compared with alternative methods of recovery.

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?

*FPL should be afforded flexibility described in the proposed financing order including: issue bonds in one or more series and tranches; reduce the amount of issuance if necessary to maintain the initial average retail charge below the current storm surcharge; recover certain costs through the storm charge subject to true-up; utilize floating rate securities and interest rate

swaps; change the amortization period up to one year to accommodate market preferences; and include call provisions.*

FPL should be afforded the flexibility to issue the storm-recovery bonds in one or more series, and each series may be issued in one or more classes or tranches. At least some of the bonds should have an expected term of approximately eleven to twelve years. The legal maturity should not exceed 14 years. This flexibility should be provided to enable structuring into tranches that generate the greatest market interest. The bonds shall be structured to provide a combined Storm Bond Repayment Charge and Storm Bond Tax Charge per kWh to each customer class that is level over the period of recovery if the actual seasonal and year-to-year changes in sales match the changes forecast at the time the bonds are structured.

As is the case with most debt issuances, the cost of the debt, *i.e.*, the effective interest rate, will not be known until the storm-recovery bonds are priced. Because the mitigation of rate impacts through the proposed bond issuance is significant and based on approval of an approximate 12-year bond amortization schedule, only an extraordinary change in market conditions between the time this Order is issued and the issuance date would overcome the benefits associated with FPL's proposal. If market rates rise to such an extent that the initial average retail cents per kWh Storm Charge associated with the storm-recovery bond issuance would exceed the average retail cents per kWh charge associated with the 2004 Storm Restoration Surcharge now in effect, FPL should reduce the aggregate amount of the storm-recovery bond issuance to an amount whereby the initial average retail cents per kWh Storm Charge would not exceed the average retail cents per kWh 2004 Storm Restoration Surcharge currently in effect.

Debt service on the storm-recovery bonds, as well as the ongoing fees of the trustee, rating agency surveillance fees and the ongoing costs of any other credit enhancement and other ongoing costs of administering the bond issuance, will not be known until the pricing of the bonds or later (e.g., rating agency fees and trustee fees will not be known until later, but FPL has provided an estimate of the ongoing costs for the initial year after issuance). The Commission should provide flexibility to recover such costs through the Storm Charge, and the true-up of such charge. Further, if their use is reasonably expected to provide customer savings, FPL should be able to utilize floating rate securities and interest rate swaps, and should be afforded flexibility to include call provisions as FPL may deem appropriate.

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?

Yes. The proposed financing order, including the findings of fact and conclusions of law, contains provisions consistent with the statute and necessary to facilitate AAA credit ratings, providing the requisite investor confidence, and resulting in an efficient and cost-effective financing. FPL's financing order provides the Commission with flexibility to be involved in every critical step of the process; however, if the Commission decides to take a direct and active role, it should adopt measures outlined in sub-issue 74(b).

For the reasons discussed throughout this brief, the Commission should issue a financing order in substantially the form included as Exhibit B to the Company's Petition. FPL's proposed order is consistent with Section 366.8260, Florida Statutes, and includes the necessary findings of fact and conclusions of law to facilitate obtaining a AAA (or equivalent) credit rating from the rating agencies, to provide the requisite investor confidence in the storm-recovery bond issuance in Florida, and result in an efficient and cost-effective financing.

FPL's proposed financing order provides the Commission with flexibility to be involved in every critical step of the issuance process if it chooses to do so. The Commission should not adopt what Mr. Fichera mischaracterized "best practices" which are based on the fundamental premise that the Commission should act by and through its financial advisor, and that its financial advisor should have co-equal decision-making authority with the utility. This approach results in a process that is more adversarial than collaborative leading to delays in issuance and unnecessary increases in issuance costs. Tr. 1486, 1507 (Olson). Indeed if Saber Partners' "best practices" are adopted, the fee for Saber Partners' advisory services will need to be renegotiated. Ex. 160 at pp. 164-65. In addition to inefficiency and increased cost, co-equal decision-making does not properly align authority with legal liability. Only the issuer and the utility have statutory issuers or controlling parties liability for the prospectus and the other offering materials, and it is inappropriate for parties who bear no liability or a lesser degree of liability to have co-equal decision-making authority over these documents or to participate in sales discussions with potential investors. Tr. 1507-08 (Olson). To date, only two commissions have utilized this practice for completed transactions and there is evidence that both are rethinking this approach. Tr. 1508 (Olson). FPL does not recommend that the Commission put itself -- particularly by extension through an independent consultant -- in the role of making final decisions and accepting specific responsibility for execution of the transaction. Tr. 1701 (Dewhurst).

