BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Florida Power & Light Company's Petition for Issuance of a Storm Recovery Financing Order	Docket No. 060038-EI Filed: April 28, 2006

CITIZENS' BRIEF

The Citizens of Florida, through Harold McLean, Public Counsel, submit this brief in accordance with the provisions of the Prehearing Order, order no. PSC-06-0301-PHO-EI issued April 18, 2006.

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

Position: * No. FPL added accruals to the 2004 storm reserve items not requested or identified in testimony, exhibits or other evidence in the record in Docket No. 041291-EI. FPL disregarded the Commission's cut off point for charges to the storm reserve. The Commission should adjust the reserve by $51,264,919.*

Argument: Commission order no. PSC-05-0937-FOF-EI states that "we find that FPL shall stop charging costs to the storm reserve no later than July 31, 2005, for restoration work related to the 2004 storm season." Exhibit 150 at 22. FPL ignored this provision of the Commission's order as if it were no requirement at all by simply making an

accrual for uncompleted, and even unstarted, work on July 31, 2005. The Commission must enforce the provisions of its order and prevent FPL from treating the Commission's requirement as if it were meaningless. As further described in this section, the Commission should adjust FPL's 2004 storm damage cost estimate as follows: (1) remove accruals for "various nuclear storm damages" ($21,467,915), (2) remove amounts allowed that FPL has not incurred ($21,700,000), (3) remove legal claims and lawsuits ($2,664,038), and (4) adjust the reserve for reimbursements for repair and restoration of poles owned by other parties ($5,432,966).

Various nuclear storm damages ($21,467,915).

Despite the fact that FPL never indicated in its 2004 case that its estimated costs included costs for the repair of intake and discharge canals at the St. Lucie plant (Exhibits 168 and 169), the accrual made by FPL on July 31, 2005, for 2004 storm costs included a large amount for just that. *See* confidential exhibit 109. Two items are noteworthy about this accrual. First, the improvements to the canal would be normal capital expenditures, so that any amount charged to the 2004 storm reserve, if allowed at all, would be offset by a normal capital amount. It should therefore have no net effect on 2004 storm costs charged to the reserve. Second, the damage was at least caused in part by the 2005 storms, so it is improper to charge it all against 2004 as FPL has done.

According to the prefiled testimony of FPL Nuclear Operations Support Vice-President Warner, in 2005 Hurricane Wilma caused damage to the side walls of the

intake and discharge canals at St Lucie. Warner, Tr. 396. The force of Hurricane Wilma in 2005 displaced rocks along the side of the canals. Warner, Tr. 399. During cross examination, Mr. Warner added that damage was also incurred in 2004 and that "it was very hard to differentiate between the damage between '04 and '05." Warner, Tr. 401. Nonetheless, FPL wants to assign all of the cost to 2004. Warner, Tr. 406-407. FPL proposes to do this even though no work was done before the 2005 hurricane season other than dredging (Warner, Tr. 402, 403), and no third-party estimates were obtained before the 2005 season (Warner, Tr. 403).

Prior to the hurricanes there was no armoring or refortification of the canal. Warner, Tr. 407. Although there was no concrete or mats in the canal previously, the proposed work will use concrete filler to repair and reinforce the sides of the canal. Warner, Tr. 408-409. The concrete mats should last for the life of the plant, or thirty years. Warner, Tr. 409-410. Expenditures should generally be capitalized if the expenditure is on an asset that lasts more than a year and benefits future periods. From the statements made by Mr. Warner, even though he described this work as a repair, it is actually a capital expenditure which will benefit the plant over a period of up to thirty years. Therefore, if it were allowed at all, it would qualify as a normal capital item which would fully offset any charge to the reserve.

In rebuttal testimony FPL witness Davis indicates that the accrual of $21,467,915 was reduced by $ 1 million in February 2006 to correct an error in the recording of storm costs in 2005. Davis, Tr. 1594. He also indicates that the remaining balance of $20.5 million should be reduced by $5.1 million due to projected additional insurance recoveries. Davis, Tr. 1595.

The entire balance should be removed, not just the amounts proposed by Mr. Davis. The proposed charges to the reserve are for projects not identified as part of the record in the prior case, are capital in nature, they will result in a betterment of the plant for a period of time far greater than a year.

Amounts Allowed that FPL Has Not Incurred ($21,700,000).

Order No. PSC-05-0937-FOF-EI included a $21,700,000 ($21,597,000 jurisdictional) reduction to FPL's requested 2004 storm damage recovery costs identified as "Contributions in Aid of Construction." The order indicates that these costs are not actually "Contributions in Aid of Construction." Page 20 of the order indicates the $21.7 million was included as part of storm restoration costs, but was not included in the calculation of the surcharge approved in that docket. In other words, the Order ultimately resulted in the addition of the $21.7 million to the allowed charges to the storm reserve for future recovery, but it was not factored into the determination of the surcharge allowed in that case. Once this $21.7 million is factored in, the net amount that effectively was approved for recovery in the 2004 Storm Cost Recovery Order is $819,800,000 ($798,100,000 + $21,700,000). DeRonne, Tr. 980. FPL agreed that the effect of the $21.7 million adjustment contained in exhibit 19 sponsored by FPL witness Davis is the same as if that amount were added to the amount contained in the Commission 2004 storm cost order. Davis, Tr. 536.

FPL has not even demonstrated that it expended the $798,100,000 identified in the Order as non-capital and non-insurance related 2004 storm expenditures.

Information provided in response to OPC Interrogatory No. 108 (Exhibit 155) reflects that actual costs incurred as of January 31, 2006 (before accruals) were only $775,345,096.

In rebuttal testimony Mr. Davis claimed that as of July 31, 2005, actual expenditures for 2004 storms were $852,600,000 with additional accruals resulting in total 2004 uninsured storm costs of $890 million. Davis, Tr. 1692. However, those actual expenditures identified were not broken down between actual normal capital expenditures and non-capital related expenditures and thus does not answer the question about the amount of non-capital expenditures related to the 2004 storms. The amount of $798,100,000 indicated in the order is net of normal capital expenditures.

Thus, FPL has not demonstrated that it spent the $21.7 million allowed in the 2004 storm cost order. DeRonne, Tr. 1012. FPL claims that only $16.3 million of the 2004 storm costs remain unspent, but that claim ignores the additional amount of $21.7 million allowed by the Commission. DeRonne, Tr. 1012 - 1017. The amount unspent is at least the sum of these two figures, or $38.0 million

This is an example of FPL's inability to spend and account for all of the money allowed by the Commission for the 2004 storm season. The Commission should make an adjustment to 2004 storm costs for the additional unspent amount of $21.7 million.

Legal Claims and Lawsuits ($2,664,038).

According to the response to OPC Interrogatory No. 108 (exhibit 155), as of July 31, 2005, the estimated 2004 storm recovery costs included $2,664,038 for estimated

claims outstanding & pending lawsuits associated with Hurricanes Frances and Jeanne. In rebuttal testimony, Mr. Davis stated that he removed $2.2 million of these costs in March of 2006 after again reviewing the basis for the charges. Davis, Tr. 1615.

These are not costs directly related to the storm recovery efforts and should not be included at all in the costs to be recovered. They also were not presented as outstanding storm related costs at the time of the prior case and are therefore precluded by the cut-off date contained in the 2004 storm cost order. Additionally, these types of costs are already considered in the determination of base rates and therefore shouldn't be allowed as hurricane costs as well. DeRonne, Tr. 984.

Estimated Offset for Reimbursements for Repair and Restoration of Poles Owned by Other Parties ($5,432,966).

FPL billed $7,419,810 to other parties for replacing joint use poles owned by others. OPC, in Exhibit 86, recommended that 2004 storm costs be reduced by $5,564,858 based on the assumption that 25% of the $7,419,810 billed to outside parties would have been normal capital costs for the poles removed and thus already excluded from the amounts charged to the storm reserve. In rebuttal testimony, FPL witness K. Michael Davis identified the amount billed net of the normal capital costs of the poles as $5,432,996, which is $131,892 less than OPC's recommended adjustment. OPC accepts FPL's position that $5,432,966 should be removed from the remaining 2004 storm recovery costs.

Conclusion

A large portion of the costs approved by the Commission for 2004 were based on estimates. DeRonne, Tr. 980. FPL has incurred less in 2004 storm recovery costs than it projected at the time of the 2004 Storm Cost Recovery case. The accrual made by FPL on July 31, 2005, included charges for work which had not been performed. Davis, Tr. 1645. If the remaining 2004 Storm Recovery Costs are not reduced to reflect the fact that actual costs have been lower than projected, the result will be an inflated amount being recovered via the storm recovery bonds and being charged to ratepayers. DeRonne, Tr. 981.

The Commission must not allow FPL to simply ignore the provision of Commission order no. PSC-05-0937-FOF-EI. The order required FPL to stop charging costs to the storm reserve no later than July 31, 2005, for restoration work related to the 2004 storm season. Instead of abiding by the provisions of the order, FPL treated it as if it were no requirement at all by simply making an accrual for uncompleted, and even unstarted, work. The Commission must enforce the provisions of its order and prevent FPL from treating the Commission's requirement as if it were meaningless.

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

Position: *Yes, the 2004 storm costs should be adjusted to remove the estimated amounts for reimbursements for repair and restoration of poles owned by other parties.*

Argument: The 2004 storm costs should be adjusted to remove the estimated amounts for reimbursements for repair and restoration of poles owned by other parties. This item is discussed in response to issue 1.

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

Position: *Yes, the 2004 reserve deficiency should be reduced $51,264,919 to reflect the adjustments discussed in response to issue 1, with a corresponding reduction in interest expense accrued at the pre-tax commercial paper rate on the account.*

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

Position: *Interest should be reduced to reflect the reduction to the 2004 storm costs included in the reserve as discussed in response to issue 1*

Argument: Two adjustments are necessary to the calculation of accrued interest on the unrecovered balance of 2004 storm costs. First, the beginning deficiency balance should be reduced by the $51,264,919 reduction as recommended by OPC witness DeRonne (and adjusted as addressed in Issue 1). Interest should also be calculated only after the monthly offset of the remaining 2005 storm accrual of $20.3 million (or $1.684 million jurisdictional on a monthly basis). The reduction to the interest on 2004 unrecovered storm costs is approximately $1.9 million using the same interest rates as reflected in Exhibit 19 (KMD-3).

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

Position: *Order No. PSC-05-0937-FOF-EI contains some precedent for the Commission's decision in this case. However, the Commission can amend its policy decisions on issues such as lost revenues and the treatment of amounts FPL claims are uncollectible because such changes are supported by expert testimony and other evidence appropriate to the nature of the issues involved.*

Argument: Order No. PSC-05-0937-FOF-EI contains some precedent for the Commission's decision in this case. However, the Commission can amend its policy decisions on issues such as lost revenues and the treatment of amounts FPL claims are uncollectible because such changes are supported by expert testimony and other

evidence appropriate to the nature of the issues involved. *Southern States Utilities v. Florida Public Service Commission*, 714 So.2d 1046, 1057 (Fla. 1st D.C.A. 1998); *Florida Cities Water Company v. Florida Public Service Commission*, 705 So.2d 620 (Fla. 1st D.C.A. 1998)

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

Position: *The risk shouldered by ratepayers in compensating companies for storm damage costs should be limited to the incremental costs incurred by utilities in restoring service to ratepayers that were prudently incurred, reasonable in amount, and otherwise properly charged to the storm reserve account. Because the storm reserve should be limited to incremental costs of restoring the system, so-called "lost revenues" have no place in the Commission's determination, whether directly or indirectly.*

Argument: In PSC order no. PSC-05-0937-FOF-EI the Commission decided that moving all O&M expenses associated with the storm repair to the storm reserve, without taking into account the normal level of expenditures funded by base rates that customers pay, requires customers to pay twice for the same costs. This is the principle which the Commission adopted for 2004 storm expenditures, and this is the principle underlying the approach taken by Citizens in this case. Larkin, Tr. 948. Moreover, this is the approach taken in a settlement of 2004 storm costs with Gulf Power Company

(exhibit 170), as well as in the pending securitization case of Gulf Power Company. Larkin, Tr. 916 - 917. Nothing in the settlement of the 2004 storm case proceeding required Gulf Power Company to follow that same approach in its securitization case. Dewhurst, Tr. 1780 - 1781. Instead, it voluntarily chose to follow the same approach in its pending securitization filing. FPL's proposal stands in stark contrast to the approach adopted by the Commission for 2004 storm costs; the approach proposed by OPC in this case; and the approach taken by Gulf Power Company in its settlement of 2004 storm cost issues; and the approach taken by Gulf Power Company in its pending securitization case.

FPL's cost accumulation under storm damage work orders results in the accumulation of all payroll and all materials, supplies and other costs charged to the work order being accumulated as storm damage costs. This is so even though some of the payroll costs and some material and other costs are reflected in rates and collected from ratepayers during the normal course of business or are costs that are part of the business risk which the Company should bear. Larkin, Tr. 892 - 893. FPL's storm accounting system does not account for only incremental costs. It accounts for total cost of any employee, material, contract cost, supplies, etc. charged to a storm work order. The accounting process utilized by FPL does not account or attempt to account for the portion of the cost charged to storm work orders that are incremental to the Company's normal operating expense. The accounting process, which FPL labels as accurate, merely charges every cost associated with employees' work on the storm, rather than trying to segregate only that cost which is incremental to normal payroll, maintenance and other expense. Larkin, Tr. 894 - 895. Granting FPL's requested

storm costs would result in customers paying twice for the same cost: once in base rates, and once through a storm restoration charge. Larkin, Tr. 932. The approach advocated by OPC, on the other hand, allows FPL to recover all reasonable and prudent incremental storm costs, but only once.

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

Position: *Yes. FPL has charged several items to the 2005 storm recovery costs that were maintenance projects planned prior to the damage incurred in 2005 by the storms, normal maintenance costs or offsets to O&M expenses which are recovered though base rates. These items include condenser tube repairs, hydrolasing costs, and amounts received from other utilities.*

Argument: FPL has charged several items to the 2005 storm recovery costs that were maintenance projects planned prior to the damage incurred in 2005 by the storms, normal maintenance costs or offsets to O&M expenses which are recovered though base rates.

Previously Planned Maintenance - Condenser Tube Repairs. The projected 2005 storm recovery costs include $2,386,000 for condenser tube repairs at Martin

Units 1 and 2 that were planned maintenance prior to Hurricane Wilma. These costs should be included as base rate recovery items and should not be recovered through the storm reserve. FPL had already planned a partial condenser retube for Martin Units 1 & 2 in its overhaul planning system in July of 2005, with overhaul dates of 2007 and 2008. The Company claims the $2,386,000 million is for damage caused by Hurricane Wilma, yet it had already planned for retubing of these units prior to the storm occurring. Consequently, these costs should not be recovered from the storm reserve. DeRonne, Tr. 970-971.

FPL concedes that an adjustment should be made, and that the revised estimate is $2,785,364. However, FPL argues that the effect of the adjustment should be addressed in the final true-up process. Davis, Tr. 1610. If the Commission doesn't recognize the adjustment now, it will be approving higher charges for customers than even the company can show to be necessary. DeRonne, Tr. 965. In effect, it would be approving charges high enough to cover $2,785,364 which FPL admits shouldn't be charged to the storm reserve. If the adjustment is proper, as the company concedes, the Commission should reflect it now.

Regular Maintenance Costs - Hydrolasing Costs. FPL's 2005 storm cost estimate also includes $144,000 for hydrolasing the Martin Unit 1 and 2 condenser tubes and $77,000 for hydrolasing the Martin Units 3 and 4 condenser tubes. The hydrolasing was conducted to clean the tubes to prepare for testing and is a normal, recurring maintenance item included in base rate recovery. Even without any storm activity, FPL had projected to perform condenser tube hydrolasing at Martin Units 1 and 2 in the spring of 2006, at Unit 3 in Fall of 2007 and Unit 4 in Spring 2008. DeRonne,

Tr. 971 - 972. FPL claims that the timing of the maintenance was accelerated because of the hurricanes (Davis, Tr. 1611), but this does not make it an extraordinary matter. The hydrolasing would have been done in any event, so it should be treated as regular maintenance and not charged to the storm reserve. The 2005 storm costs should be reduced by $221,000.

Proceeds received for the Loan of FPL Personnel & Equipment to Other Power Companies. During 2005, FPL billed $9,095,845 for the loan of company personnel and equipment to other power companies for storm restoration activities. Amounts pertaining to travel of $2,227,252 should be subtracted from this since it would not have been included in base rates. DeRonne, Tr. 974 - 976. In rebuttal testimony, FPL stated that $3,400,000 in overtime payroll and materials included in the amount of $9,095,845 were not included in base rates or the 2005 budget. Davis, Tr. 1620. OPC accordingly agrees that this amount should be subtracted from the amount of $9,095,845 as well. FPL also argues that $300,000 for "back-fill" should be subtracted (Davis, Tr. 1620) but provides no evidence that this amount would not already be included in base rates. OPC does not agree with this additional adjustment since FPL failed to show that the back-fill amount is not already covered by base rates.

