

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 23, 2018
TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
FROM: Samantha Cibula, Office of the General Counsel *SML*
RE: Docket No. 20070011-EI

Please file the attached materials in the docket file listed above.

Thank you.

Attachment

RECEIVED-FPSC
2018 JUL 23 AM 11:23
COMMISSION
CLERK

Susan D. Ritenour
Secretary and Treasurer
and Regulatory Manager

One Energy Place
Pensacola, Florida 32520-0781

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SDRITENO@southernco.com



February 14, 2007

Mr. Larry Harris
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Dear Mr. Harris:

Re: FPSC Docket No. 070011-EI, Proposed Amendment of Rule 25-6.0143, F.A.C., Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4

The staff of the Florida Public Service Commission ("Staff") is continuing with the development of Rule 25-6.0143, Florida Administrative Code, to amend provisions relating to use of accumulated provision accounts 228.1, 228.2 and 228.4. By notice issued January 24, 2007, a rule development workshop has been scheduled for February 21, 2007. Comments have been requested in order to facilitate discussion at the workshop.

Gulf Power Company ("Gulf") continues to be interested in the development of Rule 25-6.0143 and intends to participate in the workshop scheduled for February 21, 2007. In response to Staff's request for comments to facilitate discussion at the workshop, Gulf submits the following preliminary comments regarding the proposed rulemaking. Gulf does not intend this letter and attachment to serve as comprehensive or final comments regarding the subject matter of the proposed rulemaking and reserves the right to make further comments either at the workshop or post workshop if this rulemaking process continues.

In general, it is Gulf's position that the current rule provides appropriate guidance regarding the proper accounting treatment for all casualty occurrences to utility property which are not covered by insurance and is consistent with the Federal Energy Regulatory Commission's Uniform System of Accounts as specified in the Code of Federal Regulations ("FERC Uniform System of Accounts"). The purpose behind the rule is to provide for an appropriate accounting mechanism associated with an authorized program of self-insurance for all property casualty losses, including but not limited to those uninsured losses to property that occur as result of storms.

Gulf is, however, supportive of an incremental cost and capitalization concept in determining what costs are appropriate for cost recovery. If the Commission continues with the proposed rulemaking, Gulf offers the attached changes to Staff's proposed rule amendments. These changes are presented in Attachment A in red-line strikeout format. In

Mr. Larry Harris
February 14, 2007
Page Two

general, Gulf's proposed changes would clarify the types of costs allowed to be charged to the reserve in addition to the items that would not be allowed to be charged to the reserve unless and until commission approval is received.

One key change proposed by Gulf is the removal of the requirement to credit the reserve with the reimbursement of a utility's costs incurred during the assistance of another utility with storm-recovery. Crediting the reserve with these types of reimbursements inappropriately assumes that these reimbursements are a windfall benefit to the utility providing the assistance. While personnel of the utility providing assistance are away, customer service and maintenance work continues to be required and must be completed through the hiring of contract labor or through additional employee overtime to ensure normal customer service and operations are maintained. The proposed requirement to credit the reserve with reimbursements would likely discourage Florida utilities from offering assistance to each other and to utilities outside the state when disaster strikes and ultimately would result in less assistance coming to Florida from outside the state when it is critically needed to restore service in a timely and effective manner.

In summary, if the Commission continues with the proposed rulemaking to clarify the accounting and cost recovery treatment of storm-related damages, then Gulf offers the proposed changes to Staff's proposed rule amendments as shown in Attachment A.

As noted earlier, these are the preliminary comments of Gulf Power Company which reserves the right to submit additional comments regarding proposed changes in the rule as the rule development process progresses.

Sincerely,

Susan D. Ritenour (lw)

rjm

cc: Blanca Bayo
Cheryl Bulecza-Banks
Michael Cooke
Tim Devlin
Chuck Hill
John Slemkewicz
Marshall Willis
James D. Beasley
Bill Feaster
Beggs and Lane
Jeffrey A. Stone, Esquire

John McWhirter
Charles Beck
Scheff Wright
Javier J. Portuondo
Alex Glenn
John Burnett
Paul Lewis, Jr.
Natalie Smith
John Butler

Gulf Power Company Proposed Changes to Staff's Proposed Rule Amendments

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

25-6.0143 Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4.

(1) Account No. 228.1 Accumulated Provision for Property Insurance.

(a) No change.

(b) Except as provided in subsections (1)(ef) and (1)(fg), Charges to this account shall be made for all occurrences in accordance with the schedule of risks to be covered which are not covered by insurance. Recoveries, insurance proceeds or reimbursements for losses charged to this account shall be credited to the account.

(c) A separate subaccount shall be established for that portion of Account No. 228.1 which is designated to cover storm-related damages to the utility's own property or property leased from others that is not covered by insurance. The records supporting the entries to this account shall be so kept that the utility can furnish full information as to each storm event included in this account.

(d) In determining the costs to be charged to cover storm-related damages, the utility shall use an Incremental Cost and Capitalization Approach methodology (ICCA). Under the ICCA methodology, the costs charged to cover storm-related damages shall include all incremental costs incurred during storm recovery and all costs for insurance covering transmission and distribution facilities obtained by the utility subsequent to the test year on which its base rates were last set, and shall exclude those costs that normally would be charged to non-cost recovery clause operating expenses in the absence of a storm. In addition, capital expenditures for the removal, retirement and replacement of damaged facilities charged to cover storm-related damages shall exclude the normal cost for the removal, retirement and replacement of those facilities in the absence of a storm. The utility shall notify the Director of the Commission's Division of Economic Regulation in writing and provide a schedule of the amounts charged to Account No. 228.1 for each incident expected to exceed ten million dollars.

(e) All costs charged to Account 228.1 are subject to review for prudence and reasonableness by the Commission. Under the ICCA methodology for determining the allowable costs to be charged to cover storm-related damages, the utility will be allowed to charge to Account No. 228.1 all costs that are incremental to costs normally charged to non-cost recovery clause operating expenses in the absence of a storm and all costs for insurance covering transmission and distribution facilities obtained by the utility subsequent to the test year on which its base rates were last set. The types of storm related costs expressly allowed to be charged to the reserve under the ICCA methodology include, but are not limited to, the following:

1. Contract labor, such as utility personnel, line clearing personnel, and security guards;
2. Logistics costs of providing meals, lodging, and linens for tents and other staging areas;
3. Transportation of crews to staging sites;
4. Vehicle mileage and rentals;
5. Waste management costs;
6. Rental equipment;
7. Materials used to repair and restore facilities to pre-storm condition, such as poles, transformers, meters, light fixtures, wire, and other electrical equipment;
8. Overtime payroll and payroll-related costs for utility personnel
9. Fuel cost for company and contractor vehicles;

Gulf Power Company Proposed Changes to Staff's Proposed Rule Amendments

10. Cost of public service announcements regarding key storm-related issues, such as safety and service restoration estimates; and

11. Cost of commercial insurance for a utility's transmission and distribution facilities or cost to fund other programs, such as a cooperative risk sharing plan or pooled reserve among other investor-owned utilities.