However, in the event that the Commission wishes to take an active and direct role in overseeing the issuance process, it should Reserve its decision making authority to itself or the pre-hearing officer, as appropriate, and not delegate or otherwise leave that authority to be

exercised directly or indirectly by others.⁴⁹ In such case, the Commission should adopt the process described in response to Sub-issue 74(b) below.

SUBISSUES:

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?

The Commission should employ the following process and procedures before the issuance of a final financing order to ensure that the final order accurately reflects the Commission's decision and also meets anticipated financing requirements. It is understood that this process will relate only to those portions of the financing order that address the terms and manner of securitization, and not to the provisions that relate to the prudence of costs or the amount proposed to be recovered through the securitization process:

1. Commission staff should provide FPL with a mark-up of the proposed form of financing order submitted as Exhibit B to FPL's petition (exclusive of the provisions that relate strictly to the prudence issues in this case) on or before May 18;

⁴⁹ The PSC may not delegate its decision-making authority to another entity absent a clear grant of authority from the legislature to do so, and no such so-called "sub-delegation" of authority is permissible under Section 366.8260, Florida Statutes. *See, e.g., Procacci v. State, Department of Health & Rehabilitative Servs.*, 603 So. 2d 1299, 1300-1301 (Fla. 1st DCA 1992) (holding that an agency may not delegate its legislatively prescribed responsibilities to another entity); *City of Miami v. Fraternal Order of Police*, 511 So. 2d 549, 551 (Fla. 1987) (Public Employees Relations Commission cannot delegate an unfair labor charge to an arbitrator because the statute provides that "[i]t is the intent of the Legislature that *the commission act* as expeditiously as possible to settle disputes regarding alleged unfair labor practices.") (emphasis in original); *Gulfstream Park Racing Ass'n v. Department of Bus. Reg.*, 441 So. 2d 627, 629 (Fla. 1983) (Florida Pari-Mutuel Commission may not delegate to Division of Pari-Mutuel Wagering the power to allocate winter racing dates among permit holders); *Upjohn Healthcare Servs., Inc. v. Department of Health & Rehab. Servs.*, 496 So. 2d 147, 149 (Fla. 1st DCA 1986) ("HRS . . . effectively abdicated its role in the legislatively prescribed scheme and improperly delegated its authority to the hearing officer."); *School Board of Pinellas Co. v. Noble*, 384 So. 2d 205, 206 (Fla. 1st DCA 1980) (county school board had no legislative authority to delegate its hearing responsibility to professional practices council).

2. The parties would participate in an informal meeting in Tallahassee on May 22nd, and if necessary, with the Pre-hearing Officer on May 23rd, to resolve any disputed issues and work to achieve a financing order that minimizes potential conflict.

3. Any issues that cannot be separately resolved by the parties, shall be resolved by the Pre-hearing officer.

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

Should the Commission desire to take a more direct and active role in the transaction, it should adopt the following process:

1. Establish Bond Team

FPL and the Commission designate the professionals on their respective teams, representing in-house business, regulatory, finance and legal disciplines as well as outside advisors.⁵⁰ The Commission itself shall be represented on the “Bond Team” by and through the pre-hearing officer in this matter, who may be advised by the Commission's staff and financial advisor and other members of the Bond Team. FPL will propose a transaction timeline in consultation with the Bond Team, establishing clear expectations as to all key issuance activities and the responsibility for each. The Bond Team will review the results of competitive solicitations for services for transaction participants. Throughout the process, the Bond Team should expect to meet by conference call no less than weekly for detailed and documented discussion of progress and next steps.