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

Position: *No. Adjustments are necessary to ensure that the amount of payroll and labor related costs already recovered by FPL through base rates is not also recovered a second time through the recovery of the 2005 storm costs. The following adjustments are appropriate:

Remove Estimated Regular Employee Salaries	($26,092,000)
Less: Payroll Normally Charged to Clauses	2,730,000
Less: Capital Payroll in Regular Salaries	8,000,000
Remove Employee Benefits - Already in Base Rates	(9,213,514)
Total Incremental Salary/Payroll Related Adjustments	($24,575,514)*

Argument: As discussed in response to issue 6, FPL's methodology of moving all O&M expenses associated with the storm repair to the storm reserve, without taking into account the normal level of expenditures funded by base rates that customers pay, requires customers to pay twice for the same costs. This is the principle which the Commission adopted for 2004 storm expenditures, and this is the principle underlying the approach taken by Citizens in this case. Larkin, Tr. 948. Moreover, this is the approach taken in a settlement of 2004 storm costs with Gulf Power Company (exhibit 170), as well as in the pending securitization case of Gulf Power Company. The Company's cost accumulation under storm damage work orders results in the accumulation of all payroll and all materials, supplies and other costs charged to the work order being accumulated as storm damage costs. This is so even though some of the payroll costs and some material and other costs are reflected in rates and collected

from ratepayers during the normal course of business. Larkin, Tr. 892 - 893. The normal level of salaries and benefits already covered by base rates must be removed from FPL's proposed amount in order to prevent this double recovery from customers.

Offsets to regular employee salaries for payroll normally charged to clauses and capital payroll in regular salaries are appropriate. DeRonne, Tr. 959. FPL, however, contends that if the adjustment is made to remove regular payroll under the incremental approach, an adjustment should be made to reflect its claim that the adjustment for normal capital costs includes a component for regular payroll. Davis, Tr. 1594 - 1595. FPL contends that the total amount of estimated capital expenditures for the 2005 storm costs is $72.6 million, with $2.2 million of that amount being categorized as FPL regular payroll. FPL presents $2.2 million as an adjustment under the incremental approach, in addition to the $8 million adjustment already being made to remove capital payroll in regular salaries. However, there is no evidence that the capital offset proposed by FPL has not already been factored into its $8 million adjustment to offset the salary adjustment by the amount of payroll normally charged to capital. The additional $2.2 million offset under the incremental approach proposed by FPL should not be accepted by the Commission.

FPL also included $9,213,514 for employee benefits in its storm amount, and this must also be adjusted out because it is already included in base rates. According to FPL's response to OPC Interrogatory No. 184, $9,213,514 is included in the 2005 storm recovery costs for "Applied Pensions and Welfare." The response indicates that these amounts "...represent company payments for life, medical and dental insurance, thrift plan, long term". Costs associated with the provision of these types of benefits to

employees are already reflected in base rates and FPL's budgets. The cost of providing employee benefits would not increase as a result of a storm event. These are not incremental costs to the Company resulting from the storms and should not be included. DeRonne, Tr. 960 - 961.

In rebuttal testimony FPL agrees that at least $1.2 million of the amount should be removed to adjust payroll overheads to the correct amounts. Davis, Tr. 1606. However, FPL claims that the sum of the payroll loadings after the correction, included in the 2005 storm costs, is $8.4 million, consisting of $4.4 million of payroll overhead being applicable to the regular payroll based on an overhead rate of 16.69% and $4 million pertaining to overtime payroll based on an overhead rate of 6.69%. FPL also claims that in addition to the items identified as being included in the response to the OPC for pensions, welfare and insurance, the payroll overheads also include payroll taxes.

The payroll overhead items pertaining to base salaries are already factored into base rates and should not be included in the charges to the 2005 storm reserve. With regard to the application of payroll overheads associated with overtime payroll, FPL claims that the 6.69% overhead rate is lower as it only includes social security taxes. Davis, Tr. 1607.

The full amount of payroll overheads included by FPL in its proposed 2005 storm recovery costs should be removed. The portion pertaining to base salaries is already recovered in base rates. For the portion pertaining to overhead salaries, FPL has not demonstrated that the full amount of overtime costs would be taxed at the full social security tax rate. Presumably a portion of overtime costs would pertain to salaries

which exceed the taxability threshold to which the FUTA rate is applied. FPL does not provide the level of detail necessary to determine what portion of the overtime salaries included in the 2005 storm recovery costs are taxable versus the portion that would exceed the threshold. Its proposed adjustment is inappropriate.

FPL's adjustments to the incremental cost approach also include a $2,490,800 offset to the regular employee salary adjustment to reflect the fact that a portion of these payroll costs have already been removed from the 2005 estimated storm recovery costs in the adjustment to remove the estimated insurance proceeds. If this adjustment is reflected, FPL would recover the associated amount, i.e., $2,490,800, twice: once from insurers, and again from ratepayers. The regular employee salary amount included in FPL's storm recovery costs that is being removed under the incremental cost approach, totaling $26,092,000, is already being recovered in base rates. If FPL both recovers the $2,490,800 of nuclear employee base salaries from insurers and also offsets the adjustment to remove base salaries from the storm costs by the same $2,490,800, it will recover these costs both from insurers and from customers in base rates. The removal of the $26,092,000 of regular employee salaries charged to the storm recovery costs under the incremental method should therefore not be offset by the $2,490,800. DeRonne, Tr. 959 - 960.

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

Position: *No. The storm recovery cost is not a basis on which to provide extra compensation to employees who are salaried and have accepted that salary as full compensation for all time that they are required to put in. The 2005 storm costs should be reduced by $768,000 to remove exempt employee overtime incentives.*

Argument: Salaried employees receive their compensation for the level of work that is required of them. They are not compensated based on fixed number of hours of work. When overtime is required of these employees, they are responsible for providing that additional work for the salary they agreed to accept. The Company does not compensate these employees for additional time they might put in when work load requires that they spend additional hours, such as month end accounting closings or special projects with short due dates. The storm recovery cost is not a basis on which to provide extra compensation to employees who are salaried and have accepted that salary as full compensation for all time that they are required to put in. Larkin, Tr. 916.

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

Position: *No. Adjustments are necessary to ensure that costs recovered by FPL through base rates are not recovered a second time through recovery of storm costs. A $1,100,000 reduction to the tree trimming costs is appropriate to reflect that FPL's

actual expenditures for non-storm related tree trimming were less than it included in its budget for 2005 tree trimming.*

Argument: FPL's actual expenditures for non-storm related tree trimming were $1.1 million less than it included in its budget for 2005. DeRonne, Tr. 961. Since customers have already paid for the full level of FPL's budgeted tree-trimming expense in base rates, an adjustment of $1.1 million should be made to storm related tree-trimming expense so that customers do not pay twice for the same expense: once through base rates, and a second time through a hurricane surcharge.

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

Position: *No. Adjustments are necessary to ensure that costs recovered by FPL through base rates are not recovered a second time through recovery of storm costs. A $5,738,000 reduction is appropriate to remove a portion of the vehicle costs FPL indicates would have been incurred in the normal course of business, even absent the storms. *

Argument: Adjustments are necessary to ensure that costs recovered by FPL through base rates are not recovered a second time through recovery of storm costs. A

$5,738,000 reduction is appropriate to remove a portion of the vehicle costs FPL indicates would have been incurred in the normal course of business, even absent the storms. FPL's proposed 48% offset for vehicle costs it contends would have been incurred in the normal course of business ($2,767,000) and charged to capital costs is not appropriate. The Company has not supported the offset, nor has it shown that vehicle costs were not otherwise included in the storm related or other capital costs. DeRonne, Tr. 961 - 962.

In rebuttal testimony FPL also contends that the 2005 Fleet Services operations and maintenance costs were $3.2 million above budget, of which $1.2 million was for additional maintenance on vehicles due to higher usage during storm restoration. Davis, Tr. 1608. FPL contends that this $1.2 million budget variance should increase the storm costs under the incremental approach. This adjustment is not appropriate. The rebuttal testimony provided no supporting detail for these amounts, nor did it demonstrate that the determination of the $3.2 million above budget and the $1.2 million for additional maintenance was not included in the vehicle costs included in the 2005 storm recovery costs presented by FPL. The storm costs include a considerable amount for vehicle related storm recovery costs beyond the amounts removed for the portion that is factored into base rates. The $5,738,000 million is only a portion of the total vehicle costs included in the storm recovery amounts and is based on the monthly vehicle rates charged to the storm accounts. These vehicle rates include items such as depreciation, maintenance, fuel and overhead costs. Additional, incremental vehicle costs for both company owned and non-company owned vehicles remain in the proposed storm recovery costs. DeRonne, Tr. 961 - 962.

This offset was not allowed by the Commission in the 2004 storm docket, and it should not be allowed in this case either.

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

Position: *No. The actual operation and maintenance expenses for telecommunications costs in 2005 were $520,264 less than budgeted. The proposed 2005 storm recovery costs should be reduced by this $520,264 so that only the incremental telecommunications costs beyond those factored into base rates are included.*

Argument: Similar to the treatment proposed by FPL for tree trimming expenses, FPL believes that it should be allowed to keep any amounts by which its non-hurricane related telecommunications expenses come in under budget and surcharge customers for all such expenses in excess of those amounts. Davis, Tr. 1608 - 1609. This viewpoint ignores the fact that the full budgeted amounts are already included in base rates. Under FPL's proposal, customers would pay twice for the amounts under budget: once in base rates, and again through an extraordinary surcharge for hurricane expenses. During cross examination, Mr. Larkin described this as the company keeping all the pluses and sticking the ratepayers with all of the negatives. Larkin, Tr. 940 - 941.

Customers should be credited for the full amount included in base rates, which includes the entire budgeted amount. *See* DeRonne, Tr. 961 - 962.

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

Position: *No. Advertising costs for safety and other customer services are incorporated into the determination of base rates. Additional expenditures made informing the public of the Company's efforts to restore service are either covered in base rates or do not provide a direct benefit to ratepayers and are not directly related to the storm restoration efforts. As such, advertising and communications costs of $2,528,196 and $144,068 for a public relations invoice should be removed from the 2005 storm costs.*

Argument: Advertising and public relations costs are generally image building type expenditures and are not related to the restoration of service to customers. Costs associated with advertising related to public information regarding safety and other customer services are incorporated into the determination of base rates. Additional expenditures made informing the public of the Company's efforts to restore service are either covered in base rates or do not provide a direct benefit to ratepayers and are not directly related to the storm restoration efforts. DeRonne, Tr. 972. An adjustment

should be made for $506,507 included for print ads and $2,021,689 for radio communications. In addition, an adjustment should be made for $144,068 included for "Public Relations Invoice."

FPL removed some, but not all, of these expenses in its rebuttal case. *See* Davis, Tr. 1611- 1612. FPL continues to argue that it should surcharge customers for expenses such as "thank you" advertising to recognize foreign crews who worked on restoration. The expenses for foreign crews are already covered by the incremental expenses to which no party objected. "Thank you" advertising, however, goes too far: it is not required to restore service. If FPL wishes to build good will by placing "thank you" ads in newspapers, it should be responsible for the costs.

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

Position: *No. Only those costs that are directly related to restoring facilities should be included in the storm restoration cost accruals and recovered from ratepayers. It would be difficult, if not impossible, to relate uncollectible accounts directly to the effects of a storm. Even if it could be done, these expenses are not directly related to the restoration of service. They are in the nature of risk, for which the Company is compensated through the rate of return on equity. *

Argument: Only those costs that are directly related to restoring facilities should be included in the storm restoration cost accruals and recovered from ratepayers. It would be difficult, if not impossible, to relate uncollectible accounts directly to the effects of a storm. Even if it could be done, these expenses are not directly related to the restoration of service. They are in the nature of risk, for which the Company is compensated through the rate of return on equity. The Commission shouldn't compensate FPL for these types of business risks again through a storm recovery surcharge. Accordingly, the 2005 storm costs should be reduced by $3,582,000 to remove the estimated uncollectible accounts included in the storm recovery request. *See* Larkin, Tr. 915.

Issue 16: Has FPL properly charged the normal cost of replacement to rate base and the normal cost of removal to the cost of removal reserve for the 2005 storms? If not, what adjustments should be made?

Position: *No. The capital portion total 2005 storm cost has increased from the original estimated amount of $63,855,000 to $72,600,000. This additional $8,745,000 offset to the 2005 storm recovery costs should be made to reflect the higher portion of storm costs anticipated to be capital related, which would not be recovered from the storm reserve.*

Argument: At the time OPC filed testimony, the portion of the cost estimates that FPL projected to be related to capital expenditures had increased from the original estimated amount of $63,855,000 to $66,819,000, an increase of $2,964,000. DeRonne, Tr. 974. Subsequently, FPL increased the amount for estimated capital expenditures to $72,600,000, an increase of $8,745,000 from the original estimated amount. *See* Davis, Tr. 1605. OPC agrees that the normal capital offset to the storm recovery costs should be increased to $72.6 million.

FPL admits that an actual cost component of its filing has decreased the amount to be recovered but continues its argument that a true-up be made after this rate increase is approved. As addressed in response to issue 20, this premise should be rejected.

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;

Position: *No. Only those costs that are directly related to restoring facilities should be included in the storm restoration cost accruals and recovered from ratepayers. Lost revenues are not a cost of restoring service. In any event, FPL's revenues exceeded

budgeted amounts during the 2005 hurricane season, even including the impact from outages caused by hurricanes, so there are no "lost revenues" in this case.*

Argument: Last year the Commission increased the amount to paid by customers through a storm recovery surcharge by charging customers for FPL's "lost revenues." This, together with the increased surcharge to pay for what FPL claimed was an increase in its uncollectible accounts receivable, completely offset every adjustment made by the Commission for incremental costs. Adjustments to FPL's request for non-management payroll expense, managerial payroll expense, tree trimming expense, vehicle expense, advertising, and public relations expense totaled $38,814,297. This was given back to FPL by providing FPL an extra $6,000,000 for uncollectible expenses and $33,814,297 for lost revenues. Order no. PSC-05-0937-FOF-EI at pages 22-23; exhibit 146. The Commission must not let this happen again.

Lost revenues are an estimate of what the Company, in theory, would have collected from ratepayers through revenues had there been no outages caused by the storms. The calculation of this estimate is based on calculating an average consumption by customers for a prior period and then applying that average to the days of outages times the number of customer outages during the restoration period.

"Lost revenue" is not a cost of restoring service. There is no expenditure of funds or outflow of cash represented by a so called "lost revenue." It is a calculated number based on estimates of possible sales during the storm outage period. It is not reasonable to assume that these revenues are linked to, or result from, restoring service to customers.

When utility rates are set, the rate of return allowed the Company on equity provides for the assumption of risk. Part of that risk involves the effect of weather on sales. If weather is warmer than normal during the cooling season and colder than normal during the heating season, the Company receives the benefit of those increased sales because they were not taken into account in establishing base rates. The company doesn't refund money to customers if sales exceed forecasts. On the reverse side, if the weather is colder than normal during the cooling season and warmer than normal during the heating season the Company would absorb the impact of those reduced sales.

The effect of weather on sales consumption has always been a benefit/risk assigned to stockholders through the determination of the fair and reasonable rate of return. It should never be a factor in establishing incremental costs to be borne by ratepayers as a result of hurricane activity. Larkin, Tr. 907 - 908.

During the 2005 hurricane season FPL experienced a series of positive variances between budgeted and actual revenues on account of warm weather. Setting aside the effect from disruptions to service, FPL had a positive revenue variance of $19,257,000 in July, 2005; $25,804,000 in August, 2005; $14,103,000 in September, 2005; $15,486,000 in October, 2005; and $1,553,000 in November, 2005, for a total positive revenue variance during hurricane season of $76,203,000. Exhibit 147. This positive revenue variance far exceeds any hypothetical amount of "lost revenue" FPL claims to have experienced on account of lost sales during the time it took FPL to restore service to customers. FPL had some slightly negative revenue variances during

the first half of 2005 and during December, 2005, but these were during time periods when FPL was unaffected by hurricanes.

What is clear is that during hurricane season FPL's revenues more than covered all costs included in base rates, including all budgeted expenses which are included in base rates. The company claims that it "suffered extensive outages due to the 2005 storms resulting in significant amounts of budgeted revenue not being realized." Davis, Tr. 1575. This is a classic statement of half the story: although there were obviously outages resulting from the hurricanes, weather induced over-budget amounts in excess of $76 million far exceeded hurricane weather induced under-budget amounts of less than $52 million. FPL witness Gower engaged in the same tactic of complaining about revenues lost during outages while ignoring the revenues over budget from hot weather during the same period. For example, he claimed that "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." Gower, Tr. 1538. Like Mr. Davis, Mr. Gower simply ignored the revenues over budget caused by weather other than hurricanes. Since actual revenues during the hurricane months of July through November 2005 exceed budgeted revenues, there were more than enough revenues to recover all costs included within base rates.