(f) Under the ICCA methodology for determining the allowable costs to be charged to cover storm-related damages, the following costs are expressly prohibited from being charged to Account No. 228.1 unless and until the utility has received express approval from the commission following a showing by the utility that such costs are incremental costs incurred during storm recovery and are not costs that normally would be charged to non-cost recovery clause operating expenses in the absence of a storm:

1. Base rate recoverable regular payroll and regular payroll-related costs for utility managerial and non-managerial personnel;

2. Bonuses or any other special compensation for utility personnel not eligible for overtime pay;

3. Base rate recoverable depreciation expenses, insurance costs and lease expenses for utility-owned or utility-leased vehicles and aircraft;

4. Utility employee assistance costs;

5. Utility employee training costs;

6. Utility advertising, media relations or public relations costs, except for public service announcements regarding key storm-related issues as listed above in item (e) 10.;

7. Utility call center and customer service costs, except for non-budgeted overtime or other incremental costs associated with the storm event;

8. Tree trimming expenses, incurred in any month in which storm damage restoration activities are conducted, that are less than the actual monthly average of tree trimming costs charged to operation and maintenance expense for the three previous calendar years;

9. Uncollectible accounts expenses;

10. Utility lost revenues from services not provided;

11. Costs of back-fill work or catch-up work for activities not directly related to storm damage restoration activities; and

12. Replenishment of the utility's materials and supplies inventories.

(g) A utility may, at its own option, charge storm-related costs as operating expenses rather than charging them to Account No. 228.1. The utility shall notify the Director of the Commission's Division of Economic Regulation in writing and provide a schedule of the amounts charged to operating expenses for each incident exceeding five million dollars. The schedule shall be filed annually by February 15 of each year for information pertaining to the previous calendar year.

(h) If the charges to Account No. 228.1 exceed the account balance, the excess shall be carried as a debit balance in Account No. 228.1 and no request for a deferral of the excess or for the establishment of a regulatory asset is necessary.

(i) A utility may petition the Commission for the recovery of a debit balance in Account No. 228.1 plus an amount to replenish the storm reserve through a surcharge, securitization or other cost recovery mechanism.

Gulf Power Company Proposed Changes to Staff's Proposed Rule Amendments

~~(i) If a utility receives reimbursement from another utility for expenses incurred in providing storm damage restoration assistance to another utility, the utility shall credit Account No. 228.1 for the costs that normally would be charged to operating expenses in the absence of providing storm damage restoration assistance.~~

(j) A utility shall not establish or change an annual accrual amount or a target accumulated balance amount for Account No. 228.1 without prior Commission approval.

~~(k) Each utility shall file a Storm Damage Self-Insurance Reserve Study (Study) with the Division of the Commission Clerk and Administrative Services by January 15, 2011 and at least once every five years thereafter from the submission date of the previously filed study. A Study shall be filed whenever the utility is seeking a change to either the target accumulated balance or the annual accrual amount for Account No. 228.1. At a minimum, the Study shall include data for determining a target balance for, and the annual accrual amount to, Account No. 228.1.~~

(kl) Each utility shall file a report with the Director of the Commission's Division of Economic Regulation providing information concerning its efforts to obtain commercial insurance for its transmission and distribution facilities and any other programs or proposals that were considered. The report shall also include a summary of the amounts recorded in Account 228.1. The report shall be filed annually by February 15 of each year for information pertaining to the previous calendar year.

(2) – (4)(a) No change.

(b) If a utility elects to use any of the above listed accumulated provision accounts, each and every loss or cost which is covered by the account shall be charged to that account and shall not be charged directly to expenses except as provided for in subsections (1)(fe) and (1)(gf). Charges shall be made to accumulated provision accounts regardless of the balance in those accounts.

(c) No change.

Specific Authority 366.05(1) FS.

Law Implemented 350.115, 366.04(2)(a) FS.

History-New 3-17-88, Amended _____.



**EDISON ELECTRIC
INSTITUTE**

February 28, 2006

Mr. John J. Slemkewicz
Public Utilities Supervisor
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850



In Re: Potential Revisions to Rule 25-6.0143, Florida Administrative Code,
Use of Accumulated Provision Accounts

Dear Mr. Slemkewicz:

Please accept the enclosed comments from the Edison Electric Institute regarding the Florida Public Service Commission's Potential Revisions to Rule 25-6.0143, Florida Administrative Code, Use of Accumulated Provision Accounts. EEI would like to reserve the right to make further comments on this proposed rule change if the rulemaking process continues.

Sincerely,

A handwritten signature in black ink that reads 'James P. Fama' with a stylized flourish at the end.

James P. Fama
Executive Director, Energy Delivery

Enclosure

Cc: Marlene Stern, Staff Attorney, Florida Public Service Commission



**EDISON ELECTRIC
INSTITUTE**

TO: Mr. Slemkewicz

DATE: February 28, 2006

SUBJECT: Comments of the Edison Electric Institute Regarding Potential Revisions to Rule 25-6.0143, Florida Administrative Code, Use of Accumulated Provision Accounts

COMMENTS OF THE EDISON ELECTRIC INSTITUTE
REGARDING
POTENTIAL REVISIONS TO RULE 25-6.0143

The Edison Electric Institute (“EEI”) respectfully submits these comments regarding potential revisions to Rule 25-6.0143, Florida Administrative Code (“Rule 25-6.0143” or the “Rule”). EEI would like to reserve the right to make further comments on this proposed rule change if the rulemaking process continues.