2. Transaction Documents, Offering Documents and Legal Opinions

FPL recommends that Staff complete its review of transaction documents filed with FPL's petition on January 13, 2006 and make recommendations for substantive changes in the

⁵⁰ The Commission must first conclude that Section 366.8260 provides for payment for these services from bond proceeds

Staff Recommendation to be filed May 8, 2006 for vote by the Commission at the Special Agenda on May 15, 2006. The transaction documents submitted are in substantially final form and conform to applicable law. Finalization of transaction documents is a key step to a successful and timely bond issuance. Subsequent changes in the transaction documents necessary to meet rating agency requirements or to conform to final structuring and pricing requirements will be reviewed with the Bond Team. FPL will be responsible for the initial draft of the registration statement and term sheet which will be provided to the Bond Team for comment and review if requested. FPL as issuer and the party with securities law liability for statements made in these documents will retain final editorial control over the document contents. All legal opinions will be submitted to Bond Team for review and comment if requested.

3. Rating Agency Process

FPL will be responsible for obtaining credit ratings. FPL will review progress and any issues encountered with the Bond Team at scheduled update meetings.

4. Structuring and Marketing Process

A detailed marketing plan will be prepared by FPL and the bookrunning underwriter(s) for review and comment by the Bond Team. The bookrunning underwriter(s) will develop a proposed bond structure for marketing purposes reflecting comments of all parties. The structure will be refined over the course of the marketing period and finalized at pricing. In addition to the prospectus and term sheet to be filed with the SEC, a draft set of slides for an internet-enabled roadshow will be provided for review and comment by the Bond Team. FPL will retain ultimate editorial control over these documents as they will likely constitute a “free-writing prospectus” under new SEC rules. Similar to the registration statement, FPL as the party with securities law

liability will retain final editorial control over these presentations. During the execution of the marketing plan, it is anticipated that update calls with the Bond Team to provide market feedback will become more frequent. Alternatively, the Commission's representative and its advisor may choose to observe marketing presentations to potential investors made by the Company and its underwriters. Participation in marketing and sales calls will be limited to FPL and the underwriters as FPL has potential securities law liability for all statements made to potential investors at these meetings.

5. Pricing Process

FPL and the underwriters will consult with the Bond Team on strategy prior to release of pricing indications to the market. As feedback is received, each refinement of price guidance is discussed with the Bond Team. Bookrunning underwriters will develop a "pricing book" containing relevant data to be examined by all parties. It is anticipated that FPL and the Bond Team will assist in the refinement of this document. The Bond Team will discuss and agree on an the estimated range for final spreads that will cause the bonds to clear the market prior to "launching" the transaction with final guidance and scheduling a pricing call. FPL would expect to have the Commission's representative agree that, if we are able to price within that range, that we should execute the transaction, or if not to indicate what alternative the Commission proposes.

6. Issuance Advice Letter

As part of the Staff Pre-Issuance Review process proposed by FPL, at least five business days prior to the proposed pricing date for the bonds, FPL will submit to Staff a draft pro-forma issuance advice letter for review by the Bond Team and other responsible parties. This pro-forma issuance advice letter will reflect pricing guidance from the marketplace. At the same

time, a draft of the initial true-up letter, reflecting the pro-forma initial bond and tax charges, will be submitted. Not later than 48 hours after the pricing and sale of the bonds, FPL will file with the Commission a final issuance advice letter and a final true-up letter reflecting the final terms of the bonds and the resulting charges.

All of the activities described above are contemplated within the scope of FPL's proposed financing order. It is not necessary for the financing order to specify all of the particulars of the due diligence process that the Commission ultimately adopts. Tr. 1506 (Olson). These activities all fall within the Scope of Saber Partners' current contract with the Commission. Ex. 136.

7. Dispute Resolution

Any disputes relative to the foregoing activities that the Commission has reserved to itself authority to resolve shall be heard before the pre-hearing officer in this matter, with the opportunity for any party represented on the bond team to have the pre-hearing officer's decision reviewed *de novo* by the full Commission.

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?

Yes. If the Commission approves the substance of FPL's primary recommendation and market rates rise as described above, to ensure that the rate mitigation benefits of securitization are realized, FPL should reduce the aggregate amount of the storm-recovery bond issuance to an amount whereby the initial average retail cents per kWh Storm Charge requested would not exceed the average retail cents per kWh 2004 Storm Restoration Surcharge currently in effect.