It is not uncommon for revenues to be under or over forecast for a variety of weather related or economic factors during any given year. Customers do not get refunds if a company's revenues exceed its budgets, and neither should customers be charged when revenues do not meet budgets. As a matter of principle, the Commission

should not surcharge customers for lost revenues since it is not a storm restoration cost. But in this case there are no "lost revenues" at all during hurricane season because revenues exceeded budgets even after taking into account outages. The Commission should not give any extra amounts to FPL, either directly or indirectly, for "lost revenues."

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);

Position: *No. Only those costs that are directly related to restoring facilities should be included in the storm restoration cost accruals and recovered from ratepayers. Backfill work is part of daily utility operations and maintenance of the Company's system and are included as part of base rates. These costs are not extraordinary nor related to storm recovery, and as such should not be used as an offset in the incremental approach to storm reserve accounting or recovery.*

Argument: FPL's adjustment for "back-fill" under the incremental approach is essentially a back door method of requesting lost revenues. *See* Larkin, Tr. 906. Only those costs that are directly related to restoring facilities should be included in the storm restoration cost accruals and recovered from ratepayers. Other costs that the Company may claim to be related to storm recovery should be excluded. These costs include payroll and overtime in work areas not directly affected by the storm, such costs are sometimes labeled as "backfill" work. Larkin, Tr. 912.

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);

Position: *No. Only those costs that are directly related to restoring facilities should be included in the storm restoration cost accruals and recovered from ratepayers. Catch-up is part of daily utility operations and maintenance of the Company's system and are included as part of base rates. These costs are not extraordinary, nor related to storm recovery and as such should not be used as an offset in the incremental approach to storm reserve accounting or recovery.*

Argument: Costs associated with work postponed due to the employees working on storm restoration are not directly related to restoring facilities, these costs which are called "catch-up" costs should be excluded from recovery as storm costs. Larkin, Tr. 912.

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

Position: *No. Only those costs that are directly related to restoring facilities should be included in the storm restoration cost accruals and recovered from ratepayers. It would be difficult, if not impossible, to relate uncollectible accounts directly to the effects

of a storm. Even if it could be done, these expenses are not directly related to the restoration of service. They are in the nature of risk, which the Company is compensated for through the rate of return on equity.*

Argument: Only those costs that are directly related to restoring facilities should be included in the storm restoration cost accruals and recovered from ratepayers. It would be difficult, if not impossible, to relate uncollectible accounts directly to the effects of a storm. Even if it could be done, these expenses are not directly related to the restoration of service. They are in the nature of risk, for which the Company is compensated through the rate of return on equity. The Commission shouldn't compensate FPL again for these types of business risks through storm recovery. Larkin, Tr. 915.

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;

Position: *No. Only those costs that are directly related to restoring facilities should be included in the storm restoration cost accruals. These costs are similar to those described as catch-up work, which is part of daily utility operations and maintenance of the Company's system and included as part of base rates. These costs are not

extraordinary, nor related to storm recovery and as such should not be used as an offset in the incremental approach to storm reserve accounting or recovery.*

Argument: Costs associated with work postponed due to the employees working on storm restoration are not directly related to restoring facilities. Contractor costs, like "catch-up" costs, should be excluded from recovery as storm costs. *See* Larkin, Tr. 912.

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

Position: The Citizens agree that these costs should be offset against the regular salaries removed from the 2005 storm recovery costs.

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

Position: The Citizens agree that these costs should be offset against the regular salaries removed from the 2005 storm recovery costs.

h. Vacation Buy-Backs:

Position: *Vacation Buy-Backs are generated by the Company's vacation policy and not as a direct result of storm restoration activities. It reflects a discretionary action by FPL and shouldn't be charged to customers.*

Argument: Vacation Buy-Backs are generated by the Company's vacation policy and not as a direct result of storm restoration activities. FPL could have changed its carryover policy and allowed employees to carryover any and all vacation which could not be taken in 2005. Instead, the Company chose to limit the carryover hours to 120 and reimburse employees for any vacation which could not be taken in 2005. This is a management decision. These costs are not directly related to the restoration of service, but are instead related to FPL's vacation policy. Larkin, Tr. 913 - 914; 920.

In addition, part of this cost may be the result of buy-backs from employees who have purchased additional vacation hours and were unable to take those hours as vacation in 2005 because of restoration activities. Regardless of whether the vacation buy-back is a result of unused vacation or vacation which the Company is purchasing back from employees who had previously purchased those vacation hours, it is not a legitimate cost to be recovered from ratepayers. Larkin, Tr. 914. FPL did not include these costs in its requested storm recovery costs and instead included them as an offset to any disallowances provided by the incremental approach to storm recovery. These amounts should not be included in the storm reserve nor used as an offset to adjustments made as a result of the incremental approach.

i. Nuclear Payroll Expected to be Recovered Through Insurance:

Position: *In FPL's Incremental Cost Approach adjustment it includes a $2,490,800 offset to the regular employee salaries for nuclear payroll costs that it already removed from the 2005 estimated storm recovery costs in the adjustment to remove the estimated insurance proceeds. If this adjustment is reflected, FPL would recover the associated amount twice, once from insurers and again from ratepayers. Therefore, this offset is inappropriate.*

Argument: FPL's calculations under the Incremental Cost Approach includes a $2,490,800 offset to the regular employee salary adjustment to reflect the fact that a portion of these payroll costs have already been removed from the 2005 estimated storm recovery costs in the adjustment to remove the estimated insurance proceeds. If this adjustment is made, FPL would recover the associated amount, i.e., $2,490,800, twice, once from insurers and again from ratepayers. The regular employee salary amount included in FPL's storm recovery costs that is being removed under the Incremental Cost approach, totaling $26,092,000, is already being recovered in base rates. If the Company both recovers the $2,490,800 of nuclear employee base salaries from insurers and also offsets the adjustment to remove base salaries from the storm costs by the same $2,490,800, it will recover these costs both from insurers and from customers in base rates. Thus, the removal of the $26,092,000 of regular employee salaries charged to the storm recovery costs under the incremental method should not be offset by the $2,490,800. DeRonne, Tr. 959 - 960.

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

Position: * No. Landscaping is not covered by insurance and should be covered as part of base rates. Accordingly, landscaping charges of $1,503,250 should be removed from 2005 storm costs to be recovered through the storm reserve. *

Argument: FPL included an accrual totaling $1,503,250 for landscaping costs that it recorded for Hurricane Wilma in its 2005 storm costs. (Audit Finding No. 2, Staff Audit Report, page 7 of 30 in Ex. 89 (KLW-2) In her deposition, Staff witness Welch stated that, in her opinion, landscaping costs were not covered by insurance and many individuals lost landscaping which was not covered by insurance. While zoning requirements make people replace trees, people still have to pay it for it out of pocket. Ms. Welch stated that her understanding of why the storm reserve was originally set up was to replace insurance. She opined that if most people's insurance didn't cover landscaping, then FPL's requested landscaping should not be recovered through the storm reserve. She did, however, admit that landscaping required to be replaced by zoning ordinances is a cost of providing service. Ex. 157, page 50. Based on this testimony, OPC believes that landscaping costs should be recovered through base rates and not through the storm reserve. Accordingly, the 2005 storm costs should be reduced by $1,503,250.

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

Position: *No. FPL originally included $2,849,571 for estimated property damage and personal injury costs for 2005 storm costs. These are not costs directly related to the storm recovery efforts or for the restoration of electric service to customers and should not be included in the costs to be recovered. Additionally, these types of costs are already considered in the determination of base rates and should not be recovered via the recovery of storm restoration costs.*

Argument: According to the response to OPC Interrogatory No. 184, under the "Other" category of 2005 storm recovery costs FPL included $2,849,571 for estimated property damage and personal injury costs under the General Counsel Business Unit. These are not costs directly related to the storm recovery efforts or for the restoration of electric service to customers and should not be included in the costs to be recovered. Additionally, these types of costs are already considered in the determination of base rates and should not be recovered via the recovery of storm restoration costs. DeRonne, Tr. 973.

In rebuttal, FPL conceded that $2.2 million should be removed. Davis, Tr. 1615. However, the Commission should not allow FPL to charge any of these costs to customers for the reasons set forth in the preceding paragraph.

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

Position: *No. The remaining contingencies should be removed from the storm cost estimates. FPL is treating upward adjustments to estimated "contingencies" as a way of maintaining its request at the level of its original petition, instead of lowering that request as actual figures come in below original estimates. The estimates in FPL's petition were a starting point subject to adjustments based on actual figures, not an entitlement.*

Argument: As of March 14, 2006, $244,973,000 of the $906,404,000 (or 27%) of proposed storm recovery costs was still based on estimates. DeRonne, Tr. 966. Included in those estimates was $26,253,351 for "contingencies," or amounts in addition to the estimates of costs.

In prefiled testimony OPC recommended removal of this amount of remaining contingencies. DeRonne, Tr. 965 - 966; exhibit 85. In its rebuttal testimony, FPL indicates that the remaining contingencies for the 2005 storm costs as of March 2006 declined to $7.5 million. The cause of the decline is partially due to the fact that the projected total storm costs have decreased from the $906,404,000 (as presented by FPL in its direct testimony and exhibit 13) to $885,613,000 (as presented by FPL in its rebuttal testimony and exhibit 106), a reduction of $20,791,000.

Throughout this process it is the ratepayers that are being asked to ultimately fund these amounts. If the amounts are over-estimated, it is ratepayers who will be locked in to paying higher amounts over the next twelve years under FPL's proposal. FPL's general premise -- that if the costs are overestimated they will be trued-up and serve to increase the available reserve funds for future storms -- is not reasonable and is not the position the Commission should adopt in evaluating the proposed 2005 storm recovery costs in this case. Removal of the contingencies still allows for the inclusion of a significant amount of estimated costs in the proposed storm recovery financing. DeRonne, Tr. 966. FPL's estimates for contingencies are highly variable, as if FPL were using contingencies as a "plug" figure. According to Commission auditor Kathy Welch, "If one group does not meet its contingency, they keep transferring it to other groups." Exhibit 157 at 58.

If the Commission reflects the full reduction in the projected 2005 storm recovery expenditures as the starting point in its decision, the additional $7.5 million remaining for contingencies should be removed. These contingencies are above and beyond the estimated remaining expenditures and should not be included. If the starting point is the $906,404,000 presented by FPL in the original filing, then OPC's full recommended adjustment to remove contingencies of $26.25 million should be made by the Commission.

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

Position: *Yes. FPL should be required to true-up the actual costs incurred and not continue to increase the amount of contingency costs as a plug amount to keep the storm cost equal to the original amount requested or to the estimated amount approved by the Commission. A cut-off date of December 31, 2006 should be established for charging 2005 storm restoration costs to the reserve.*

Argument: Last year the Commission ordered FPL to stop charging costs to the storm reserve no later than July 31, 2005. Exhibit 150 at 22. As discussed in response to issue 1, FPL ignored that cut-off date and attempted to charge items not even identified in the 2004 storm case -- and work not yet performed -- against the 2004 storm reserve. The Commission should adopt a cut-off in this case to prevent FPL from repeating the pattern it established with 2004 storm costs. FPL expects most restoration work to be completed by year end 2006, with a few exceptions. It is not appropriate to allow an indefinite period for charging costs associated with the 2005 storms to the reserve.

For any amounts that are not based on actual expenditures as of the December 31, 2006, the items contained in any accruals should be limited to those projects that were specifically identified as part of this case and the projects should actually be started by December 31, 2006. As a large portion of the 2005 storm recovery costs that FPL is seeking for inclusion in the storm financing are still based on estimated amounts, this limitation should help to mitigate any potential pressures to seek out additional projects to somehow tie to the 2005 storms in order to result in a certain final cost level. See DeRonne, Tr. 990 - 991.

Consistency with the 2004 storm docket decision in Order PSC-05-0937-FOF-EI also requires that FPL true-up the 2005 estimated costs to actual and adjust the reserve to reflect allowed adjustments. Page 37 of the Order states as follows: "Within 70 days after the conclusion of this recovery period, FPL shall file the final actual 2004 storm damage costs and the total amount collected through the surcharge during the recovery period."

A similar true-up mechanism is also appropriate in this case. All costs should be trued-up to the actual amounts incurred and as adjusted by the Commission. Any projects started after the recommended December 31, 2006 cut-off date should be charged to base rates, not the storm reserve. Further, OPC recommends that the staff should audit the actual amounts to ensure compliance with the Commission's order.

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

Position: *Yes. However, FPL has not yet billed the outside parties for the repairs or replacements. The 2005 storm costs should be reduced by a minimum of $7,923,288 to reflect an estimate of the amounts billed to other parties. This represents a placeholder adjustment of 75% of the estimate provided by FPL witness Williams of $10,564,384 to provide an offset for capital costs.*

Argument: As of March 31, 2005, FPL had not completed a survey of the poles belonging to other companies which FPL had replaced, and accordingly had not yet billed the outside parties for the repairs or replacements. Davis, Tr. 1621. Late filed deposition exhibit 2 to the deposition of Geisha Williams indicated that FPL estimated the total cost to be billed to other companies was $10,564,384. DeRonne, Tr. 968. Based upon a ratio developed from the normal and extraordinary costs related to poles repaired in 2004, Ms. DeRonne recommended that 75% of this cost be used to estimate the portion of this cost which should be used as an offset to the 2005 storm recovery costs. *See* DeRonne, Tr. 969, and Davis, Tr. 1586. Without explanation, FPL used a different ratio -- about 39% -- between normal and total costs for pole repair in 2005. *See* Davis, Tr. 1611.

Regardless of which ratio is used, a review should be conducted once the actual amounts are trued-up to ensure that the billings to outside parties for FPL's repair and replacement of poles owned by others is based on the actual costs incurred by FPL. DeRonne, Tr. 970. Since the ratio developed from the 2004 storms is based upon a completed survey of poles repaired in 2004 (Davis, Tr. 1586) while the ratio for 2005 is not based upon a completed survey (Davis, Tr. 1611), the ratio from 2004 should be used until the final figures become available. The 2005 storm costs should be reduced by $7,923,288 to reflect this estimate.

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

Position: *Yes. Additional adjustments should be made to the requested 2005 storm costs should be made for employee assistance costs and repair costs under warranty.*

Argument: Additional adjustments should be made to the requested 2005 storm costs as described below:

Employee Assistance Costs. Costs provided to assist FPL employees to secure their personal damaged property should be removed. These are employee benefit costs and are not directly related to restoring FPL facilities. FPL employees are no different from other non-utility emergency workers that have to restore their own property and ratepayers should not bear these costs. Customers are not in a position to pass their costs on to third parties, and neither should employees of FPL be allowed to pass their personal costs related to the hurricane on to customers through FPL. Accordingly, 2005 storm costs should be reduced by $245,025. Larkin, Tr. 914 - 915.

Repair Costs Under Warranty. FPL has included an estimated $316,250 for a cooling tower fan repair at Martin Unit 8 even though a warranty claim is being pursued. Although the estimated amounts charged to the reserve will be trued-up to actual as the amounts become known, it is not appropriate to include such costs in the estimates. To potentially inflate the estimated storm costs under the premise that it will be trued-up later is a veiled attempt to increase the amount provided in the reserve to even more than the $650 million replenishment already requested. DeRonne, Tr. 963 - 965.

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

Position: This is a fall-out issue.

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

Position: *The Commission should order that only projects that have been identified in this docket and physical construction has begun on or before December 31, 2006 should be allowed to be charged to the storm reserve for 2005 storm costs.*

Argument: Last year the Commission ordered FPL to stop charging costs to the storm reserve no later than July 31, 2005. Exhibit 150 at 22. As discussed in response to issue 1, FPL ignored that cut-off date and attempted to charge items not even identified in the 2004 storm case -- and work not yet performed -- against the 2004 storm reserve. The Commission should adopt a cut-off in this case to prevent FPL from repeating the pattern it established with 2004 storm costs. FPL expects most restoration work to be completed by year end 2006, with a few exceptions. It is not appropriate to allow an

indefinite period for charging costs associated with the 2005 storms to the reserve. For any amounts that are not based on actual expenditures as of the December 31, 2006, the items contained in any accruals should be specifically limited to those projects specifically identified as part of this case, and the projects should actually be started by December 31, 2006. For any remaining estimated amounts, the accruals should be specifically limited to those non-capital projects that were specifically identified as part of this case and started by December 31, 2006. This cut-off date should help to mitigate any potential pressures to seek out additional projects to somehow tie to the 2005 storms in order to result in a certain final cost level. DeRonne, Tr. 990.

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

Position: *FPL's pre-storm pole inspection process was inadequate. Osmose, the only valid inspection, covers less than 1% of poles annually. Thermovision inspections exclude 845,000 lateral poles, and detect only conspicuous external damage. Hazard assessments aren't recorded in a meaningful data base. Lacking actual data, KEMA invented the term "touchpoint opportunities", and substituted convoluted, speculative "probabilities." This effort failed to mask FPL's deficiencies. The Commission should

adopt OPC's estimate of poles that failed from deterioration, based on FPL's own post-storm data.*

Argument: A wood pole inspection and maintenance program is an example of a reliability program. If a utility replaces a deteriorated pole before it fails, the utility avoids a customer outage. Sometimes a pole may be deteriorated to the point of needing a replacement, but is literally "held in place" by conductors attached to adjacent poles. (TR-1433) Such poles may continue to stand during normal conditions, only to fail during hurricane force winds. (TR-1434) If a utility replaces a deteriorated pole in post-storm "restoration" conditions, it will incur costs higher than it would incur had it replaced the pole in normal conditions. (TR-1434) An effective pole inspection and maintenance program can therefore increase reliability during non-storm periods and reduce the costs of replacing poles compared to the cost of post-storm restorations.