EEI is the trade association for shareholder-owned electric companies, and serves international affiliates and industry associates worldwide. Our U.S. member companies serve 97 percent of the ultimate customers in the shareholder-owned segment of the industry and nearly 71 percent of all electric utility ultimate customers in the nation. EEI members own approximately 60 percent of the nation’s circuit miles of transmission. EEI’s members include Florida Power and Light Company, Tampa Electric Company, Gulf Power Company and Progress Energy Florida, Inc. EEI also coordinates a Mutual Assistance program in order to facilitate EEI members providing storm damage

assistance to one another in restoring power to their customers in the fastest, safest and most efficient manner possible.

EEI is commenting in this proceeding, specifically, because we are concerned with the proposed addition of Section (1) (i) to the Rule which states that:

“If a utility receives reimbursement from another utility for expenses incurred in providing storm damage restoration assistance to another utility, the utility shall credit Account No. 228.199 for the costs that normally would be charged to operating expenses in the absence of providing storm damage restoration assistance.”

While EEI’s electric utility members do not make a profit when assisting each other during storm damage restoration, they do expect to be “made whole” for their efforts and to be able to retain the same high level of service for their own customers when assisting others in need. The Rule language above would cause utilities in Florida to either lose money while assisting the customers of another utility or sacrifice service levels for their own customers. This would set a dangerous precedent which could undermine a mutual assistance program that has benefited customers of EEI electric utility members for many years.

The EEI Mutual Assistance program was formed in 1955. Our electric utility members are proud that this type of program is unique within American industry. We believe it provides an extremely important service by helping member electric utilities to assure fast, safe and efficient service restoration after emergency situations for electric customers throughout the nation. The EEI Mutual Assistance program, together with the Southeastern Electric Exchange and other regional mutual assistance groups, form the backbone of the investor-owned electric utility industry’s extremely successful response to local and regional, natural and man made disasters. The fundamental tenet of the

program is that, whenever possible, a member electric utility will assist another member electric utility to restore power to its customers, with the understanding that if a problem befalls the assisting utility, the other utility will assist it in return.

The advantage of the program is that the requesting utility will receive professional, well trained personnel provided on an “at cost”, not for profit basis. Along with providing nationwide resources, the program is organized with processes in place, so that when an emergency situation arises, members can immediately put personnel and material into action to assist the requesting company. The benefit of having this type of program from which to request resources allows the requesting utility to focus more of its own resources toward assisting its customers as opposed to organizing outside assistance. An important part of this program is that it is mutual. Each company willingly assists others “at cost” because it knows that it will benefit from similar assistance when needed.

Florida has benefited substantially from electric utility mutual assistance. During the 2005 hurricane season, Florida Power and Light Company received over 15,000 outside workers from utilities in 36 states and Canada to assist in restoring the lights after hurricane Wilma. This assistance for Wilma came from 63 different electric utilities. Gulf Power Company was assisted by approximately 5,000 workers from 15 states after hurricane Dennis. Similarly, in 2004, Florida Power and Light Company received assistance from 39 states and Canada. In 2004, overall, Florida’s investor owned utilities received storm restoration assistance from thousands of outside workers who responded to four major hurricanes, as the chart below demonstrates:

Company	CHARLEY	FRANCES	IVAN	JEANNE
FPL	6,006	7,997		7,937
Gulf			5,000	
Progress	3,616	2,815	207	2,742
Tampa	1,238	1,483		1,919

Outside of Florida, hurricane Katrina provided an example of the resources that can be quickly gathered and brought to bear in an emergency. Over 22,000 electric utility crews and other contractors from approximately 40 electric companies in over 24 states as far away as California and the District of Columbia responded to requests for assistance to the northern Gulf Coast region of the country.

In return, EEI's Florida members have also responded to the calls for assistance from their neighbors. All of the Florida EEI member utilities have helped each other during storm restoration activities, and have traveled hundreds and thousands of miles to assist EEI member utilities in other states. Most recently, they all worked on restoration work for hurricanes Rita, Katrina, Wilma, Frances, Charley, Jeanne, Ivan and Isabel.

The reason mutual assistance has been so successful is that it creates a prompt, reliable and economical resource for all of the utilities involved. The requesting utility is able to rely on a large influx of expert, professional assistance to help it quickly, safely and efficiently get the lights back on for its customers using skilled professionals which are paid at-cost. The responding utility, at no cost to its customers, is thus able to build relationships and develop goodwill that it can rely on when it faces its own an emergency disruption. Even in today's competitive environment in many parts of the Nation, utility companies help each other with mutual assistance because they know that, if needed, they can rely on the help from others.

The proposed changes to the Rule threaten to break the balance of this program and endanger the future of mutual assistance. Utilities will be less eager to assist their fellow utilities (by moving their personnel and materials long distances and working under stressful conditions) if they feel that they will be incurring a cost for themselves and / or providing less service to their customers.

Section (1) (i) of the proposed Rule, by requiring a Florida utility to credit mutual aid revenues received to the storm reserve, ignores the fact that personnel sent by a responding utility are no longer able to perform their normal work duties back in their home territories. This normal work effort will then need to be completed at a later time, either by contractors or on overtime when the crews come back home (backfill and catch-up). If a utility cannot apply their reimbursement for mutual assistance activities to offset these incremental costs to their normal activities, then they will be put in the position of losing money while assisting their neighbor. Utilities will go to tremendous lengths to help one another as long as they are not penalized for doing so. Section (1) (i) would create just such a disincentive.

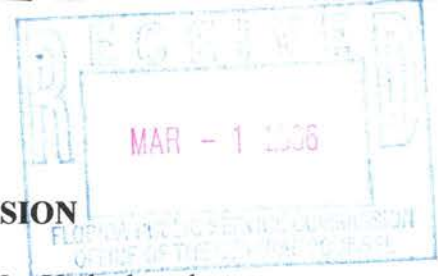
Due to its geography and weather patterns, EEI views Florida as an integral part of any successful mutual assistance program. Florida utilities both provide and request a large amount of assistance in any given year and interact not only with the Southeast, but across the greater United States. The proposed addition of Section (1) (i) to the Rule has the potential to seriously undermine the valuable assistance that our member electric utilities have become accustomed to in providing mutual assistance to one another and to create a very unfortunate precedent in a state where mutual assistance is such an

important program. EEI urges the Florida Public Service Commission to avoid implementing this change and to preserve the balance of the mutual assistance program that has served Florida's electric utility customers so well in the past.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Rule 25-6.0143; Use of Accumulated
Provision Accounts 228.1, 228.2 and 228.4

Docket No: Undocketed
Filed: February 28, 2006



**PRE-WORKSHOP COMMENTS OF
THE FLORIDA INDUSTRIAL POWER USERS GROUP**

The Florida Industrial Power Users Group (FIPUG) hereby offers the following pre-workshop comments regarding the proposed amendments to Rule 25-6.0143; Use of Accumulated Provision Accounts 228.1, 228.2 and 228.4. These comments are preliminary in nature and are subject to revision by FIPUG at a later date. In addition, FIPUG would like to reserve the right to file more detailed comments following the workshop scheduled for March 10th.