Market rates have risen since FPL's January 13, 2006 filing initiating this proceeding. They may further increase before bonds are actually issued. FPL's un-refuted recommendation is that if the impact of any increase in market rates relative to its proposal results in an increase

in the initial storm charge vs. the 2004 storm surcharge, the issuance amount of the bonds should be lowered until the initial Storm Charge is equal to or lower than the current 2004 storm surcharge, thus ensuring the preservation of the rate mitigation effects of securitization.

Specifically, Mr. Dewhurst testified:

The current residential surcharge of \$1.65 per 1,000 kWh would be replaced with the combination of a Storm Bond Repayment Charge and a Storm Bond Tax Charge referred to collectively as the Storm Charge, which under current market conditions would provide an estimated levelized charge of approximately \$1.58 per month for a typical 1,000 kWh residential bill for approximately 12 years. The actual average retail charge per kWh will vary based on changes in customer growth and usage projections as well as changes in market interest rates that may occur between now and the issuance date of the bonds. If market rates rise to such an extent that the average retail kWh charge associated with the bond issuance would exceed the average retail kWh charge associated with the Storm Restoration Surcharge now in effect, the aggregate amount of the storm-recovery bond issuance would be reduced to an amount whereby the initial average retail kWh Storm Charge would not exceed the average retail kWh Storm Restoration Surcharge currently in effect. While this would reduce the amount of Reserve replenishment, it strikes a reasonable balance between customer interests in the mitigation of rate impacts and the need to fund the Reserve to a reasonable level immediately to prepare FPL to respond to another potentially destructive 2006 storm season.

Tr. 57-58.

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.

*If it becomes necessary to implement such a surcharge due to delay in the issuance of storm-recovery bonds, a new tariff would be proposed and submitted by FPL for administrative

approval and calculated so as to recover the total amount of 2005 storm costs approved for recovery in the financing order over approximately three years.*

In light of the size of the current Reserve deficit and the need to begin to reduce the deficit and rebuild the Reserve to prepare for another potentially active storm season, and to guard against the possibility of an appeal and the attendant delays, the Company recommends that the Commission approve a surcharge to be applied to bills rendered on and after August 15, 2006 to recover FPL's reasonably and prudently incurred 2005 storm-restoration costs over approximately three years (or until the applicable revenue requirements have been recovered) in the event the issuance of storm-recovery bonds is delayed for any reason, including if the Commission's Order in this proceeding is appealed. This contingent surcharge is necessary to prevent unnecessary delays in the recovery of reasonable and prudently incurred storm restoration costs, particularly important given the need for final non-appealable order prior to actually issuing the bonds. It is critical that a mechanism for recovery is in place before significant new storm or other costs are incurred to free up short-term liquidity to support ongoing operational requirements such as the fuel hedging program, construction program and clause under recoveries. The monthly impact to residential customers of this surcharge is currently estimated to be \$2.98 per 1,000 kWh based on current estimates for 2005 storm restoration costs. The surcharge would be discontinued when the storm-recovery bonds are issued. The amount of storm-recovery bonds issued would be adjusted for the impact of collections of this surcharge. Tr. 59 (Dewhurst).

The allocation of costs to the rate classes should be consistent with the manner in which equivalent costs were treated in the last filed cost of service study as provided by FPL in Exhibit 61. Tr. 752-54, 760, 775-76 (Morley); Ex. 57-58, 61. A new tariff would be proposed and submitted for administrative approval. Tr. 803 (Morley). FPL's proposed allocation

appropriately treats each functional category of storm costs (e.g., distribution, transmission, and production). Tr. 752 (Morley). For example, the proposed storm charge allocates distribution-related storm costs in the manner in which equivalent costs were allocated in the last filed cost of service study. This is accomplished on the basis of a total distribution plant in service allocation factor which recognizes each element of distribution costs and incorporates the specific allocation methods outlined in the last filed cost of service study. Ex. 4 at p. 000158. No party filed testimony proposing an allocation method other than that proposed by FPL.

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?