Outages that occur during hurricanes are eliminated from the calculation of FPL's reliability indices. (TR-1434) It is no coincidence, then, that FPL's reliability indices, that were worsening prior to 2004, showed improvement during the period with heavy hurricane activity.

At issue in this case is the adequacy of FPL's pre-storm efforts to detect, repair, or replace deteriorating poles.

FPL initiated a pole inspection program in the early 1980's, but eliminated the program in 1991—for the express purpose, according to FPL's documents, of cutting costs. (Exhibit 76: "Reliability 2000 Deployment Plan," pages 1,4,5) In 1998-1999, FPL personnel proposed a program that would involve detailed inspections of all of

FPL's wood poles over alternative cycles of 4, 7, or 10 years.(Exhibit 77: TR-203) When FPL implemented the program in 1999, it sharply reduced both the geographical scope and the number of annual inspections that had been proposed originally (TR-204). The protocol for inspections conducted in this program calls for sounding the pole, excavating 18" below ground level and probing for deterioration, boring the pole when indicated, and generating a comprehensive report that is entered into a detailed data base.

The cost of this program, referred to during the hearing as the "Osmose program," is a function of the number of inspections performed annually. (TR-207) During the first years of implementation, through its vendor, Osmose, FPL performed about 28,000 inspections annually, at a program cost of about $1 million. By 2004, FPL had reduced the total number of inspections to 7710 (TR-207), and the corresponding level of annual expenditures to approximately $550,000. (Exhibit 82, page 17)

Based on the thoroughness of the inspections, the training of the inspectors, and the data base of detailed information that such inspections generate, OPC witness James Byerley concluded the Osmose program is an effective inspection program—as far as it goes. However, the scope at FPL is extremely small. Recently, Osmose has inspected fewer than 1% of FPL's wood poles annually.

During the proceeding, FPL and KEMA pointed to Thermovision crews and hazard assessments by workmen as additional sources of pole inspections. Neither constitutes an effective inspection and maintenance program.

FPL employs crews equipped with Thermovision infrared cameras to inspect conductors, insulators, lightning arrestors, and other electrical equipment for "hot spots"

that may predict failures in the electrical apparatus. The Thermovision cameras cannot detect deterioration in wood. (TR-805) In 2003, FPL added visual inspections of wood poles to the Thermovision crews' assigned tasks. (TR-805) Such visual inspections can detect only obvious external deterioration that occurs above ground level. A pole may be experiencing deterioration below ground level or inside what may appear to be a healthy outside "shell." The Osmose program detects deteriorating poles at a rate 20 times greater than does the Thermovision program. (TR- 806)

Thermovision crews inspect only "feeder" poles. (TR-207) Some 65% of FPL's wood poles (approximately 845,000) are lateral poles, not feeders. (TR-209)

FPL describes hazard assessments performed by workers prior to climbing or working on a pole as the third leg of its pole inspection program. However, it is clear that the hazard assessments, which are part of an arrangement between management and labor to address safety of workers, are not maintained in a data base for future reference. (TR-212) Observing the lack of a data base of information stemming from such hazard assessments, OPC witness James Byerley invoked the maxim of management that states, "What gets measured gets done," and added this trenchant corollary: What gets measured but not recorded ought as well have never been measured. (TR- 820). The lack of documentation and retention of data dooms any effort to portray the hazard analysis as a serious pole inspection and maintenance mechanism.

In addition, before attributing any value to the hazard assessment as an effective pole inspection mechanism, the Commission should read closely the "fine print" in FPL witness Williams' rebuttal testimony. According to the witness, work performed from a

bucket truck warrants a hazard assessment *if the task would place stress on the pole.* (TR- 1390) The witness did not identify those tasks which would *not* necessitate a hazard assessment: The replacement of a lightning arrestor? The replacing of a bulb in a luminaire? A reconnection? How many others? The witness did not say, but the caveat certainly places this leg of the "program" in a different light than the all-encompassing treatment it received in the KEMA report.

And who decides whether a particular task does not rise to the level of a hazard assessment? Clearly it is in the discretion of the employee. FPL challenged OPC witness James Byerley when he commented that a hazard inspection performed from a bucket truck may be abbreviated (TR-852), but based on FPL's own description of applicable criteria FPL's rebuttal testimony proves Mr. Byerley's observation to be insightful.

The rest of the "fine print" in Ms. Williams' testimony states that "compliance issues are appropriately handled by local management." As OPC reads it, this statement is code for: There is no enforcement and auditing of standards on a company-wide basis, either of implementation of practices by employees or enforcement of those practices by management. That being the case, the Commission should question the validity of KEMA's simplistic, untested assumption that the practices articulated on paper are carried out in all instances.

This assumption becomes important when assessing the credibility of KEMA's calculations of the "probability," based on "opportunities" provided by "touchpoints," that poles would go uninspected for various periods. Interestingly, FPL's Vice President of Distribution, Geisha Williams, said she had never seen the word "touchpoint" used in

conjunction with FPL pole inspections prior to this docket; just as interestingly, KEMA's Dr. Brown said he didn't originate it, either. (TR-209; TR-310) However, even more important is the admission by Dr. Brown that the exercise in probabilities was necessitated by the fact that FPL has no data base of information regarding the inspection status and condition of its poles that would enable KEMA to make a factual determination of the situation. (TR-312).

Finally, FPL witness Geisha Williams stated that FPL's policy is to expend money only on programs that present value to customers. If that is true, then FPL must have seen value to customers when it proposed, prior to any requirement having been imposed by the Commission, to inspect all of its poles (using the detailed sounding, excavating, and boring protocol) over a ten year period. (TR-1436). After all, if the existing mechanisms already were identifying and replacing all deteriorated poles effectively—such that only sound poles were in place when storms hit—then the anticipated increase in the frequency of hurricanes would provide no justification for a more extensive inspection and maintenance program.

All in all, the weight of the evidence supports a finding that FPL's pole inspection mechanism was deficient prior to Hurricane Wilma. OPC witness Byerley provided a reasonable basis for adjusting the restoration costs that FPL proposes to charge to the storm reserve so as to take this deficiency into account. The adjustment is based on FPL's own post-storm forensic analyses. Mr. Byerley began with the total number of FPL-owned poles that failed during Wilma; calculated the portion that represented creosote poles; determined the number of creosote poles that failed; multiplied that value by $1700, which FPL says is its usual installed cost; and increased the result by a

factor of four to approximate the effect on FPL's costs of replacing the poles under storm conditions. During the hearing FPL questioned Mr. Byerley's use of 6,925 total FPL poles, when an update to the report on which he relied indicated this figure included some 557 street light poles. However, nothing on the updated information indicated the street light poles were not made of wood, and in Mr. Byerley's experience wood poles that hold luminaries also are used to carry distribution service. (TR- 866) In fact, without intending to do so, Mr. Byerley included examples of wood poles serving both purposes in his Exhibit 67. (TR-877-878) The burden of demonstrating the specific street light poles in question did not belong in the total was on FPL. FPL did not demonstrate why the total of 6925 should not be used in Mr. Byerley's calculation.

FPL also challenged Mr. Byerley's selection of $1700 as the normal cost of installing a wood pole. In her testimony, Ms. Williams said this figure included the cost of "transferring facilities." However, during cross-examination she acknowledged that such costs are part of the overall cost of replacing a pole. (TR-1437)

FPL also complained about the factor of four by which Mr. Byerley increased the normal installed cost to approximate the impact of paying for replacement efforts during post-storm conditions. Mr. Byerley based his factor on his personal experience, and deliberately kept the increase on the conservative side. Ms. Williams asserted that FPL expects the number to be $2000, but did not provide a breakdown of assumptions or costs to support this number. In view of the number of factors that operate to increase the cost above that incurred in normal conditions, including the extensive use of multiple contractors and outside utility crews, their travel and accommodation expenses, extensive use of premium-time labor, expedited material and equipment deliveries,

FPL's proposed increase factor of 17.6% ($2000 instead of $1700) appears far out of line with the magnitude of other storm-related costs, and unreasonable on its face. While Mr. Byerley acknowledged his factor is not definitively quantified, he based it on experience of similar situations in the past, and kept it on the conservative end. The Commission should adopt his factor for the purpose of calculating the adjustment.

During cross-examination, Mr. Byerley acknowledged that he had picked up a wrong number from the forensic data when he applied a factor of 45% to arrive at the number of FPL-owned creosote poles that failed. The correct figure, which appeared elsewhere on the chart that was his source, is 28%. OPC accepts the use of 28% rather than the 45% factor that Mr. Byerley used originally in the calculation of the adjustment.

However, OPC submits that Mr. Byerley's method of estimating the amount of conductor damage that should be associated with failed poles should be used. FPL argued that Mr. Byerley improperly used the total amount of conductor damage, which includes damage from all sources, to derive a ratio of pole damage to conductor damage. However, FPL also contended that the vast majority of conductor damage is related—not to failed poles—but to wind and other factors. OPC believes FPL may be engaging in circular reasoning. FPL disagrees with OPC's contention that poles failed because they were deteriorated; FPL would attribute the conductor damage that OPC would associated with failed poles to other categories, such as wind. Only because FPL disagrees with the premise that deteriorated poles failed, then, is the account containing conductor damage deemed by FPL to have been caused by factors other than poles. Mr. Byerley's ratio is a better approximation than an approach that begs the question of whether poles failed due to deterioration.

Substituting the 28% factor for the 45% figure that Mr. Byerley erroneously employed in his testimony, the adjustment to restoration costs to reflect the impact of deteriorated poles and related conductor damage is $11,403,300.

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

Position: *FPL's Vegetation Management Program is inadequate. Vegetation related outages have been increasing steadily since 1999. This concurs with the Staff Report in July 2005. The slight decrease in 2004 is due to excluding hurricane related outages. Internal studies show that FPL opted to repair damage after hurricanes rather than take preventive measures. If FPL had done preventive clearing before the hurricanes, many more consumers would have had power afterward. The Commission should adopt OPC's estimate of preventable tree-related damage.*

Argument: In a report dated July 2005, the Commission Staff noted that FPL's incidents of vegetation-related outages increased steadily between 1999 and 2003. OPC witness James Byerley examined the distribution reliability reports filed by FPL during this period, and observed the same worsening trend. Mr. Byerley also observed worsening CAIDA and SAIFI indices from 1999 and 2003; small improvements in 2004

were attributable to the fact that FPL excludes major storm events from the calculation of reliability indices. (TR-815)

Exhibit 82, captioned "Hardening Distribution's Infrastructure," was prepared by FPL following Hurricane Katrina. The authors evaluated the costs and benefits of reducing the line clearing cycle for three alternative scenarios, but apparently concluded that the plans were not cost effective. (Exhibit 82, pages 26-28) Significantly, however, the only factor considered was a comparison of the costs that FPL would incur prior to and after the storm; any enhancements to reliability delivered to customers were not taken into account. This approach to the analysis of vegetation management expenditures, plus the fact that FPL did not, prior to 2005, significantly increase its vegetation management budget, indicate that it is FPL's view that it is more economical, from FPL's perspective, to restore the system damaged by vegetation after hurricanes than to perform the preventive maintenance required to mitigate storm damage effectively.

OPC witness Mr. Byerley reviewed forensic data collected following Hurricanes Katrina and Wilma by FPL crews. Exhibit 82, "Hardening Distribution's Infrastructure," includes a finding that, during Katrina, 62% of the conductor damage caused by trees was on laterals and 69% of the lateral tree-related damage was "preventable." Exhibit 82, page 11 of 42. Because the KEMA finding with respect to Hurricane Wilma was, in a word, preposterous (KEMA determined that only three preventable instances of vegetation occurred during the hurricane), Mr. Byerley began with the Katrina factor and, to be conservative, reduced the "preventable" ratio from 69% to 50% for use as a proxy in his assessment of Hurricane Wilma. The forensics data indicated that 24% of pole failures during Wilma were due to trees. Mr. Byerley accordingly estimated that

half, or 12%, of such failures were preventable. He applied this factor to the total of 6925 of failed poles; multiplied the result by the normal replacement cost of $1700; increased that amount by a factor of four to reflect the impact of higher costs incurred during storm restoration conditions; and added an estimate of associated conductor damage based on the ratio of overall pole restoration costs to overall conductor repair costs. The result is an adjustment of $11.3 million.

FPL complained about the use of Mr. Byerley's 50% factor in lieu of the three instances of preventable tree-related damage reported by KEMA. In response, OPC says simply that, in view of the scope of the hurricane, on its face the KEMA number is neither reasonable nor credible.

FPL witness Geisha Williams attempted to distance FPL from the findings of the "Hardening Distribution's Infrastructure." However, it was she who appointed the members of the study team who reviewed the data collected by the forensics team, and she agreed that the analysts were well qualified for the task. (TR- 1442)

Finally, FPL argued with Mr. Byerley with respect to the definition of "preventable." (TR-1401) However, Mr. Byerley adopted FPL's own definition of the term (TR-817), and used FPL's own data. His analysis is reasonable. The Commission should adopt his adjustment.

Issue 29: Did FPL adequately inspect and maintain its distribution and transmission system prior to June 1, 2005? If not, what action should the Commission take with regard to any surcharges it may approve as a result of this docket?

Position: * See Citizens' position and argument on issue 27. *

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

Position: Please see Citizens' position and argument on issue 27.

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

Position: Please see Citizens' position and argument on issue 28.

Issue 32: Did FPL adequately inspect and maintain its distribution and transmission system prior to October 23, 2005? If not, what amount, if any, should be adjusted from the costs that FPL proposes to charge to the storm reserve and recover through securitization or a surcharge?

Position: Please see Citizens' position and argument on issue 27.

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

Position: *FPL's pre-storm maintenance was inadequate. Cross-brace bolts, critical to structural integrity, were loose or missing on 31 towers in 1998. Given the risks known then, FPL shouldn't have "assumed" that measures to reduce conductor vibration would prevent future loose bolt problems. FPL should have secured the nuts on all cross-brace bolts, and documented the 1998 discovery adequately. FPL did neither, even when it discovered another bolt missing in 2002. FPL must bear full responsibility for $10.4 million of restoration costs.*

Facts: FPL's Conservation-Corbett 500 kV transmission line consists of 223 towers. (TR- 1362). The towers are of two designs. The "old" design, developed in the 1970s, is characterized by angled legs, whereas the "new" design includes two vertical legs

and a horizontal crossbar in an "H-shaped" configuration. Each tower, whether of the old design or the new one, incorporates a large, X-shaped cross-brace that connects to each leg of the assembly. The cross-brace is connected to the tower legs by a total of only four bolts—one at each of the ends of the two components that form the "X." The cross-brace is the source of much of the overall configuration's structural integrity. Specifically, the cross-brace enables the tower to withstand severe lateral forces, such as high winds. (TR-1295). Even a single loose cross-brace bolt will degrade the structural integrity of the overall tower significantly. (TR-1295) In this regard, cross-brace bolts differ, in terms of their critical nature, from other components (such as foundation bolts) which involve numerous bolts and in which the loss of a single bolt is far less significant. If one or more towers fail because of loose or missing cross-brace bolts, there is a danger that they will pull down adjacent towers and conductors and initiate a cascading failure, even if the other towers are structurally sound. (TR-1355-1357)

When the "old" tower design was developed during the 1970's, the engineering drawings specified the use of locknuts to secure the nuts on the cross-brace bolts. (TR- 269; Exhibit 142) Over time, in approximately the same time frame in which FPL began using bolts made of "weathering steel," the requirement of locknuts on cross-brace bolts was eliminated. "Weathering steel" is steel that develops an exterior "patina" of oxidized metal behind the nut on the cross-brace bolt. The patina is supposed to prevent the nut from loosening on the bolt. However, locknuts continued to be available as possible and feasible options for the Conservation-Corbett towers, even after "weathering steel" was specified. (TR-1340) Alternatively, it is possible to damage

("peen") the threads behind the nuts and so prevent the nut from "backing off" the threads. Dr. Brown and Ms. Jaindl regard both methods as reliable and effective. (TR-281-282; TR-1361)

In Florida, the "weathering steel" develops its protective patina in several weeks—or a month at most. (Tr-1374)

The Conservation-Corbett towers were placed into service in 1996. When FPL installed the Conservation-Corbett transmission line, it strung the conductor at a tension level that was relatively higher than other, similar transmission lines. KEMA report, page 42.

In 1998, during an outage inspection FPL crews discovered damaged insulators on some of the Conservation-Corbett towers. During the same investigation, FPL found that cross-brace bolts were loose or missing at 31 different towers on the Conservation-Corbett transmission line.