COMMENTS ON STAFF'S PROPOSAL

FIPUG supports the staff recommendation, which uses an incremental cost approach when accounting for storm damage. FIPUG believes that the incremental cost approach is the proper approach for the Commission to adopt by rule as it attempts to allow utilities to recover their fair costs incurred during storm restoration activities while excluding those costs that the utility already recovers through base rates. In particular, FIPUG supports the principals that were embodied in Exhibit A to the settlement between the Office of Public Counsel, FIPUG and Gulf Power approved in Order No. PSC-05-0250-PAA-EI. The greater public interest militates against double recovery for storm expenses. Fairness suggests that if a lineman's salary and reasonable overtime is covered through base rates and a depreciation reserve has been collected from customers to replace poles, it is better to mitigate surcharges to customers by recognizing these payments rather than ignoring the double recovery and allowing utility earnings to move to windfall levels. In addition, FIPUG supports the Staff proposal to prohibit recovery of lost

revenues. FIPUG believes it is unfair to charge customers for service that was not provided by the company or received by the customer.

Section 1(b) and 1(c)

FIPUG would suggest the addition of “or base rates” after the words “not covered by insurance.”

Section 1(d)

FIPUG supports limiting the capital expenditures charged to be charged to Account No. 228.199, Accumulated Provision for Storm Damage (Storm Damage Account). However, FIPUG would propose that the cost of removal expense not be charged to the Storm Damage Account, and that retirements be booked based on a utility’s existing depreciation/retirement procedures.

In addition, the threshold for the reporting requirements in the last sentence of Section 1(d) should be reduced to a lower amount and expressed as a percentage. Using a percentage threshold instead of a dollar threshold would allow the rule to apply more uniformly to the utilities covered by the rule. Further, the lower threshold will allow for greater transparency of charges to the Storm Damage Account resulting from non-catastrophic storms. FIPUG also suggests that the Commission include language to require the utilities to provide a year-end accounting of all charges to the storm reserve on a month-by-month and per storm basis to allow better tracking of the costs charged to the reserve.

Section 1(e)

FIPUG supports providing a list of those categories of items that a utility shall not charge to the Storm Damage Account. In addition to the items listed in Staff’s proposal, FIPUG supports including the following additional items that should not be charged to the Storm

Damage Account:

1. A utility's cost of materials and supplies under normal operating conditions;
2. Normal base rate recoverable costs for utility owned or leased vehicles or aircraft, such as insurance, depreciation, maintenance or fuel;
3. Storeroom expense;
4. Base regular payroll and payroll related costs and normal, budgeted overtime for managerial and non-managerial personnel;
5. Labor costs associated with repairs and replacements that have been identified as job or work orders, but that have not yet been worked and that will be completed by existing, full-time employees or regular, budgeted contract personnel;
6. Labor costs associated any work or activity related to the storm other than the job or work orders identified in (5) above that will be completed by employees as part of their regular job duties;
7. Bad debt or uncollectable expenses;
8. Tree trimming expense that is budgeted and included in base rates;
9. All other allocated expenses included in normal operations and existing budgets.

Section 1(f-g)

FIPUG has no comments as to these sections.

Section 1(h)

FIPUG supports limiting any surcharge to the amount of the debit balance of the Storm Damage Account. In addition, FIPUG believes that the rule should incorporate language to allow the substantially interested persons a point of entry to petition the Commission for an alternative recovery mechanism for costs charged to the Storm Damage Account. For example, if a utility is earning an excessive return on equity, a person may want to petition the Commission to require that excess earnings be credited to the Storm Damage Account. The Commission would, of course, also have the authority to initiate such a proceeding on its own motion.

Section 1(i)

FIPUG supports crediting the Storm Damage Account for those reimbursements for normal O&M costs that a utility receives as a result of providing storm damage restoration

assistance to another utility. FIPUG believes that such an adjustment is necessary to avoid double recovery by the utility, and to prevent storm restoration assistance from becoming a profit center for the utility at the customer's expense.

Section 1(j)

FIPUG believes that the rule should incorporate language to allow substantially interested persons a point of entry to petition the Commission to establish a new annual accrual amount. For example, if a utility is earning an excessive return on equity, a person may want to petition the Commission to require that excess earnings accrue to the Storm Damage Reserve in lieu of a rate case proceeding. The Commission would, of course, also have the authority to initiate such a proceeding on its own motion.

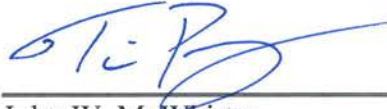
Section 1(k-l); 2(b)

FIPUG has no comments as to these sections.

ADDITIONAL COMMENTS

In addition to the above, FIPUG suggests that the Commission include language in the rule to create a per storm threshold, not unlike a deductible, as a test of when it is appropriate to charge costs to the Storm Damage Account. The purpose of such a threshold would be to limit charges to the reserve to only serious and/or out-of-the-ordinary weather events that cause significant outages and/or damage to a utility's system.

Respectfully submitted,



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Attorneys for the Florida Industrial Power Users Group

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Rule 25-6.0143; Use of Accumulated
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revenues. FIPUG believes it is unfair to charge customers for service that was not provided by the company or received by the customer.

Section 1(b) and 1(c)

FIPUG would suggest the addition of “or base rates” after the words “not covered by insurance.”

Section 1(d)

FIPUG supports limiting the capital expenditures charged to be charged to Account No. 228.199, Accumulated Provision for Storm Damage (Storm Damage Account). However, FIPUG would propose that the cost of removal expense not be charged to the Storm Damage Account, and that retirements be booked based on a utility’s existing depreciation/retirement procedures.

In addition, the threshold for the reporting requirements in the last sentence of Section 1(d) should be reduced to a lower amount and expressed as a percentage. Using a percentage threshold instead of a dollar threshold would allow the rule to apply more uniformly to the utilities covered by the rule. Further, the lower threshold will allow for greater transparency of charges to the Storm Damage Account resulting from non-catastrophic storms. FIPUG also suggests that the Commission include language to require the utilities to provide a year-end accounting of all charges to the storm reserve on a month-by-month and per storm basis to allow better tracking of the costs charged to the reserve.