No adjustment is necessary since FPL would calculate interest on the storm costs to be recovered on an after-tax commercial paper rate basis.

No adjustment is necessary since FPL would calculate interest on the storm costs to be recovered on an after-tax commercial paper rate basis. Tr. 429 (Davis).

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?

The Commission should authorize the transfer of the unamortized balance of the storm related costs subject to future recovery from the Storm Damage Reserve (Account 228.1) to a deferred Regulatory Asset (Account 182.1) The amount transferred should be amortized consistent with the amounts recovered as revenue through the authorized surcharge recovery factor.

The Commission should authorize the transfer of the unamortized balance of the storm related costs subject to future recovery from the Storm Damage Reserve (Account 228.1) to a deferred Regulatory Asset (Account 182.1). The amount transferred should be amortized consistent with the amounts recovered as revenue through the authorized surcharge recovery

factor. This is consistent with the past treatment of such amounts, as described in page 33 of the 2004 Storm Cost Recovery Order.

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?

The allocation of the costs to the rate classes should be consistent with the manner in which equivalent costs were treated in the last filed cost of service study as provided by FPL in Document Nos. RM-3, RM-4 and RM-5.

The Storm Charges should be allocated based on the allocation of equivalent costs in the last filed cost of service study in Docket No. 050045-EI. Tr. 752-54, 760, 775-76 (Morley); Ex. 57-58, 61. FPL's proposed allocation is consistent with Section 366.8260(2)(b)2.h. of the securitization statute, which provides that in those cases where the Company's last rate case was resolved by settlement, as FPL's was, the allocation of storm costs should be consistent with the cost of service study filed by the Company in that rate case. The cost of service methodology filed in Docket No. 050045-EI and approved by the Commission as part of the 2005 Settlement Agreement was the same cost of service methodology that was approved by the Commission in Docket No. 830465-EI with one exception, which relates to treatment of the St. Lucie Unit 2 production unit.⁵¹ Tr. 776 (Morley). In this proceeding, FPL appropriately treats each functional

⁵¹ FIPUG asserted in its prehearing statement that the Stipulation and Settlement negotiated and signed by the parties to Docket No. 050045-EI and approved by the Commission in that proceeding was related to the cost of service study approved in Docket No. 830465-EI, and not the one filed in Docket No. 050045-EI. A plain reading of the agreement belies FIPUG's argument. Further, it is clear from the transcript of the Agenda Conference at which the Commission approved the Stipulation and Settlement that the Commission understood that a new and different cost of service study was being approved. Specifically, it was acknowledged that "under the stipulation, all capital costs in the environmental cost-recovery clause would be allocated in the same manner in which capital costs are allocated in a rate case, which is on a

category of storm costs (e.g., distribution, transmission, and production) based on their treatment in the cost of service methodology filed in Docket No. 050045-EI. Tr. 752 (Morley). FPL is allocating distribution costs in the manner a distribution plant as a whole is allocated. In the case of transmission voltage customers, there is a portion of distribution costs required to serve transmission customers – meters. That is the only distribution cost allocated to transmission voltage customers in the current proceeding. Moreover, the allocation of meter costs to transmission voltage customers is consistent with the cost of service study approved by the Commission in Docket No. 830645-EI and with the Company’s cost of service study filed in Docket No. 050045-EI. Tr. 779-80 (Morley). No other party in this case has sponsored testimony proposing an allocation method other than that proposed by FPL.

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?

The appropriate recovery period is approximately twelve years, subject to the flexibility to accommodate market preferences discussed in Issue 71.

An eleven to twelve-year recovery period is appropriate. This flexibility will enable the bonds to be structured into tranches that are most attractive to the market. The storm-recovery bonds will be issued in multiple tranches (or classes), with average lives that range from two to ten years (approximately). The scheduled maturity of the bonds will match the intended recovery period at eleven to twelve years from the date of issuance, although the legal final

demand basis, not an energy basis.” Transcript of August 24, 2005 Special Agenda Conference at 1654. Under the cost-of-service study previously in effect, the one approved in Docket No. 830465-EI, such costs would have been allocated on an energy basis for the St. Lucie Unit 2 Nuclear Plant.

maturity will not exceed fourteen years.⁵² Tr. 657 (Olson). There have been rate reduction bond tranches with longer average lives, but they have a more limited following in the investor community, so they tend to trade at higher yields than the shorter tranches. A shorter recovery period, such as ten years, may attract interest from fewer investors. Tr. 658 (Olson).