FPL measured unusually high conductor vibration on the Conservation-Corbett line. Crew members also observed structure vibration. (Exhibit 71, page 2 of 24) FPL believed that the high level of conductor vibration caused the damage to the insulator on the Conservation-Corbett tower. Documents prepared by FPL personnel in 1998 establish that they regarded the loose bolt situation as an independent problem—one that could present a serious problem in high wind situations. (Exhibit no. 71, pages 3, 23)

FPL installed a damping mechanism to intercept and lower the vibrations. FPL did not document the actions it took to address the loose bolt problem in 1998. (KEMA report, page 43) FPL did not enter the discovery of loose cross-brace bolts on 31 500

kV transmission towers in its asset management system, which serves as the basis for future inspection scheduling decisions. (KEMA report, page 44)

To ascertain whether the nut on a cross-brace bolt is secure or loose, it is necessary to place one's hand on the nut and attempt to turn it. (TR-1369-1370) To place one's hand on the nut in this fashion, it is necessary to climb the tower.

FPL performs "climbing inspections" of 10% of its transmission towers every four years. For the Conservation-Corbett line, this translates into 22 or 23 of the line's 223 towers. (TR-1362) At this rate, FPL will have performed a regular "climbing inspection" on all of the towers of a transmission line after 40 years. (TR-1362)

FPL conducted its usual 10% climbing inspection in 2002. Subsequently, in 2002, a routine ground patrol discovered a tower having a missing cross-brace bolt on the Conservation-Corbett line. FPL treated it a an anomaly, and took no further action. In 2003, FPL crews visually inspected the towers when using Thermovision cameras to search for electrical "hot spots."

In 2005, during Hurricane Wilma 30 towers of the Conservation-Corbett 500 kV transmission line collapsed—28 of them in a cascading event. After the hurricane, FPL crews found that numerous towers had loose or missing cross-brace bolts. Fourteen of these same towers also had loose or missing cross-brace bolts in 1998. FPL spent approximately $10.4 million to restore the Conservation-Corbett line to service.

When the Conservation-Corbett towers fell, certain of the falling facilities impacted facilities of the Alva-Corbett 230K transmission line.

Argument: FPL witness Dr. Richard Brown, who sponsored the report of KEMA, opined that the cause of the failure of 30 Conservation-Corbett transmission towers was the installation guideline that called for manual tightening of cross-brace bolts, which guideline he characterized as inadequate. He acknowledged that, if FPL had been placed on notice of the inadequacy of the guideline following installation but failed to take adequate corrective action prior to the hurricane, then FPL would be responsible for the failure. (TR- 279-280) Denying this was the case, Dr. Brown and FPL witness Barbara Jaindl asserted that FPL "reasonably assumed" that FPL had cured the source of loosening cross-brace bolts when FPL installed conductor vibration-reducing equipment in 1998 and measured lower conductor vibration at the time.

OPC expert witness James Byerley—who, unlike Dr. Brown (TR-265), has had the direct responsibility for maintaining the transmission line owned by his utility employer -- testified that the cause of the failure was FPL's poor maintenance and poor record keeping. Mr. Byerley testified that, under the circumstances known to FPL in 1998 , FPL should have secured the nuts on the bolts in 1998. Mr. Byerley characterized the omission of the 1998 discovery in FPL's asset management system as "inexplicable." (TR- 818)

In rebuttal, FPL witness Jaindl accused Mr. Byerley of using "hindsight." (TR-1350-1351)

In gauging whether FPL "reasonably assumed" that it had solved the problem of loose cross-brace bolts in 1998, it is necessary to take stock of what FPL knew at that time. (TR-1352-1358) FPL knew that it had never experienced a loose cross-brace bolt on any other 500 kV transmission line. FPL knew that on 31 towers of the

Conservation-Corbett line, cross-brace bolts were either loose or missing entirely. FPL knew that the cross-brace is essential to the structural integrity of the tower assembly. FPL knew that the loosening of even one cross-brace bolt could endanger the structural integrity of the tower to which it was connected. FPL knew that the collapse of a nine-story, 12-to-15-ton steel transmission tower and its 500,000 volt conductor could pull down other towers on the line. FPL knew that the loose bolt problem presented a problem independent of the damaged insulator that could pose a serious danger in a high wind situation. FPL knew that the "weathering patina" mechanism had failed to prevent nuts from loosening on the cross-brace bolts. FPL knew that the manual tightening routine that it used when it installed the towers had failed to prevent the cross-brace bolts from loosening.

In short, FPL knew in 1998 that, despite the application of "industry standard" installation guidelines, cross-brace bolts were loose or missing on 31 transmission towers. FPL also knew the loose and missing cross-brace bolts presented an emergency situation and severe risks. A prudent utility would have responded accordingly. Instead, FPL apparently reimplemented the original "installation guideline" that Dr. Brown says was inadequate. [1] But the inadequacy of the "installation guideline"—which called for weathering steel bolts and manual tightening—had been made glaringly apparent during the 1998 inspection.

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[1] OPC uses the term "apparently" here because FPL did not document the steps it took address the loose and missing cross-brace bolts. KEMA report, at pages 42-43. Because FPL failed to document the steps it took at the time, FPL was forced to *deduce* that it took steps to address the loose bolts incident by comparing the towers that had loose and missing bolts in 1998 with the list of towers that exhibited loose and missing bolts in 2005. In the absence of documentation KEMA relied on FPL's "recollection" that it manually retightened the bolts.)

On rebuttal, the FPL witnesses strained to resist the evidence of FPL's imprudence. When Ms. Jaindl offered her view that the towers fell before the steel could weather and lock the nuts onto the bolts, she was ignoring the fact—developed during her own stay on the witness stand-- that the patina forms within several weeks to a month, while the towers had been in service for two years. When she attempted to answer, in response to cross-examination, that FPL "knew" in 1998 that it had fixed the problem of loose bolts, she was contradicting her own statement that FPL "reasonably assumed" that was the case—if one "knows," one does not *have* to "assume." She was also ignoring reality—the discovery of loose or missing cross-brace bolts in 2005 is proof positive that FPL did not "know" it had solved the problem in 1998, as is the 2005 directive of FPL's structural engineer, Dr. Jerry Wong, to get to the bottom of the "vibration phenomenon" in order to prevent the "loose bolts" problem from recurring. (Exhibit 70, page 10 of 11)

Dr. Brown took a different tack. In the KEMA report, he had characterized the 10%/four year inspection routine as inadequate to have intercepted the loose bolt problem. During cross-examination, he alluded to "new information" of additional post-1998 inspections, and said he now believed it was unlikely the loose bolt problem existed in 2003. Dr. Brown did not change his prefiled testimony to reflect any changes in opinions. Instead, he worked the reference to "new information" and his "changed opinion" into his answer to a question posed during cross-examination. The manner in which the "new information" was introduced should itself render the testimony suspect. Second, Dr. Brown failed to explain why FPL (who knew that KEMA was in the process of evaluating FPL's performance) would have failed to provide all information regarding tower inspections to him beforehand, either when he was gathering data or in response

to his proposed conclusions. Next, Dr. Brown did not take into account the fact that none of the later inspections he described involved climbing inspections of all towers—the scope of inspection that would have been necessary to support his sweeping "change of opinion." FPL witness Barbara Jaindl acknowledged that the only way to determine whether a nut is loose or secure on a cross-brace bolt is to place one's hand on it and attempt to turn it. (TR- 1369) Dr. Brown and Ms. Jaindl referred to several inspections that, according to their testimony, took place during 1999-2003. However, only one of these was a *climbing* inspection (2002), and it was of the usual, 10%-each-4-years variety. Having in mind the type of inspection necessary to determine definitively whether a cross-brace bolt is secure or loose, nothing that either Dr. Brown or Ms. Jaindl added, in terms of "new information," provides a basis on which Dr. Brown can alter his original observation, which is that the 10% auditing inspection each four years was inadequate to detect a continuing problem of loose and missing bolts on the Conservation-Corbett transmission line. On the other hand, the disclosure that a "routine ground patrol" identified a *missing* cross-brace bolt in 2002 provides evidence—not that FPL had taken adequate steps in 1998—but that the problem continued. Yet, in Dr. Brown's words, FPL chalked this up as an anomaly. (TR-276) When questioned about FPL's treatment of the missing cross-brace bolt in 2002, Ms. Jaindl said only that FPL was confident in the ability of additional inspections to deal with the problem. (TR-1365-1366) Yet it was her testimony that established it is necessary to place one's hand on the bolt and test it, and of the additional inspections to which she alluded only one—which had already taken place in 2002 prior to the ground patrol's discovery—involved climbing some (10%) of the towers. (TR-1363)

Finally, Dr. Brown painted himself into a corner. When he tried to rule out the continuation of the loose bolt problem, the question inevitably became: What, then, caused the bolts to loosen and the towers to fail during the 2005 hurricane? When the question arose during his first appearance, Dr. Brown was forced to acknowledge he had no alternative explanation. (TR-338-339) Later, after presenting his rebuttal testimony, Dr. Brown "speculated" that the high winds of Hurricane Wilma may have loosened the bolts. (TR-1306) His testimony is not credible. It was Dr. Brown who earlier said that he had contacted other utilities, and none had experienced the loosening of bolts in high wind. FPL did not experience loose bolts on other transmission lines—even those in the same vicinity. Further, Dr. Brown's speculation conflicts with the testimony of Ms. Jaindl, who stated the "conductor vibration" phenomenon is associated with *low wind speeds* of 5 to 15 miles per hour. (TR-1371) Perhaps most telling of all, Dr. Brown's speculation conflicts with his own testimony on the same point. When he commented on Exhibit 71 (the 1998 document in which, at page 23, FPL personnel recognized the loose bolts would present a problem in high winds), Dr. Brown agreed that the concern reflected by the FPL personnel was *not* that the high winds would cause the bolts to loosen further, but that the bolts had to be tight for the cross-brace to provide the structural integrity necessary to enable the tower to withstand high winds. (TR-1297)

The situation comes down to this: Either the loose bolt problem had not been solved, and the loose bolts rendered the towers susceptible to the high winds of the hurricane; or, the cross-brace bolts were intact until the hurricane loosened them. Neither Ms. Jaindl, whose assertion that FPL "knew" it had solved the problem was

palpably wrong, nor Dr. Brown, whose efforts to change his earlier indictment of the adequacy of inspections to detect the continuing problem failed to take into account the necessity of placing hands on each bolt, has provided a credible basis for the Commission to conclude that the hurricane turned and loosened secure bolts.

Far more credible was the testimony of OPC witness James Byerley, who testified that the high winds of Wilma would not have blown the towers over unless the cross-brace bolts were already loose, and that a bolt (including one having a locknut) would not shear unless exposed to the release of the tremendous energy of a cascading failure of multiple towers.

Despite the efforts of FPL's witnesses to steer the placing of responsibility for the failure away from FPL, the only rational conclusion supported by the evidence of record is that the loose bolt problem persisted after 1998 and caused the towers to fail during Hurricane Wilma. (TR-823-824)

Dr. Brown also attempted to trivialize the omission of the 1998 discovery of 31 loose or missing cross-brace bolts from FPL's asset management system—the data base that FPL uses to schedule future inspections. Dr. Brown tried mightily to aid FPL—laboring so far as to assert that the significance or severity of an event is *irrelevant* to the consideration of whether it should be documented and recorded in the asset management system! (TR-295) In OPC's view, Dr. Brown was trying to defend the indefensible: evidence of an asset management system that is designed in a way that fails to capture the discovery of 31 towers having multi-story cross-braces with loose or missing bolts constitutes proof of imprudence *per se.* Dr. Brown simply was not credible on this point. If the severity of a maintenance problem is not relevant to the question of

record-keeping, OPC wonders what criteria Dr. Brown and FPL would offer in its place—and questions the value a data base that ignores the severity of maintenance problems would provide in the future. FPL's documentation of the 1998 discovery was deficient, as was its handling of the loose/missing bolt situation itself.

There appears to be no disagreement with respect to the proposition that the Alva-Corbett 230 KV transmission line failed because the Conservation-Corbett line collapsed on top of it. (KEMA Report, page 41; TR-791). Because FPL's maintenance and record keeping deficiencies caused the failure of the Conservation-Corbett line, ratepayers should not be required to pay for any costs incurred to restore the Alva-Corbett line.

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

Position: * FPL should accrue and collect interest on the actual costs incurred as adjusted by the Commission. Interest should not be accrued on any estimated amounts. The accrual of interest should begin in November, 2005 and cease when the first bonds are issued at the pre-tax commercial paper rate. *

Argument: FPL should only be allowed to accrue and collect interest on the actual amount of storm costs incurred less the adjustments approved by the Commission in this proceeding. Further, interest should not be accrued on any estimated amounts or

contingency costs as those amounts do not represent investment by the utility until they are incurred. The customers should not have to pay the time value of money on items with which the utility has not spent the money. The accrual of interest on actual costs incurred should begin in November, 2005 and cease when the first bonds are issued. The interest rate should be applied at the pre-tax commercial paper rate for each month to recognize the benefits of credit deferred tax impacts that FPL has received in the form of tax losses written off for tax but not book purposes as cost free funds from the government.

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

Position: No position.

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

Position: This is a fall-out issue.

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

Position: * The Commission should approve a reserve that meets the historically-stated threshold of covering the costs of most, if not all, storms. The appropriate level of funding for the storm reserve should be $150 million. However, based on the projected increase in hurricane activity, the Commission could reasonably include a "safety margin" raising the approved reserve to $200 million. *

Argument: Please see the post-hearing brief filed by AARP.

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

Position: *Once the reserve regains a positive balance, the reserve should continue to be held in a funded account with the interest earned accruing to the benefit of the ratepayers. By law, funds obtained through securitization must be restricted to storm recovery activities caused by named tropical storms or hurricanes.*

Argument: Once the reserve regains a positive balance, the reserve should continue to be held in a funded account with the interest earned accruing to the benefit of the ratepayers.

Pursuant to sections 366.8260(1)(j), (k), and (n), Florida Statutes, funds obtained through securitization may be used only to finance storm-recovery costs incurred or that will be incurred by an electric utility in undertaking storm-recovery activity cause by storms. Storms are defined as named tropical storms or hurricanes that occurred during calendar year 2004 or thereafter. Funds obtained through securitization must therefore be restricted to storm recovery activities caused by named tropical storms or hurricanes.

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

Position: *Yes, but only if the Commission takes an active role in the bond issuance process and does not approve FPL's proposed methodology. To ensure that the issuance of storm-recovery bonds results in the lowest overall cost to ratepayers compared with the alternative methods of financing, the "best practices" outlined in Commission staff witness Fichera's direct testimony should be adopted including active

participation by the Commission, its staff, and financial advisors which ensures ratepayer protection.*

Argument: The Commission needs to take an active role in the bond issuance process to ensure that the lowest overall costs are achieve for the securitization process. With the goal of avoiding or significantly mitigating rate impacts to customers, the Commission must use every tool available to ensure that the ultimate costs are the lowest costs that can be achieved. To ensure that the transactional fees and interest rates are the lowest possible in a securitization scenario, the Commission, its staff, and its financial advisors must be included in every step of the process including through real time pricing. (TR-1200) Just as the Texas Commission took an active role in the issuance process of its securitization and was able to lower the costs to ratepayers by maximizing the benefits to Texas ratepayers (Commission staff witness Klein direct testimony at p. 6), the Florida Commission should taken the same active role to maximize the benefits of lower costs for Florida ratepayers.

As noted by FPL witness Dewhurst the choice of whether to implement securitization versus a surcharge is a policy judgment. (TR–82) Securitization produces a smaller monthly charge and the surcharge proposal has a shorter recovery period. (TR-82) As FPL witness Dewhurst noted, while strictly speaking the surcharge is the "fewest dollars approach," it produces a much higher monthly charge over a shorter period of time. (TR-114) However, in the current circumstances [such as increased fuel costs and prior storm surcharges] there is a good logical argument for saying the customers would be well served to have a smaller monthly charge, even

though that is spread out over a longer period of time. (TR-114, 115) FPL witness Dewhurst testified that securitization tends to mitigate the impact on rates, it gives a smaller impact immediately, and it's likely to produce less rate volatility going forward. (TR-115)

To ensure that securitization translates to the lowest monthly charge possible, the transaction cost and interest rate need to be as low as possible based on market conditions. FPL's proposal has a "pre-review" process whereby the Commission would take a passive role. A passive role by the Commission can result in real dollar costs to ratepayers. Commission staff witness Noel in his direct testimony at page 12 shows that an active financial advisor, Saber, involved in a transaction on behalf of a commission has resulted in a 5 to 29 basis point savings to ratepayers. (Noel direct testimony at p. 12) Thus, FPL's proposed methodology would not result in the lowest overall cost to customers.