Section 1(e)

FIPUG supports providing a list of those categories of items that a utility shall not charge to the Storm Damage Account. In addition to the items listed in Staff’s proposal, FIPUG supports including the following additional items that should not be charged to the Storm

Damage Account:

1. A utility's cost of materials and supplies under normal operating conditions;
2. Normal base rate recoverable costs for utility owned or leased vehicles or aircraft, such as insurance, depreciation, maintenance or fuel;
3. Storeroom expense;
4. Base regular payroll and payroll related costs and normal, budgeted overtime for managerial and non-managerial personnel;
5. Labor costs associated with repairs and replacements that have been identified as job or work orders, but that have not yet been worked and that will be completed by existing, full-time employees or regular, budgeted contract personnel;
6. Labor costs associated any work or activity related to the storm other than the job or work orders identified in (5) above that will be completed by employees as part of their regular job duties;
7. Bad debt or uncollectable expenses;
8. Tree trimming expense that is budgeted and included in base rates;
9. All other allocated expenses included in normal operations and existing budgets.

Section 1(f-g)

FIPUG has no comments as to these sections.

Section 1(h)

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Section 1(i)

FIPUG supports crediting the Storm Damage Account for those reimbursements for normal O&M costs that a utility receives as a result of providing storm damage restoration

assistance to another utility. FIPUG believes that such an adjustment is necessary to avoid double recovery by the utility, and to prevent storm restoration assistance from becoming a profit center for the utility at the customer's expense.

Section 1(i)

FIPUG believes that the rule should incorporate language to allow substantially interested persons a point of entry to petition the Commission to establish a new annual accrual amount. For example, if a utility is earning an excessive return on equity, a person may want to petition the Commission to require that excess earnings accrue to the Storm Damage Reserve in lieu of a rate case proceeding. The Commission would, of course, also have the authority to initiate such a proceeding on its own motion.

Section 1(k-1); 2(b)

FIPUG has no comments as to these sections.

ADDITIONAL COMMENTS

In addition to the above, FIPUG suggests that the Commission include language in the rule to create a per storm threshold, not unlike a deductible, as a test of when it is appropriate to charge costs to the Storm Damage Account. The purpose of such a threshold would be to limit charges to the reserve to only serious and/or out-of-the-ordinary weather events that cause significant outages and/or damage to a utility's system.

Respectfully submitted,

s/ Timothy J. Perry

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Attorneys for the Florida Industrial Power Users Group

MEMORANDUM

TO: John Slemkewicz and Samantha Cibula, Esq.
Florida Public Service Commission

DATE: February 28, 2006

SUBJECT: Comments of Florida Power & Light Company ("FPL") Regarding
Potential Revisions to Rule 25-6.0143, Florida Administrative Code,
Use of Accumulated Provision Accounts

COMMENTS OF FPL REGARDING POTENTIAL REVISIONS TO RULE 25-6.0143

Florida Power & Light Company ("FPL") respectfully submits these comments regarding whether and to what extent the Commission should amend Rule 25-6.0143, Florida Administrative Code ("Rule 25-6.0143" or the "Rule").

FPL commends Staff for undertaking rulemaking as a vehicle for facilitating constructive dialogue on important public policy issues related to storm restoration. Such key public policy issues include deciding which categories of costs should be eligible for recovery from customers in order to foster the State objective of safely and rapidly restoring service to customers following storms. For example, should the Company be permitted to charge public safety advertising and media outreach expenses to the Reserve, or should such expenses compete for dollars in FPL's routine advertising budget? Should all employee payroll incurred in restoring service following storms be charged to the Reserve or should FPL only be permitted to charge the Reserve for amounts incremental to what it budgeted for the year, irrespective of whether those amounts actually were recovered through base rates or whether other incremental costs resulting from storms would offset any base rate savings? Should FPL be allowed to

charge employee assistance costs to the Reserve to the extent those costs enable employees to participate in the restoration effort sooner?

The overarching question is this: should FPL be reimbursed entirely for reasonable and prudent storm restoration-related costs of providing service to customers or should the shareholders of the Company bear some of these costs? Because the costs associated with restoring service after tropical storms and hurricanes are a necessary cost of doing business in Florida, FPL believes the costs are properly recoverable from customers. Obviously, FPL has no control over acts of nature and no ability to control or influence the events that have conspired to drive storm-related costs considerably above the amounts available through insurance and reserves.

This is not the first time the Commission has faced these critical questions. Prior to Hurricane Andrew, which struck South Florida in 1992, FPL had a small Reserve and maintained commercial windstorm insurance coverage for its transmission and distribution ("T&D") system. The cost of carrying insurance coverage, a bona fide cost of doing business, was recovered through base rates. The full cost of storm restoration, therefore, was borne by customers through the cost of insurance and the Reserve.

Following Hurricane Andrew, commercial insurers recognized that they had fundamentally misunderstood the nature of utility windstorm coverage and effectively withdrew from the market. In the absence of commercial coverage, Florida utilities, with the Commission's approval, instituted an approach that relied more heavily on the Reserve (Account No. 228.1), the existence of which pre-dated Hurricane Andrew. In 1993, FPL initially proposed an automatic revolving storm clause, but this was rejected by the Commission. Instead, the Commission endorsed an approach which consists of

three parts: 1) an annual storm accrual, adjusted over time as circumstances change; 2) a funded Reserve adequate to accommodate most but not all storm years; and 3) a provision for utilities to seek recovery of costs that go beyond the Reserve. These three parts have worked together to allow FPL over time to recover the full costs of storm restoration, while at the same time balancing potentially competing customer interests: as small an ongoing impact on customer bills as possible; minimal volatility of “rate shock” in customer bills because the Reserve is insufficient; and intergenerational equity.

As a result of a relatively mild period of hurricane and tropical storm activity from 1993 to 2003, FPL’s Reserve was able to grow to a level of approximately \$345 million as of August 2004. However, following the destructive 2004 storm season during which an unprecedented three hurricanes struck FPL’s service territory over an approximately six-week span, FPL’s Reserve was entirely depleted and it was forced for the first time to call on the third part of the framework – seeking recovery of costs that exceed the Reserve balance.