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?

Yes, FPL's proposed mechanism is appropriate, consistent with the statute, and should be approved

FPL prepared and submitted with the testimony of K. Michael Davis a proposed form of Storm Charge True-Up Mechanism addressing each item required by Section 366.8260(2)(b)4., Florida Statutes. Ex. 24; Tr. 455-59 (Davis). That section requires FPL to detail in its filing any adjustments made for the undercollection or overcollection of revenues as follows:

Such adjustments shall ensure the recovery of revenues sufficient to provide for the payment of principal, interest, acquisition, defeasance, financing costs, or redemption premium and other fees, costs, and charges in respect of storm-recovery bonds approved under the financing order.

Section 366.8260(2)(b)4., Florida Statutes. Because FPL's proposed Storm Charge True-Up Mechanism shown in Ex. 24 contains appropriate line items and provides for necessary computations related to each required point, it satisfies the requirements of the Statute and should be approved by the Commission. Tr. 457 (Davis).

⁵² The legal maturity of each tranche is two years later than its scheduled maturity, and Storm Charges may be imposed during this time if for any reason the related tranche is not retired on schedule. Because of the inherent volatility of electric utility revenues, it is necessary to have a period after the scheduled maturity during which Storm Charges can be collected to make up any shortfall. Although two years may not be necessary to collect any shortfall, for meeting all the rating agencies' triple-A stress tests, two years is recommended. Tr. 658-59 (Olson).

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?

Yes.

Respectfully submitted this 27th day of April, 2006.

R. Wade Litchfield, Esquire
Bryan Anderson, Esquire
John Butler, Esquire
Natalie F. Smith, Esquire
Attorneys for
Florida Power & Light Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420

By: s/ R. Wade Litchfield
R. Wade Litchfield

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Florida Power & Light Company's Post-Hearing Brief, has been furnished electronically and by United States Mail this 28th day of April, 2006, to the following:

Wm. Cochran Keating, IV, Esquire
Florida Public Service Commission
Division of Legal Services
Gerald L. Gunter Building
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Harold A. McLean, Esquire
Charles J. Beck, Esquire
Joseph A. McGlothlin, Esquire
Patricia A. Christensen, Esquire
Office of Public Counsel
c/o The Florida Legislature
111 W. Madison Street, Room 812
Tallahassee, FL 32399-1400

John W. McWhirter, Esquire
McWhirter, Reeves, & Davidson, P.A.
400 North Tampa Street, Suite 2450
Tampa, Florida 33602
Attorneys for the Florida Industrial Power
Users Group

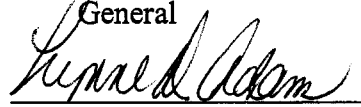

Timothy J. Perry, Esquire
McWhirter, Reeves, & Davidson, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
Attorneys for the Florida Industrial Power
Users Group

Michael B. Twomey, Esquire
P.O. Box 5256
Tallahassee, Florida 32314-5256
Attorney for AARP

Robert Scheffel Wright, Esquire
John T. LaVia, III, Esquire
Young van Assenderp, P.A.
225 South Adams Street, Suite 200
Tallahassee, Florida 32301
Attorneys for the Florida Retail Federation

Lieutenant Colonel Karen White
and Captain Damund Williams
AFCESA/ULT
139 Barnes Drive
Tyndall Air Force Base, Florida 32403
Attorneys for the Federal Executive Agencies

Christopher M. Kise, Solicitor General
Jack Shreve, Senior General Counsel
Office of the Attorney General
The Capitol – PL01
Tallahassee, FL 32399-1050
Attorneys for Charles J. Crist, Jr., Attorney
General

By: 
for 
R. Wade Litchfield, Esquire
Bryan Anderson, Esquire
John Butler, Esquire
Natalie F. Smith, Esquire
Attorneys for Florida Power & Light
Company
700 Universe Boulevard
Juno Beach, Florida 33408-0420