Even FPL witness Dewhurst acknowledged that while the degree of involvement has varied, some states have taken a very active role. (TR-126) Further, FPL witness Dewhurst conceded that even though he did not think it was necessary, ". . . if the Commission wishes to participate and take an active role even through pricing, we'd be delighted to have you along." (TR-129) Therefore, Commission should adopt the "best practices" standard outlined in Commission witness Fichera's direct testimony at pages 47 through 51. These practices can be summarized as follows: 1) active Commission participation including selecting underwriters, counsel, and other transaction participants; 2) review and negotiation of transaction documents and contracts; 3) enforce statutory limitations for ratepayer benefits; 4) ensure savings benefits are

transferred to ratepayers; 5) market to the broadest market possible for lowest interest rates; 6) require transparency and accountability in the bond issuance process; 7) work actively and collaboratively in the bond issuance process with the Commission, its staff, its financial advisors; 8) require accountability certification; and 9) provide that the Commission has authority to enforce financing order and other documents for the benefit of the ratepayers. (Fichera direct testimony at pp. 47 through 51).

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

Position: *If the Commission approves securitization, FPL's 2004 storm costs should be reduced by $51,264,919 as addressed in Issue 1. Corresponding reductions should be made to interest accrued based on actual storm costs, interest rates, and the most recently available revenue collections. *

Argument: As noted in the previous issue, securitization allows for storm costs to be spread over a longer period time thereby reducing the monthly charge on customers' bills. (TR-114, 115) FPL's proposal calls for its remaining 2004 storm costs to be rolled into securitization. (Dewhurst direct testimony at p. 6) If the Commission were: 1) to approve securitization for the 2005 storm cost and replenishment of the reserve and, 2) continue the 2004 storm surcharge, that would result in a higher

monthly charge then if the Commission allowed all of the storm costs to flow through a monthly securitization charge. So, to maintain the goal of the lowest possible monthly charge to mitigate against rate shock, the Commission should allow the securitization of the remaining 2004 storm costs, as adjusted by the Citizens' proposal, to be flowed through securitization.

However, even if the Commission were to choose to continue the 2004 surcharge, Citizens' proposed adjustments should be made at this time and the surcharge recalculated to bring down the monthly charge. Regardless of whether securitization or surcharge is approved for the 2004 storm cost, the proposed adjustment of $51,264,919 as addressed in Issue 1. If the Commission approves securitization, FPL's 2004 storm costs should be reduced by $51,264,919 as addressed in Issue 1. Corresponding reductions should be made to interest accrued based on actual storm costs, interest rates, and the most recently available revenue collections.

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

Position: * FPL's requested storm-related costs of $1,690,160,000 should be reduced by all of the adjustments set forth in response to preceding issues. Corresponding reductions should also be made to interest and income taxes related to the adjustments recommended and to reflect that interest should only be calculated on the actual not estimated amounts. *

Argument: Based on the resolution of the preceding issues in accordance with the recommended adjustments advocated by the Citizens, FPL's requested storm-related costs of $1,690,160,000 should be reduced by all of the adjustments set forth in response to preceding issues. In addition, the storm-related costs should be reduced by the amount of interest related to the adjustments recommended and to reflect that interest should only be calculated on the actual amounts incurred not on estimated costs. The amount to be securitized should also be reduced to remove the income taxes associated with the total storm-related costs to be recovered.

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

Position: *Based on the resolution of the preceding issues in accordance with the recommended adjustments advocated by Citizens, no amount should continue to be collected through a surcharge or other form of recovery if the Commission approves the securitization methodology set forth in the "best practices" standard.*

Argument: As noted in the previous issue, securitization allows for storm costs to be spread over a longer period time thereby reducing the monthly charge on customer's bills. (TR-114, 115) FPL's proposal asks for its 2005 storm costs,

remaining 2004 storm costs, and a replenishment to the storm reserve to be securitized. (Dewhurst direct testimony at p. 6) Even with Citizens' adjustments, FPL's request is large approximately $1 billion in storm-related costs, less any further reduction to reflect any penalties or other adjustments determined appropriate by the Commission. (HE-85, 86) With traditional forms of recovery (i.e. a surcharge), the higher the amount to be recovered, the higher the surcharge because the costs are general recovered over short periods of time. So, in contrast to a securitization charge, the more traditional surcharge would produce a much higher monthly charge over a shorter period of time. (TR-114, 115)

Thus, to maintain the goal of the lowest possible monthly charge to mitigate against rate shock, the Commission should allow FPL to securitize the costs of the 2005 storm costs, remaining actual 2004 storm costs, and replenishment of the reserve only after the Citizens' adjustments have been made. Therefore, no amount should continue to be collected through a surcharge or other form of recovery if the Commission approves the securitization methodology set forth in the "best practices" standard.

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

a. The amount approved for recovery; and

b. The cost allocation to the rate classes.

Position: *Based on the resolution of the preceding issues in accordance with the recommended adjustments advocated by Citizens, no amount should continue to be collected through a surcharge or other form of recovery if the Commission approves the securitization methodology set forth in the "best practices" standard.*

Argument: Based on the resolution of the preceding issues and in accordance with the recommended adjustments advocated by Citizens, FPL's alternative proposal 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 2005 storm costs and replenishment the reserve, should not be approved. In the current circumstances [such as increased fuel costs and a prior storm surcharge] customers would be well served to have a smaller monthly charge, even though that is spread out over a longer period of time. (TR-114, 115) FPL witness Dewhurst testified that securitization tends to mitigate the impact on rates, it gives a smaller impact immediately, and it's likely to produce less rate volatility going forward. (TR-114, 115) The more traditional surcharge would produce a much higher monthly charge over a shorter period of time. (TR-114, 115) Thus, FPL should be allowed to securitize its 2005 storm costs, properly reduced remaining 2004 storm costs, and to replenish the reserve as adjusted by the Citizens, if the Commission adopts the "best practices" standard.

However, if the Commission were to approve a surcharge for the 2005 storm charges, and replenishment of the reserve, the amount should be based on Citizens' adjustments to these charges. This would consist of $701,016,139 for the 2005 storm costs and a $200 million reserve. (HE-85, Stewart direct testimony at p. 11).

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

Position: * All effects of the funded reserve should be eliminated for base rate, AFUDC and surveillance purposes. Accounts specifically removed should be the regulatory asset not sold to the SPE and the associated credit deferred taxes, the storm reserve fund, the storm reserve and associated debit deferred taxes. The current AFUDC rate should be investigated to ensure that the increase in credit deferred taxes for 2004-2005 storm losses has been applied to current plant construction projects. *

Argument: FPL witness Davis explained the accounting entries that would be entered on the books of FPL when the financing order is issued and when the regulatory assets are transferred to the SPE as the bonds are sold. For discussion purposes only, these entries assume that the requested $650 million reserve replenishment would be approved by the Commission. The first entry records a regulatory asset and a corresponding reserve (liability) of $650 million. To reflect the future impact of income taxes, a deferred tax asset related to the reserve and a deferred tax liability related to

the regulatory asset are recorded (each at $250 million). When the bonds are issued, the after-tax portion of the regulatory asset will be sold to the SPE and the moneys received ($400 million) will be recorded in a reserve fund that will accrue interest. At this point, FPL will retain a regulatory asset of $250 million, a deferred tax asset and liability of $250 million each, a reserve fund of $400 million, and a reserve of $650 million. The deferred tax asset will remain on the books until additional storm costs are incurred and the storm reserve is charged. The regulatory liability will amortize down as funds are collected from the customer from the storm and tax charge. Tr. 486 - 490 and 521-523.

Mr. Davis admitted that the regulatory asset is separate from the deferred tax asset and liability, and would be included in rate base to earn an additional rate of return. Mr. Davis thought that there would be offsetting accounts to the regulatory asset but he couldn't recall what they would be. Davis, Tr. 495.

In his cross examination of Mr. Davis, Mr. McWhirter expressed concern that FPL would have more deferred tax credits on the books because of the storm losses from 2004-2005 and that the AFUDC rate used to capitalize financing costs into future plant would be overstated. Mr. Davis responded to this and explained that AFUDC is set on an annual basis and if there is any significant change or major shifts in capital structure, then the AFUDC rate would be changed. He stated that FPL looks at the rate every year and that this year they did not change the rate because the difference was insignificant. Tr. 497 - 498. Mr. Davis testified that there are $652 million of deferred tax liabilities associated with the storm losses from 2004 and 2005 and that those

deferred taxes will benefit ratepayers by lowering the AFUDC rate, which adds to the value of plant constructed. Tr. 501.

Commissioner Deason asked Mr. Davis what specific accounts would be taken out of rate base. Mr. Davis responded that the storm fund and reserve would both come out of rate base as those items earn their own return. What would remain in the ratemaking equation would be the $250 million regulatory asset and the debit and credit deferred taxes. In responding to Commissioner Deason's question as to why the regulatory asset would remain in rate base, Mr. Davis stated that the only way that it would be removed would be if the Commission directed that the amount be removed for surveillance purposes. Mr. Davis did admit that the whole transaction would increase rate base by $250 million. Tr. 524 - 525.

When asked by staff if the intended effect of the ratemaking treatment for funded reserves is to eliminate all balance sheet amounts related to the reserve from the ratemaking formula, Mr. Davis couldn't answer other than to say that FPL complies with the Commission's directives. When questioned further, Mr. Davis agreed that you could separate out all of the effects of the funded reserve but that he didn't think that the Commission had historically done that and that just because you can carve out the pieces, it might not be the right thing to do.

OPC believes that the proper regulatory philosophy is to either include all or remove all of the components in the rate setting formula. To do otherwise would cause a mismatch, and in this case, FPL has chosen to leave in the component that benefits the shareholders at the expense of the ratepayer. The total effects of the funded reserve should be eliminated for base rate, AFUDC and surveillance purposes.

Accounts specifically removed should be the regulatory asset not sold to the SPE and the associated credit deferred taxes on the regulatory asset, the reserve fund, the storm reserve and associated debit deferred taxes on the storm reserve.

Further, OPC believes that the Commission should fully investigate the current AFUDC rate to see the impact on the increase in zero cost credit deferred taxes related to the storm losses incurred in the last two years has in fact materially reduced the AFUDC rate applied to plant construction projects.

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

Position: *Yes. FPL should indemnify ratepayers against an increase in the servicer fee to protect the ratepayers from any potential negligence, misconduct, or termination for cause by FPL as FPL is in the best position to prevent such misconduct by its own actions.*

Argument: FPL should be required to indemnify ratepayers against an increase in the servicer fee to protect the ratepayers from any potential negligence, misconduct, or termination for cause by FPL as FPL is in the best position to prevent such misconduct by its own actions. FPL witness Dewhurst stated in his direct testimony, that FPL in its role as Servicer, will collect the Storm Bond Repayment

Charge. (Dewhurst direct testimony at p. 26) The servicing fee as requested by FPL for its role as the initial servicer can be determined either by reference to an established dollar amount or a percentage. (Dewhurst direct testimony at p. 30)

Commission staff witness Fichera noted that FPL's obligation as servicer in this transaction is like a collection agent for the SPE which provides the funds to the bondholder. (Fichera direct testimony at p. 51) He further noted that this relationship is governed by the Servicing Agreement and like any other contract for service, it has certain provisions concerning performance, care, liabilities, and indemnities. (Fichera direct testimony at p. 52) But the Serving Agreement is essentially between affiliated parties with all of the liabilities associated with the agreements falling to ratepayers under the storm-recovery charge and the true-up mechanism. (Id.) He testified that this is why Saber strongly believes that regulatory oversight through ratepayer representation must be preserved over the transaction documents for the life of the storm-recovery bonds. (Id.)

The Commission should adopt the specific recommendation of witness Fichera related to the Servicer Agreement. As part of specific ratepayer protections advocated by witness Fichera, the Commission should include a change in the Servicer's standard of care from "Gross Negligence" to "Negligence." (Fichera direct testimony at p. 53) Also, the Servicer should be required to indemnify ratepayers for any losses resulting from the Servicer's breach. (Id.) In the case of a default, FPL should be prohibited from terminating the Serving Agreement without prior Commission approval. (Id.)

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

Position: *The appropriate up-front and ongoing fee for FPL's role as the servicer throughout the term of the bond is the incremental cost to FPL for performing the servicer duties. The difference between the servicing fee necessary to create an arms-length transaction and FPL's approved incremental costs should be used to increase the storm reserve available for recovery of future storm costs. *

Argument: FPL has proposes an estimated up-front servicer fee of $350,000 and an estimated on-going servicing fees of $525,000 annually. (HE-8) In response to Commission staff Interrogatory No. 225, FPL indicated that the estimated total amount of $6.3 million over the life of the bond was determined by multiplying the proposed .05% servicing fee by the $1,050,000,000 proposed bond issuance amount, which equates to a $525,000 annual fee. Then the $525,000 was multiplied by twelve years, which is the intended recovery period. (HE-4) FPL witness Dewhurst testified that in order to receive an appropriate bankruptcy opinion, it is necessary that there be compensation for that servicing provided by FPL, based on an arms-length transaction. (TR-118) Further, in response to Commission staff Interrogatory No. 200, FPL indicated its belief that in order to receive a bankruptcy analysis and opinion, the servicing fee must be sufficient to cover the incremental costs and provide a reasonable return. (HE-4) Additionally, in the Interrogatory 200, FPL stated that they reviewed the typical servicing fees for other rate reduction type bond transactions and proposed a servicing

fee amount at the lower end of the range of fees charged. (HE-4) While FPL acknowledged that it has not broken out the "reasonable return" that is included in its servicing fee, they quoted Standard and Poor's that "The servicer's fee should cover its servicing and collection expenses and be in line with industry norms for securities of similar quality." (HE-4, FPL response to Interrogatory No. 202)

For purposes of the fee between FPL and the SPE, it is appropriate that an arms-length transaction is created to achieve the necessary bankruptcy analysis and opinion to obtain the lowest overall costs to customers. However, the servicing fee should be adjusted to reflect the Commission approved bond issuance amount. Thus, the .05% serving fee should be multiplied by the Commission approved amount and multiplied over the approved recovery period to establish the appropriate on-going fees for FPL/SPE payment purposes only.

Ratepayers, however, should only be required to pay for FPL's approved incremental costs of providing the servicer duties. The difference between the servicing fee necessary to create an arms-length transaction and FPL's approved incremental costs should be used to increase the storm reserve available for recovery of future storm costs.

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

Position: *FPL should be permitted to collect from ratepayers the servicing fee that is necessary to establish an arms-length transaction for purpose of creating an independent SPE. However, FPL should be allowed to keep only its approved incremental costs for servicing the bonds. The difference between the servicing fee necessary to create an arms-length transaction and any approved incremental costs should be used to increase the storm reserve available for recovery of future storm costs.*

Argument: As noted in the previous issue, FPL should be permitted to collect form ratepayers the servicing fee that is necessary to establish an arms-length transaction for purposes of creating an independent SPE. Further, the amount of the servicer fee of .05% to be flowed through the bond should be adjusted based on the Commission approved bond amount and recovery period.

However, FPL should only be allowed to keep its approved incremental costs for servicing the bonds. The difference between the servicing fee necessary to create an arms-length transaction and approved incremental costs should be used to increase the storm reserve available for recovery of future storm costs.

As noted in response to Commission staff Interrogatory No. 205, FPL plans on using its customer accounting system with a few modifications for the Storm Bond Repayment Charge. (HE-4) In response to questioning regarding whether FPL has estimated the incremental costs of performing the duties required in the servicing agreement, FPL witness Dewhurst acknowledged that FPL has not prepared a bottoms-up estimate of the actual incremental costs needed to perform those activities. (TR-

117, 118) FPL still had not prepared an estimate of its incremental costs by the time of the hearing, even though they were asked about these costs in numerous interrogatories. (See, HE-4, Interrogatories Nos. 60, 199, 200, 201, 202)

Moreover, FPL did not charge customers for administering the 2004 surcharge. In response to Commission staff Interrogatory No. 213, FPL stated that any costs associated with collecting the 2004 storm-recovery surcharge were insignificant and performed in conjunction with other base rate activities. FPL responded that they did not attempt to identify any additional costs related to administering the surcharge and has treated the surcharge in the same fashion as any other billing element. (HE-4) Since FPL has not supported its incremental costs by the time of the hearing where those costs would be subject to examination, the full amount of the servicer fee should be used to increase the storm reserve available for recovery of future storm costs. Moreover, ratepayers should not be penalized because FPL chose to seek securitization rather than a surcharge by requiring that ratepayers incur an extra cost for servicing the bonds. This is especially true when FPL has failed to support any incremental costs to the utility for providing this service. Allowing FPL to collect and keep a servicing fee without accounting for actual incremental costs would be tantamount to allowing a "profit surcharge" to be tacked to the ratepayers' bill.

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

Position: *The appropriate up-front and ongoing fee for FPL's role as the administrator throughout the term of the bond is the incremental costs to FPL for performing the administrator duties. The difference between the administration fee necessary to create an arms-length transaction and FPL's incremental costs should be used to increase the storm reserve available for recovery of future storm costs.*

Argument: FPL proposes that it should also collect an estimated annual administrative fee of $125, 000 per annum, plus expenses, payable quarterly. (HE-36) FPL witness Dewhurst opines that certain of these ongoing costs, such administrative fee 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. (Dewhurst direct testimony at p. 30) In response to Commission Staff Interrogatory No. 28, FPL indicated that it would be providing the administration duties. As part of these duties, FPL would be furnishing the SPE with ordinary clerical and bookkeeping services. (HE-36) However, there is no indication that these ordinary clerical and bookkeeping functions will create any additional costs to FPL that are not being recovered through base rates.