The subject of the proper method for accounting for storm costs was the subject of much debate in FPL’s request for recovery of 2004 storm costs. Concluding that it was appropriate and consistent with Commission precedent to allow FPL to recover from customers all reasonable and necessary costs of restoring service, then Commission Chairman Baez reasoned that the Commission had decided it was in the best interests of Florida that the utilities be reimbursed for all storm restoration-related costs so that base rates did not need to be set at the higher level that would be required were utilities to assume the risk of volatile and unpredictable storm losses. Former Chairman Baez framed the analysis supporting the decision as follows:

[A]s to the question of whether it is a make-whole standard or not, and I will reserve my feelings on using the words "make whole" because I think there are [] better words, but here is my philosophy as clearly as I can state it. Once upon a time ... we had insurance for these things. I think you heard Mr. Slemkewicz at least imply that the way that insurance policies would have worked was that there would have been no consideration as to the top number. The insurance limits are what they are, and there would be no subdiscussion of what is proper and what was prudent and so forth.

To me that was an all-or-nothing proposition. Now, unfortunately, we don't have that available as an option. ... [W]e decided that the best thing to do in the best interest of Florida was to go to a self-insurance plan. And we didn't go all the way on that. I feel compelled to keep reminding those that are listening that we did not go all the way.

A true self-insurance plan would have maintained a magic number on hand at all times. It would have contained, I guess, just as an insurance policy theoretically maintains a magic number on hand at all times. So in the best interest of the ratepayers, ultimately, and all involved, we decided to choose a method that ramped up and that accrued a certain amount every year until we got to a particular level and so forth.

Any way you look at it and in any way it was done ... one thing is true, ... what this Commission decided was in the best interest[s] of Florida was that we were not going to bet on mother nature, and that is my guiding principal. We made a decision not to say, you know what, we are going to set rates at a certain level, we are going to, you know, decide how you protect against loss, but, I tell you what, if a big storm comes down or any other catastrophic event, you guys are on your own, ... because to have done that, we would have had to, necessarily, let the company set its own rates to be able to say, you know what, in order for us to provide this service we have got to charge this much because tomorrow the end may come, and we have got to guard against that, and those are things that businesses do all the time.

Now, regulation steps in and tries to keep order and take everybody's interest into play, but the fact remains that we decided not to take a gamble. And because we decided not to take a gamble, I think to me that implied, for lack of a better word, a hold harmless or make-whole standard has to be the guiding principle here.

See Transcript of July 19, 2005 Agenda Conference, Item 17, pp. 45-47 (emphasis added).

The Commission in its role as FPL's rate regulator recognized through its decision at least three key facts that are relevant to this rulemaking proceeding: 1) FPL must be permitted recovery of all reasonable and prudent costs incurred in restoring service following storms in accordance with fundamental principles of rate regulation; 2) there is absolutely no double recovery or "double dipping" with respect to recovery of storm costs if the amounts budgeted for recovery through base rates indeed are not recovered through rates because electric sales are not achieved when power is out due to storms, because customers are absent following storms or because there are offsetting increases in unbudgeted expenses as a direct result of storms (backfill expense, catch-up expense, vacation buy back for employees unable to take planned vacation due to storm duty, etc.); and 3) permitting the recovery of all reasonable and prudent storm costs fosters the State objective of safe and rapid restoration of service following storms.

Summary

FPL believes that the Commission Staff's draft revisions to Rule 25-6.0143, if adopted, would mark a drastic departure from Commission precedent that has allowed FPL the opportunity to recover reasonable and necessary storm costs. If adopted, the draft revisions to the Rule would: 1) violate fundamental principles of ratemaking regarding the recovery of reasonable and prudent costs incurred restoring service to customers following storms and contradict thoughtful Commission precedent allowing utilities the opportunity to recover the full cost of storm restoration; 2) have the unintended consequence of causing higher costs to customers by encouraging the use of expensive outside contractors and foreign crews and potentially increasing the Company's cost of capital; and 3) would introduce additional confusion regarding the

appropriate costs to be charged to the Reserve in contravention of well-settled accounting principles. A revised version of Staff's draft Rule reflecting FPL's proposed approach is attached as Exhibit A.

Staff's draft Rule is introduced on the heels of the two most destructive Hurricane seasons Florida has ever faced, with predictions for more active seasons to come. FPL's service area alone has experienced the effects of an unprecedented seven hurricanes in just two storm seasons, and FPL's Reserve to pay for storm costs has been completely depleted. FPL's request for recovery of the costs associated with the 2005 storm season, and related requests, is pending in Docket No. 060038-EI.¹ As was the case following the 2004 storm season, the matter of storm cost recovery, and related matters, has drawn substantial political and media attention.

It is against this backdrop that the draft revisions to Rule 25-6.0143 have been introduced. In direct contravention of the regulatory compact, the draft Rule ignores and would deny across-the-board actual costs incurred by FPL in providing service to customers without regard to whether such costs were reasonably or prudently incurred. For example, FPL would be denied recovery of "base rate recoverable payroll," but there would be no consideration of offsetting adjustments to amounts disallowed based on highly variable and extraordinary incremental costs incurred by FPL as a direct result of storms that are neither charged to the Reserve nor recovered through base rates, such as:

¹ Since the Commission's decision in the 2004 Storm Order applied only to that proceeding, FPL is again requesting that an actual restoration cost methodology be employed in determining the amounts to be booked to the Reserve. The decision in this rulemaking docket would have prospective application only and, thus, would not apply to FPL's pending request in Docket No. 060038-EI. See, e.g., Env'tl. Trust v. Department of Environmental Protection, 714 So. 2d 493, 499-500 (Fla. 1st DCA 1998); Gulfstream Park v. Division of Pari-Mutuel Wagering, 407 So. 2d 263, 265 (Fla. 3d DCA 1981) ("administrative rules will not be applied retroactively").

1) overtime incurred by Company personnel in work areas not directly affected by the storm due to loss of personnel to storm assignments (backfill work); 2) 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); 3) increases in uncollectible accounts receivable write-offs as collection efforts are suspended due to priority of storm restoration; and 4) vacation buy back due to employees not able to use vacation time because of storm restoration responsibilities. The assumption that such costs would be reflected in base rates is incorrect and inconsistent with the fact that the Commission is moving highly volatile and extraordinary costs to base rates while FPL is operating under a base rate freeze. See Order No. PSC-05-0902-S-EI, Docket Nos. 050045-EI and 050188-EI (issued September 14, 2005) (approving Stipulation and Settlement among all parties to FPL's retail base rate case).

The incremental approach espoused in the draft Rule is based on the theory that reimbursing FPL for its actual costs of storm restoration is excessive because such costs are already accounted for in FPL's base rates – so-called double recovery or “double dipping.” As addressed above, one fatal weakness of this theory is that there is no provision for extraordinary storm restoration costs in base rates. In other words, even if, for example, a certain level of normal O&M expense is deemed to be implied in base rates, that level of expense neither includes nor contemplates any amount of cost contingency associated with the impact of a hurricane, which, among other things, results in normally scheduled work and the related costs being deferred or delayed to a subsequent period, not to mention widespread outages during which such costs are not recovered through sales of electricity.

Even if items such as backfill and catch-up expense were forecast in a rate case proceeding, they would most likely be treated as variable and extraordinary in nature and denied for recovery through base rates. Because the draft Rule does not take into account these and other incremental costs that are neither charged to the Reserve nor recovered through base rates, FPL would be denied any opportunity to recover these costs of providing service in direct violation of cost-of-service regulation. This would be an untenable result, especially if we are entering a period of increased storm frequency and intensity as predicted by many respected climatologists.

Ultimately, customers enjoy the rewards that come from ensuring the utility is provided the opportunity to recover all reasonable and necessary storm costs and ensuring that the utility has the financial wherewithal to take whatever actions are required to ensure a reliable energy supply. It is crucial that investors remain confident that FPL will continue to receive constructive regulatory support for their storm restoration efforts in the form of reimbursement for reasonable and prudent costs incurred. A perceived lack of regulatory support will have ramifications beyond this proceeding, with the end-result being a greater cost of utility service for customers throughout the State as the Company is forced to take a "bet on mother nature" and make business decisions on the gamble that a storm will occur in any given year.

FPL respectfully requests that the Commission adopt an insurance-like actual restoration cost approach with a capital adjustment, which results in single recovery of all costs related to storm restoration without the necessity of employing management budgeting tools for a purpose they were not intended and are not well-suited. Such an approach would comport with ratemaking principles and the regulatory framework for

storm cost recovery, provide an objective means of ensuring appropriate costs are charged to the Reserve and foster the safe and rapid restoration of service following storms in accordance with State objectives.

In Part One of these Comments, FPL addresses the fundamental flaws in the “Incremental Cost and Capitalization Methodology” proposed in the draft Rule, including discussing on a more specific basis the problems with certain categories of costs the draft Rule prohibits from being charged to the Reserve, including employee assistance, employee payroll and call center and customer service expenses. As a policy matter, certain of these categories of costs should be charged to the Reserve in furtherance of the State objective of safe and rapid restoration of service following storms. Also addressed in Part One are problems with the proposal to require utilities to credit the Reserve with amounts reimbursed in providing mutual assistance to other utilities in need. The proposal ignores actual costs to the Company that are incurred when crews are sent to provide restoration assistance to other utilities and, if adopted, it could have the unintended consequence of discouraging mutual aid.

In Part Two, FPL discusses problems with the draft Rule requirement that only deficits in the Reserve may be recovered through a surcharge. This provision contradicts Commission precedent and Florida Statutes permitting the utilities to replenish or fund the Reserve to an approved level through mechanisms including a surcharge and the issuance of storm-recovery bonds.

In Part Three, FPL addresses the requirement that a separate subaccount be established for storm. FPL believes that a separate subaccount should not be established

since there is no separate provision for uninsured property damage resulting from the other hazards covered by Account No. 228.1.

The comments provided by FPL below are not comprehensive of positions FPL may take as this rulemaking proceeds. FPL looks forward to participating in the March 10, 2006, Rule Development Workshop and in having further discussions with Staff and interested parties as this rulemaking moves forward.

Part I.

The Incremental Methodology Espoused in the Draft Rule is Fundamentally Flawed

The accounting methodology espoused in the draft Rule is inherently flawed. The draft Rule purports to follow an “incremental” approach, but it expressly ignores unrecovered base rate expenses associated with storm restoration, as well as other incremental actual costs to the utility directly resulting from storms, in violation of fundamental principles of ratemaking.

A. The “incremental” methodology in the draft rule violates fundamental ratemaking principles permitting recovery of all reasonable and necessary costs.

A fundamental tenet of the regulatory compact is that a utility is entitled to recover from customers all reasonable and necessary costs incurred in providing service, including an opportunity to earn a fair return on investment, and that these costs should be borne by those for whose benefit they were incurred. In exchange, the utility provides safe, reliable service to customers at a reasonable cost. The draft Rule violates principles of ratemaking. In years where a storm strikes, there would be a bias against recovery of the costs of service and earning a fair rate of return.

The inclusion of all reasonable and necessary costs in rates is the essence of public utility regulation. Not only is this obligation related to the regulation of monopoly providers of service, it is also essential to encourage efficient utility operations and ensure reliable utility service to customers. Apart from maintaining adequate utility service, the opportunity to recover reasonable and necessary expenditures, such as those associated with FPL's storm restoration efforts, is central to the cost-of-service approach to regulation adopted in Florida and elsewhere in this country.

Because the costs associated with restoring service after tropical storms and hurricanes are a necessary cost of doing business in Florida, they are properly recoverable from customers. The ability of the FPL to recover extraordinary costs associated with storm restoration is similar to the regulatory treatment this Commission affords fuel and purchased power costs, with expenses in excess of the amount recovered from customers routinely being deferred after-the-fact and recovered through future rates. Unexpected weather conditions, capacity shortages, or fuel cost volatility can produce power market conditions that share many of the characteristics that distinguish catastrophic events, such as natural disasters. FPL is forced to incur significant costs in meeting its commitment to provide reliable service that have not been considered in existing rates. Obviously, FPL has no control over acts of nature and no ability to control or influence the events that have conspired to drive storm-related costs considerably above the amounts available through insurance and reserves.

The draft rule violates the basic ratemaking model by attempting to adjust one side of the ratemaking equation (costs) while ignoring the other (revenues). Base rates are designed under the assumption of normal costs and normal revenues. Normal costs

include regular payroll and vehicle charges, etc. The revenue requirement is divided by a normal level of costs and sales to set the base rates. As a result of hurricanes and storms, there are very significant outages during which electricity sales do not achieve the “normal” level assumed in base rates. To determine whether cost recovery is truly “incremental” to the amount assumed in base rates, therefore, one must ask whether total avoided base rate costs exceed total avoided base rate revenues. Further, other incremental base rate expenses such as catch-up, backfill and vacation buy back would have to be taken into account under this approach.