To the extent that it is necessary for the rating purposes to create an arms-length transaction between FPL and the SPE with regards to the administrative functions, FPL should be permitted to flow through the bond $125,000 per annum, payable quarterly. However, the Commission should establish this amount as fixed, not subject to any future increase through the true-up mechanism. As noted by Commission staff witness Fichera, this Administration Agreement, like the Servicing Agreement, is essentially

between affiliated parties. (Fichera direct testimony at p. 52) Thus, it should be subject to closer scrutiny and any doubt as to the merit of costs should be resolved in favor of the ratepayers.

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

Position: *FPL should be permitted to collect from ratepayers the administration fee that is necessary to establish an arms-length transaction for purpose of creating an independent SPE. However, FPL should be allowed to keep only its approved incremental costs for administering the bonds. The difference between the administration fee necessary to create an arms-length transaction and approved incremental costs should be used to increase the storm reserve available for recovery of future storm costs.*

Argument: FPL should be permitted to collect from ratepayers the administration fee of $125,000 per annum that is necessary to establish an arms-length transaction for purposes of creating an independent SPE. The Commission should establish this amount as fixed, not subject to any future increase through the true-up mechanism, as this is a transaction between affiliate parties.

However, FPL should be allowed to keep only its approved incremental costs for administering the bonds. The difference between the administration fee necessary to

create an arms-length transaction and approved incremental costs should be used to increase the storm reserve available for recovery of future storm costs.

FPL indicated that it would use its customer accounting system with programming modifications for the Storm Bond Repayment Charge. (HE-4, Commission staff Interrogatories Nos. 205, 206) But FPL has failed to identify any additional costs associated with this programming modification or any other additional cost associated with implementing the billing or forecasting associated with the Storm Bond Repayment Charge that is incremental to costs recovery in base rates. (HE-4, Commission staff Interrogatories Nos. 205, 206, 207)

Moreover, FPL did not charge customers for administering the 2004 surcharge, so ratepayers should not bear the cost of normal bookkeeping functions associated with the SPE. In response to Commission staff Interrogatory No. 213, FPL stated that any costs associated with collecting the 2004 storm-recovery surcharge were insignificant and performed in conjunction with other base rate activities. FPL responded that they did not attempt to identify any additional costs related to administering the surcharge and has treated the surcharge in the same fashion as any other billing element. (HE-4) Since FPL has not supported its incremental costs by the time of the hearing where those costs would be subject to examination, the full amount of the administration fee should be used to increase the storm reserve available for recovery of future storm costs. Moreover, ratepayers should not be penalized because FPL chose to seek securitization rather than a surcharge by requiring that ratepayers incur an extra cost for administering the bonds by providing normal clerical and bookkeeping functions. This is

especially true when FPL has failed to support any incremental costs to the utility for providing this service.

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

Position: * The amounts should be reflected as a credit on each customer's bill as a refund allocated among customer classes in the same manner that the storm charges were collected. *

Argument: OPC believes that at the upon repayment in full of the Storm Bonds and all appropriate financing costs, any remaining amounts held by the SPE (except for the equity contribution and related interest earning in the capital sub-account) should be applied as a credit to each customer bill as a refund allocated among customer classes in the same manner that the storm charges were collected. Customers will have paid this charge for 12 years and they deserve to receive the benefit of any overage instead of allowing FPL to continue to use the funds.

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

Position: *The Commission should adopt the "best practices" standard. The Commission's financial advisor should make an independent evaluation regarding lowest cost and that evaluation should be made available to the parties. If there is a dispute as to whether the lowest costs for the front costs were obtained based on the independent evaluation or other means, the matter should be brought before the Commission for resolution in the 120 day proceeding.*

Argument: The Commission should adopt the "best practices" standard through which the Commission is present and active in the bond issuance process to ensure the lowest overall costs to customers based on market conditions. (Fichera direct testimony at pp. 47-51) These practices can be summarized as follows: 1) active Commission participation including selecting underwriters, counsel, and other transaction participants; 2) review and negotiation of transaction documents and contracts; 3) enforce statutory limitations for ratepayer benefits; 4) ensure savings benefits are transferred to ratepayers; 5) market to the broadest market possible for lowest interest rates; 6) require transparency and accountability in the bond issuance process; 7) work actively and collaboratively in the bond issuance process with the Commission, its staff, its financial advisors; 8) require accountability certification; and 9) provide that the Commission has authority to enforce financing order and other documents for the benefit of the ratepayers. (Fichera direct testimony at pp. 47 through 51)

With the adoption of these "best practices," ratepayers can be assured of a voice at the table in real time. Since there is no meaningful opportunity to make a post-

transaction review given the nature of the transaction, transparency and accountability during the process are essential. (Fichera direct testimony at p. 43) Having the Commission's financial advisor at the table allows for an independent evaluation regarding whether lowest overall cost base on market conditions were achieved. This independent evaluation should be made available to the parties.

With the active involvement of the Commission, its staff, and advisors, most if not all disputes related to the up-front bond issuance costs should be resolved informally through the collaborative process. If there are any remaining disputes as to whether the lowest costs for the up-front bond issuance costs were obtained based on the independent evaluation or other means, the matter should be brought before the Commission for final resolution through the 120 day process. Section 366.8260(2)(b)5, Florida Statutes, provides that the utility should file with the Commission, within 120 days, the actual costs of the storm-recovery bond issuance. The actual issuance costs include, but are not limited to, the up-front cost identified in FPL's petition and interest rates. If the Commission determines that the costs were in excess of the lowest overall costs reasonably consistent with market conditions at the time (i.e., the lowest overall cost based on market conditions), the Commission is authorized and should require that the utility make a contribution to the storm reserve in an amount equal to the excess of actual issuance costs incurred out of storm-bond issuance proceeds. In accordance with the statutory requirements, FPL will only be passing through actual costs, not estimated costs.

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

Position: *The Commission should adopt the "best practices" standard. The actual on-going costs should be flowed through the storm-recovery bonds charged to ratepayers through a true-up mechanism. But FPL should be required to increase the storm-reserve for any on-going costs that do not meet the lowest costs standard and that are higher than the estimated on-going costs in this docket. On-going fees should be limited as described in the previous issues.*

Argument: The Commission should adopt the "best practices" standard through which the Commission is present and active in the bond issuance process to ensure the lowest overall costs to customers based on market conditions. (Fichera direct testimony at pp. 47-51) FPL should be required to ensure that the on-going costs meet the lowest overall cost based on market condition standard. With the active involvement of the Commission, its staff, and advisors, most if not all disputes related to the on-going costs should be resolve informally through the collaborative process.

If the actual on-going costs exceed the estimated costs presented in this proceeding, FPL should be required to establish that the increase in actual costs is consistent with the lowest overall cost based on market conditions. While the actual amount of the on-going costs should be flowed through the true-up mechanism, if FPL fails to demonstrate that the increased on-going costs meets the lowest cost standard, FPL should be required to apply the difference between the actual and the estimated

cost as an increase to the storm reserve available for recovery of future storm costs. Section 366.8260(2)(b)2.j., Florida Statutes, allows the Commission to include any other conditions that the Commission considers appropriate and that are not otherwise inconsistent with this section. While Section 366.8260(2)(b)4, Florida Statutes, requires that FPL be allowed to collect the financing costs and other fees, costs, and charges, related to repayment of the approved storm-recovery bonds through a mechanical true-up mechanism, the language does not preclude the Commission review of the on-going costs as described above.

The review described above would not be inconsistent with the automatic true-up mechanism nor would it inhibit the ability of FPL to timely true-up for actual costs. It would, however, add an extra layer of protection to the ratepayers and continue the Commission's appropriate oversight of the costs of these bonds. In addition to this added layer of oversight, the Citizens' recommended treatment of the servicing fees and administration fees discussed in the previous issues should be adopted.

Issue 58: Is FPL's process for determining whether the upfront bond issuance costs satisfy the statutory standard of Section 366.8260(2)(b)5. reasonable and should it be approved?

Position: *No. The process outlined by FPL in its petition, proposed order, and testimony, does not allow the active participation of the Commission. FPL's process does not afford independent protection for the ratepayers to ensure that the up-front

costs, on-going costs, and interest rates achieve the lowest overall cost based on real time market conditions. Therefore, FPL's proposed process is not reasonable and should not be approved.*

Argument: The process outlined by FPL in its petition, proposed order, and testimony, does not allow the active participation of the Commission. FPL's process does not afford independent protection for the ratepayers to ensure that the up-front costs, on-going costs, and interest rates achieve the lowest overall cost based on real time market conditions. The statute permits the Commission a 120 day review after the issuance to determine whether the costs were in excess of the lowest overall costs reasonably consistent with market conditions at the time (i.e. the lowest overall cost based on market conditions). Section 366.8260(2)(b)5, Florida Statutes. But as Commission witness Fichera testified, there is no meaningful opportunity to make a post-transaction review given the nature of the transaction. Therefore, transparency and accountability during the process are essential. (Fichera direct testimony at p. 43) While the Commission can require FPL to pay back the bond funds to the reserve if it determines that the lowest costs standard was not met, it cannot alter the amount of the bonds once they are issued. Section 366.8260(2)(b)5, Florida Statutes.

Once the bonds are issued, ratepayers are on the hook to pay the pay the full amount of the bond over the recovery period. The only meaningful way for the ratepayers to decrease their exposure to higher interest rates and other transaction fees is to have a representative at the table. Without Commission involvement in real time, there will be no way for the Commission to know that the transaction was priced at the

lowest interest rate possible. (Fichera direct testimony at p. 38) Because the statute requires that the Commission makes a determination that the lowest overall cost based on market conditions is achieved, active participation by the Commission and its agents is the only practical way to meet this statutory requirement. Section 366.8260(2)(b)5, Florida Statutes. FPL's passive role proposal would significantly limit the Commission's ability to make the necessary independent evaluation. Therefore, FPL's proposed process is not reasonable and should not be approved.

Issue 59: Is FPL's process for determining whether the on-going costs satisfy the statutory standard of Section 366.8260(2)(b)5. reasonable and should it be approved?

Position: *No. The process outlined by FPL in its petition, proposed order, and testimony, does not allow the active participation of the Commission. FPL's process does not afford independent protection for the ratepayers to ensure the up-front costs, on-going costs, and interest rates achieve the lowest overall cost based on real time market conditions. Therefore, FPL's proposed process is not reasonable and should not be approved.*

Argument: As stated in response to the previous issue, the process outlined by FPL in its petition, proposed order, and testimony, does not allow the active participation of the Commission. FPL's process does not afford independent ratepayer protection that would ensure that the lowest over costs for on-going costs based on market

conditions. In fact, FPL has no process in place to allow for the Commission to review its on-going costs, but does propose that the on-going costs be flowed through an automatic true-up mechanism. Section 366.8260(2)(b)4, Florida Statutes.

In Issue 57, Citizens outlined a process that is permissible under the statute and would create a process for Commission to oversee the on-going costs throughout the life of bond. Section 366.2860(2)(b)2.j., Florida Statutes. Citizens' proposed process for reviewing the on-going costs would create a rebuttable presumption that FPL should increase the storm-reserve by the difference between estimated and actual on-going costs if actual costs are greater than estimated costs identified in this docket unless FPL can demonstrate that the actual on-going costs are the lowest overall costs for the service based on market conditions. As noted by Commission staff witness Noel, the usual financial motivation for FPL to obtain the lowest costs is not present in securitization. (Noel direct testimony at p. 7) Citizens' proposed process would reestablish the normal balance because FPL would have an incentive to achieve the lowest overall costs for those services.

Without the Commission's oversight of on-going costs, there is no practical method for the Commission to ensure that the lowest costs have been achieved and will continue to be achieved over the life of the bond. FPL's process would require the Commission to abdicate its regulatory oversight role because the on-going costs could escalate without a determination that the costs are reasonable or prudent or the lowest overall costs based on market conditions. Therefore, FPL's proposed process is not reasonable and should not be approved.

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

Position: *The methodology that is employed should be that which produces the lowest overall cost based on real time market conditions.*

Argument: Commission staff witness Noel testified that while he believed in theory that the negotiated bid offerings he was involved with could have been done through a competitive bid process, a competitive bid process was not practical. (Noel direct testimony at p. 4) He points out that this was because the negotiated bid issuances were not simple, straightforward offerings and these issuances took time and effort to conduct educational sessions with investors and hard-fought negotiations. (Id.) Similarly, he suggests that while Saber would evaluate both negotiated and competitive processes, it would be likely that the Florida securitization bond offerings would need to be sold through a negotiated offering. (Noel direct testimony at pp. 4, 5)

He argued that more education is still needed in the market, particularly since this is a first time offering for Florida. By contrast, a competitive bid offering would not enable the much-needed and thorough communication program that this offering would require to achieve the best price for the bonds. Witness Noel testified that he believes that costs to ratepayers likely would be higher with a competitive bid offering. (Noel direct testimony at p. 5)

FPL's witness Dewhurst stated that the bonds could be sold either through a competitive bidding process or a negotiated sale. FPL is indifferent at this time as to which method is preferable. Witness Dewhurst argued that the decision as to which method is any be preferable is dependent on factors such as issue size, complexity of issue, and current market conditions, some of which are not known with certainty at this time. (Dewhurst direct testimony at p. 27)

Given the uncertainty as to whether a competitive or negotiated bidding process is preferable, the parties should be given some flexibility to choose the methodology that will result in the lowest overall costs to ratepayers based on real time market conditions. This flexibility should be predicated on the Commission adopting the "best practices" standard and being active in the transaction so that ratepayers can be assured that the choice of a negotiate or competitive bid offering was in the best interest of the ratepayers resulting in the lowest overall costs based on market conditions.

Issue 61: What additional terms, conditions or representations should be made in the financing order to enhance the marketability of the bonds and achieve the lowest possible cost?

Position: * To enhance marketability of the bonds and to achieve the lowest overall cost to ratepayers, the "best practices" outlined in witness Fichera's testimony should be adopted. In addition, the bonds should be marketed broadly with active education regarding the nature of the bond issuance.*

Argument: To enhance marketability of the bonds and to achieve the lowest overall costs for ratepayers, the "best practices" outlined in witness Fichera's testimony should be adopted including active participation by the Commission, its staff, and financial advisors in the bond issuance process which ensures that the ratepayers have protection. (Fichera direct testimony at pp. 47-51) Commission witness Fichera's "best practices" includes nine items. The fifth item states that the storm-recovery bonds should be offered to the broadest market possible to garner lower interest rates for the benefit of the ratepayers through increased competition among the underwriters and investors. (Fichera direct testimony at p. 48)

Commission witness Noel testified that to bring down the yields in a meaningful way, the broadest array of investors needs to be reached and educated on the incredible features these bonds hold. (Noel direct testimony at p. 5) Witness Noel opined that since all costs will be borne by the ratepayers, FPL has less-than-normal economic incentive to achieve the lowest possible cost. (Id. at p.7) He further stated that FPL's highest priority in this transaction is likely to be getting the issuance done quickly, with cost taking a lower priority. (Id.) Witness Noel testified that without the Commission's oversight, the bond pricing will not be as high due to less aggressive marketing and the transaction documents will probably not have the desired protections for ratepayers. (Id.)

Commission staff witness Fichera contends that marketing and investor education affects the cost of the storm-recovery bonds. (Fichera direct testimony at p. 27) He stated that investor's fundamental valuation comes from an understanding of

the credit, its liquidity, "relative value" and the functioning of the capital markets. (Id. at p. 28) Thus, the Commission, through the use of independent advisors with a duty of loyalty and care to the Commission, can and should take a co-leadership role with FPL in marketing and in investor education efforts. Further, a joint and collaborative effort can best serve the interests of ratepayers while fully addressing the financing needs of the utility. (Id. at p. 29) Even FPL witness Dewhurst conceded at the hearing that although he did not think it was necessary, ". . . if the Commission wishes to participate and take an active role even through pricing, we'd be delighted to have you along." (TR-129) This collaborative, co-leadership process should be reflected in the financing order. In addition, the financing order should reflect the goal that these bonds will be marketed to the broadest group of investors practicable based on market conditions.

In addition, the prospectuses should include an affirmative statement regarding the nature of the transaction. Texas required language in its securitization prospectuses that stated the broad-based nature of the true-up mechanism and the State Pledge which serves to effectively eliminate the credit risk, for all practical purposes and circumstances. (Fichera direct testimony at p. 30) Commission staff witness Fichera testified that including this type of language in the prospectus ". . . could lead to narrower credit spreads against benchmark securities than had been achieved in connection with prior ratepayer-backed bonds." (Id.) The Commission should require that similar language as was approved in Texas be included in the Florida securitization prospectus.

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

Position: *Yes.*

Argument: The Commission should have the final approval of all legal opinions and other transaction documents and subsequent amendments. The Commission through its designees, staff and financial advisors should take a co-leadership role with FPL in the marketing and issuance including pricing of the securitization bonds. (Fichera direct testimony at p. 29) Through the collaborative process, most if not all disputes regarding the legal opinions, transaction documents, and subsequent amendments should be resolved. However, the Commission should maintain final authority to approve all documents. As Commission witness Fichera stated the only way to protect ratepayers is to provide for Commission approval of all future decisions affecting ratepayers before they are made final. (Fichera direct testimony at p. 52) The methodology for approval of subsequent documents is explained in Issues 74, 74(a), and 74(b).

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

Position: *No. The process outlined by FPL in its petition, proposed order, and testimony, does not allow the active participation of the Commission. FPL's process does not afford independent protection for the ratepayers to ensure that the up-front costs, on-going costs, and interest rates achieve the lowest overall cost based on real time market conditions. Therefore, FPL's proposed process is not reasonable and should not be approved.*

Argument: The process outlined by FPL in its petition, proposed order, and testimony, does not allow the active participation of the Commission. Witness Dewhurst testified FPL's process is designed so that all input will be received and evaluated prior to moving to the next step. (Dewhurst rebuttal testimony at p. 37) FPL's proposed Commission staff "pre-review" process was outlined in witness Dewhurst's Exhibit MPD-9. In that Exhibit, the transaction documents are provided to Commission staff 30 days prior to launch. Commission staff's final disapproval letter is due two days prior to launch. (HE- 135) However, FPL's process does not afford independent protection for the ratepayers to ensure that the up-front costs, on-going costs, and interest rates achieve the lowest overall cost based on real time market conditions.

Commission witness Fichera noted that by adopting the "best practices" standard, the Commission will be "at the table" for all negotiations affecting ratepayers in advance on any decision affecting ratepayers. (Fichera direct testimony at p. 52) He contended that because any retrospective review of the pricing would be speculative without the real time access to the information available to the underwriter and investors, the only way to protect ratepayers is to provide for the Commission approval

of all future decisions affecting ratepayers before they are made final. Commission witness Fichera testified that the Commission should make decisions based not on draft language but on final terms and conditions in real time. For the Commission to have a meaningful review and decision process, it cannot be restricted or restrained in terms of time and consideration. (Id. at pp. 52-53)

Since FPL's process does not afford the Commission real decision making based on final language, FPL's proposed process is not reasonable. The Commission has its statutory duty to ensure that the lowest overall costs are achieved reasonably consistent with market conditions at the time. Section 366.8260(2)(b)5, Florida Statutes. As noted by the Commission witness Fichera, the only reasonable way to determine if the lowest overall costs were achieved based on market conditions is to have "eyes and ears" at the table. A Commission financial advisor in the process would provide critical information and perspective to the Commission to discharge its duties. (Fichera direct testimony at p. 41) FPL's proposal keeps the Commission out of the process at its most critical time. Thus, FPL's proposed process is not reasonable and should not be approved.

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

Position: *The Commission should adopt the "best practices" standard which includes active participation by the Commission, its staff, and financial advisors in the bond issuance process.*

Argument: To ensure that the structure, marketing, and pricing of the storm recovery bonds result in the lowest possible burden on FPL's ratepayers, the "best practices" outlined in witness Fichera's testimony should be adopted including active participation by the Commission, its staff, and financial advisors in the bond issuance process which ensures that the ratepayers have protection. (Fichera direct testimony at pp. 47-51) Commission witness Fichera's "best practices" includes nine items.

The seventh item states that the Commission should direct its staff and outside experts such as its financial advisor to participate fully and in advance in all aspects of structuring, marketing, and pricing the storm-recovery bonds and instruct them to challenge any decision they believe would not result in the lowest all-in cost of funds to ratepayers. (Id. at p. 49) Witness Fichera further outlines how this can be accomplished. The following summarizes the points Witness Fichera testified should be used in the structuring, marketing, and pricing of the bonds: 1) establishing and clearly communicating goals and objectives; 2) reviewing, analyzing and proposing revisions to all documents; 3) evaluate and approve offering methods; 4) valuating the performance of the underwriters prior to the offering; 5) require underwriters, if a negotiated process is selected, to develop a written marketing plan and implement robust marketing efforts; 6) establish a regularly scheduled (weekly) conference call between participants to update Commission; and 7) require FPL and potential underwriters or advisors to

carefully monitor market conditions and document their marketing efforts. (Id. at pp. 49-50) In addition, to the recommendation presented by Witness Fichera, Citizens contend that the parties to this matter should be able to receive regular updates on the status of the transaction from Commission staff and should be permitted to listen into the regularly scheduled conference calls updating the Commission, if requested. As noted previously, an active Commission results in real costs savings to ratepayers. (Fichera direct testimony at p. 45) Thus, it is imperative that the Commission adopt all of the "best practices" standard items to ensure the lowest overall costs to ratepayers.

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

Position: *Yes, but only if the Commission takes an active role in the bond issuance process and does not approve FPL's proposed methodology. To ensure that the issuance of storm-recovery bonds results in the lowest overall costs to ratepayers compared with the alternative methods of financing, the "best practices" outlined in Commission staff witness Fichera's direct testimony should be adopted including active participation by the Commission, its staff, and financial advisors which ensures ratepayer protection.*

Argument: This issue is similar to Issue 39. As stated previously, the Commission needs to take an active role in the bond issuance process to ensure that the lowest overall costs are achieve for the securitization process. The Commission must use every tool available to ensure that the ultimate costs are the lowest costs that can be achieved. The lowest cost standard is necessary to meet the requirement that costs to ratepayers are avoided or that the rate impacts to customers are significantly mitigated as compared to other methods of financing. To ensure that all costs meet the lowest overall costs standard, the Commission, its staff, and its financial advisors, need to be included in every step of the process especially through real time pricing. (TR 1200)

Witness Dewhurst testified that the choice of whether to implement securitization versus a surcharge is a policy judgment. (TR-82) A surcharge while strictly speaking is the "fewest dollars approach," it produces a much higher monthly charge over a shorter period of time. (TR-114) Securitization tends to mitigate the impacts on rates because it provides smaller impacts immediately and less rate volatility going forward. (TR-115) Given current circumstances, there is merit to the argument that customers would be well served by a smaller monthly charge spread over a longer period of time. (TR- 114, 115)

FPL's proposal has a "pre-review" process that would have the Commission in a passive review role. But as Commission staff witness Noel's testimony demonstrates, an active role by the Commission through its financial advisor results in real dollar savings for customers. (Noel direct testimony at p. 12) By achieving the lowest overall costs through an active role, the Commission ensures that the rate impacts to

customers really have been mitigated to the greatest degree. Because FPL's proposal does not include an active Commission role, it would not result in the lowest overall costs to customers. While FPL witness Dewhurst testified that he did not believe that it was necessary for the Commission to have an active role, FPL would be delighted to have the Commission take an active role even through pricing. (TR-129) Therefore, the Commission should adopt the "best practices" standard. (Fichera direct testimony at pp. 47-51)

Issue 71: What flexibility should FPL be afforded in establishing the terms and conditions of the storm recovery bonds, including, but not limited to, repayment schedules, interest rates, and other financing costs, as well as the use of floating rate securities, interest rate swaps, and call provisions?

Position: *The Commission and FPL should work together in a collaborative process as described in the "best practices" standard to allow for flexibility by the parties to ensure that the lowest overall costs are obtain for the benefit of the ratepayers.*

Argument: The Commission and FPL should work together in a collaborative process as described in the "best practices" standard to allow for flexibility by the parties to ensure that the lowest overall costs are obtain for the benefit of the ratepayer. Commission staff witness Fichera testified that Saber, as the Commission's advisor, is committed to meeting its obligation to minimize the net costs of doing this transaction so

as to reduce/mitigate ratepayer burdens of recovering storm-recovery costs approved by the Commission. He stated that in meeting this obligation, they hope that they can establish a collaborative and collegial working environment to assure an effective and timely sale of storm-recovery bonds at the lowest possible cost. (Fichera direct testimony at p. 45) He proposed that in the case of a stalemate on any issue which is not resolved in the collaborative process, that Saber, staff, and FPL make written presentations of their views to the Commission.

Such written presentations should be addressed at a regular Agenda Conference or by a designated Commissioner acting as a hearing officer. If time is of the essence, the Commission could waive its regular recommendation filing deadline. Regardless of which method is chosen, parties should be allowed to file written comments and/or participate in the Agenda Conference or at any hearing before the Commissioner.

The collaborative process outlined by witness Fichera allows for flexibility in establishing the terms and conditions of the bond through negotiations between the transactional parties. It also provides a reasonable mechanism to resolve any disputes and allows the Commission to exercise appropriate regulatory authority.

Issue 74: Based on resolution of the preceding Issues, should a financing order in substantially the form proposed by FPL be approved, including the findings of fact and conclusions of law as proposed?

Position: *No, the financing order needs to reflect the Commission's decision in this proceeding including findings of fact and law.*

Argument: The financing order submitted with FPL's petition and testimony should not be adopted as presented since it does not reflect the Commission's decisions in this proceeding including findings of facts and law. The findings of facts and law will need to be written to reflect all of the Commission's decisions regarding 2004 storm-recovery costs, 2005 storm-recovery costs, and replenishment amounts along with the financial requirements.

Commission witness Fichera testified that the general transaction structure (in FPL's proposed order) appears to be consistent with most, but not all, other financing orders. But he noted that FPL pre-issuance document review process and the issuance advice letter process are unusual and to his knowledge have not been used in any other utility securitization transaction. (Fichera direct testimony at p. 54) Witness Fichera opined that in FPL's proposed order, its proposed Findings of Fact 57 and 58 appear designed to exclude the Commission's staff and financial advisor from participating in any way after 5:00 p.m. two business days before the storm-recovery bonds are offered for sale, including the actual pricing of storm-recovery bonds. He notes that in most transactions, this is the time when the most crucial negotiations take place, including actual pricing of the bonds. In fact, FPL's proposed Finding of Fact 59 specifically contemplates a marginalized role for the Commission in which it would serve as a mere recipient of finalized documents that become effective "without further Commission action." Witness Fichera testified that the pre-issuance negative check-off review

process proposed by FPL is unduly burdensome to the Commission and ratepayers. (Id. at 54-55) These are examples of the types of items in FPL's proposed order that would need to be changed to reflect the Commission's decision should the Commission adopt an active role. FPL's proposal would essentially delegate the Commission's role to clerk, the repository of documents with no control over the final content of those documents. Citizens' believe that such a delegation of authority is inconsistent with the statutory role of the Commission.

The Commission should be free to utilize FPL's proposed order or any other financial securitization order as a template for this order. As noted above, it appears that the general transaction structure proposed in the FPL's draft order is consistent with previous financing orders (excluding the pre-review process). But whether FPL's draft financing order or another order is utilized as a template, the Commission's actual decision must be reflected in the final order.

Issue 74(a): If the Commission votes to Issue a financing order: 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?

Position: *Commission should hold at least one informal meeting of the parties after the Commission vote and prior to the issuance of the financing order to ensure that the financing order meets all requirements. A draft of the order should be provided to the

parties for their comments. Any disputes should be addressed by the Commission at an Agenda Conference.*

Argument: Commission should hold at least one informal meeting of the parties after the Commission vote and prior to the issuance of the financing order to ensure that the financing order meets all requirements. A draft of the order should be provided to the parties for their comments prior to the informal meeting.

As noted in the previous issue, the Commission should be free to utilize FPL's proposed order or any other financing order as the template for this order. However, all findings of facts and conclusions of law, whether delineated separately or throughout the document, must reflect the Commission's decision.

If the parties identify any areas of disagreement with the Commission's proposed language in its draft order, the parties should attempt to resolve the dispute at the informal meeting. If any language disputes cannot be resolved, then the Commission should issue its order and the normal reconsideration process can be used, if needed.

Issue 74(b): If the Commission votes to Issue a financing order: What post-financing order regulatory oversight is appropriate and how should that oversight be implemented?

Position: *Commission should take an active role in the issuance process. Parties should receive periodic updates on the status of the transaction through designated

Commission staff. The Commission should retain final decision making authority. Any disputes should be addressed by the Commission either at an Agenda Conference with shortened recommendation filing as necessary or through the use of a designated Commissioner as a hearing officer. Parties should be provided a point of entry if there are future disputes.*

Argument: As stated in response to numerous previous issues, the Commission should adopt the "best practices" standard, thereby taking an active role in the issuance process. At a minimum, the Commission should act through its staff and financial advisors for the reason articulated in prior issues responses.

As addressed under Issue 67, Commission witness Fichera testified that a collaborative process should be established. Part of which should include regularly (weekly) scheduled conference calls (Fichera direct testimony at p.49) He proposed that in the case of a stalemate on any issue which is not resolved in the collaborative process, that Saber, staff, and FPL make written presentations of their views to the Commission. (Id. at 46) Citizens agree.

Such written presentation should be addressed at a regular Agenda Conference or by a designated Commissioner acting as a hearing officer. If time is of the essence, the Commission could waive its regular recommendation filing deadline or make other accommodations as necessary in compliance with the Uniform Rules. Regardless of which method is chosen, parties should be given the opportunity to file written comments and/or participate in any Agenda Conference or at any hearing before the Commissioner.

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

a. The amount approved for recovery;

b. The calculation of the surcharge;

c. The cost allocation to the rate classes; and

d. The surcharge's termination date.

Position:

a. * FPL should not be permitted to initiate an interim rate to begin collecting for 2005 storm costs if the bond issuance is delayed. If the initial bond issuance is delayed beyond the period in which all actual, adjusted 2004 storm costs have been collected, the 2004 storm-surcharge rate should continue until all of the 2005 actual, trued-up, storm costs have been collected or until the first bond is issued. All subsequent bond issuances should be netted for any amounts collected. *

b. * See above position under section (a).*

c. * No position.*

d. * See above position under section (a). *

Argument: FPL should not be permitted to initiate an interim rate to begin collecting for 2005 storm costs if the bond issuance is delayed. As part of its proposal, FPL requests that it be allowed to apply a surcharge to customer's bills after the August 15, 2006 date for up to a period of three years to collect the 2005 storm costs if the bond issuance is delayed for any reason. FPL witness Dewhurst testified that under FPL's proposal that monthly impact of this interim surcharge would be $2.98 per 1,000 kWh. (Dewhurst direct testimony at p. 10)

The bonds can be brought to market relatively quickly, even with minor delays. In his deposition, FPL witness Olson stated that if he had a rating agency presentation and an effective SEC registration statement in hand, a person could offer these types of bonds in 60 days. He also indicated that he would advise his people to start on the rating agency presentation as soon as the hearing was completed. He stated that the registration statement would take less than a month. In addition, he said that the lead time is primarily affected by the disclosure documents and the rating agency. (HE-167, Olson deposition at pp. 95, 96) When asked whether adding time to the transaction exposed the utility to any more risk than it otherwise would be exposed to, he conceded that it would not, except to the extent that the utility needed the money to conduct its business. (HE-167, Olson deposition at 67) Since the utility would be getting all of their approved storm-costs up-front in securitization rather than over a period of time as with

a surcharge, the utility is better off under securitization and they do not need any interim surcharge for 2005 storm costs to begin August 15, 2006.

FPL should be allowed to collect its 2004 surcharge until such time as the first bond is issued. Any additional surcharge on top of the 2004 surcharge would negate the benefit of rate shock mitigation to the ratepayers avoided by the use of securitization. An interim 2005 surcharge would result in a $2.98 per 1,000 kWh on top of the 2004 storm surcharge based on FPL's proposed numbers. (Dewhurst direct testimony at p. 10)

If the initial bond issuance is delayed beyond the period in which all actual 2004 storm costs (adjusted consistent with Citizens' recommendations) have been collected, the rate for the 2004 storm costs should be allowed to continue until all of the 2005 actual, trued-up, storm costs have been collected or until the first bond is issued. The subsequent bond issuances should be netted for any amounts collected after the issuance of the financing order.

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

Position: Yes. FPL should accrue and collect interest on the actual storm costs incurred less the adjustments ordered. Interest accrual should begin in November, 2005 and the interest rate should be the pre-tax commercial paper rate for each month.

Argument: If a recovery mechanism other than securitization is approved, FPL should only be allowed to accrue interest on the unrecovered balance of approved 2005 storm costs at the pre-tax commercial paper rate. This methodology recognizes that FPL receives benefits from the credit deferred taxes recorded on its books related to the write-off of storm losses in 2004 and 2005. Using the pre-tax commercial paper rate is consistent with FPL's requested method of calculating interest.

Respectfully submitted,

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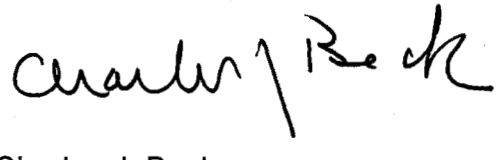

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DOCKET NO. 060038-EI

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail or hand-delivery to the following parties on this 28th day of April, 2006.

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