By ignoring that the “base rate recoverable items” disallowed under the draft rule indeed are not recovered through base rates due to electricity sales that are not achieved when customers have no service or are absent following storms, the ratemaking model is erroneously skewed. If a true incremental approach is to be followed, there must be offsetting adjustments to amounts disallowed to the extent of incremental costs incurred that are not charged to the Reserve (e.g., backfill, catch-up, uncollectible accounts receivable write-offs, vacation buy back, etc.). Otherwise, the Company is deprived of the ability to recover reasonable and necessary costs of providing service and an opportunity to earn a fair rate of return in violation of the regulatory compact that has served Florida customers well, and in contravention of the Stipulation and Settlement Agreement approved in Docket No. 050045-EI, which freezes base rates.² Indeed, the draft Rule would move costs to base rates during the term of this base rate freeze the

² The Stipulation and Settlement Agreement specifically permits FPL to “recover prudently incurred costs associated with events covered by Account No. 228.1” (Paragraph 10).

nature of which have never been recovered through base rates because of the unusual and nonrecurring nature of the costs.

B. Use of the actual restoration cost approach serves customers well.

An actual restoration cost approach fosters the objective of safe and rapid restoration of service at a reasonable cost to customers. On the other hand, the draft Rule appears to penalize utilities for engaging Company personnel in storm restoration and sending Company personnel to offer assistance to other utilities. Further, the draft Rule could have the unintended consequence of actually increasing costs to customers.

1. The actual restoration cost approach fosters safe and rapid restoration.

Chapter 366, Florida Statutes, and Chapter 25-6, Florida Administrative Code, establish the framework under which FPL is regulated by the Commission. This regulatory framework clearly requires electric utilities to conduct their service restoration efforts in an efficient, rapid, and safe manner. To comply with the statutory and rule guidelines, when FPL experiences significant storm damage, it mobilizes all available employees with one common objective – restore power to customers as safely and as quickly as possible. This effort requires the involvement of linemen and other field personnel to actually restore power, as well as other available personnel to enable and support the restoration in every way possible – e.g., through damage surveys, organizing and running restoration staging sites and other support activities. All of the restoration activities are performed through detailed restoration plans that are updated at least annually and practiced several times before hurricane season begins.³

³ All of the costs associated with annual planning activities and practicing for storm restoration are charged to normal operating expenses, not the Reserve.

As addressed above, the duties normally performed by utility employees generally do not go away; they are merely deferred until after storm restoration is complete or performed by others who are not on storm duty while the restoration effort is ongoing. Both the backfill and catch-up work necessary to ensure that these duties are caught up generally involve overtime or the use of contractors or temporary labor that is charged to normal operating expense not the Reserve.

Under an approach that allows FPL to recover actual costs incurred, FPL's incentive is straightforward: to restore power as quickly as practicable. To this end, FPL mobilizes virtually the entire organization in one way or another in support of storm restoration efforts. The normal work of those who are assigned directly to storm support either is performed by others ("backfill work") or is done later, usually with overtime ("catch-up work"). An actual restoration cost approach, as reflected in Exhibit A, would ensure the interests of the Company and customers continue to be aligned in furtherance of safe and rapid restoration.

2. The draft Rule could increase costs to customers

Contrary to the apparent intent of the draft Rule, to decrease the cost to customers regardless of the amount of costs incurred by the Company, the draft Rule could have the unintended effect of actually increasing costs to customers. In addition to encouraging the use of higher cost outside contractors and foreign crews in the restoration effort, as addressed above, the draft Rule could increase the Company's cost of capital.

Investors' required rates of return for utilities are premised on the regulatory compact that allows the utility an opportunity to recover reasonable and necessary costs. By protecting utilities from exposure to extraordinary or catastrophic events that result in

legitimate costs of electric service, but which are beyond the control of management, customers benefit from lower capital costs than they would otherwise bear. Of course, the corollary is also true – shifting the burden of extraordinary risks to shareholders would have the effect of considerably increasing investors' required rate of return and, in turn, the cost of equity. Ultimately, customers realize the important benefits that come from ensuring the utility is allowed to recover all reasonable and necessary storm costs and ensuring that the utility has the financial wherewithal to take whatever actions are required to ensure a reliable energy supply.

C. The actual restoration cost approach is accurate, straightforward and comports with accounting principles.

The actual restoration cost approach removes the costly and time-consuming need to track and calculate incremental costs and amounts not recovered through base rates, encourages the cost-efficient use of experienced utility employees and accomplishes the objective of safe and rapid restoration of service at a significantly lower cost. The actual restoration cost methodology is the most accurate method of accounting for storm-restoration costs because it utilizes normal cost accounting practices, processes and procedures that are relied upon by FPL in the ordinary course of business.

1. Budgets are not suitable for calculating storm costs.

Instead of relying on readily available and accurate storm restoration cost data, the incremental approach relies on measuring or estimating variances between budgeted and actual expenditures. Employing budgets for the purpose of assessing the amount of recoverable storm costs is an improper use of a managerial accounting tool for a purpose for which they were not intended. For example, if the Company developed a new process designed to create efficiencies and save budgetary expense, under the draft Rule, the

Company would be penalized for those savings and efficiencies if they occurred in a storm year. This sends the wrong message to the Company because such savings and efficiencies should be encouraged, not discouraged. As a policy matter, the Commission, customers and FPL would all be better served by using the actual restoration approach that relies upon cost accounting data, rather than the incremental approach's indirect and judgmental assessment of budget-related documents, as the measure for storm restoration costs.

Budgets are set for purposes of allocating overall resources. This is a basic management process aided by the budgeting tools of managerial accounting. Budgets are monitored, and adjustments in expenditures are made over the course of the year, in order to help management measure and assess actual business resource requirements in the course of the year in comparison with the resources that were estimated to be needed in the budgeting process. This is a valid and indeed essential business process. However, it is not a typical, common, or even accepted accounting method for cost accounting. It is also an unnecessarily complicated and indirect method for measuring storm costs, especially when FPL already has in place accurate cost accounting methods for capturing and recording storm restoration costs directly. The Company should be encouraged to use the budgetary process for the business purpose for which it is intended, and the draft Rule could have the opposite effect.

2. Accounting principles dictate the use of an actual cost approach

As addressed in greater detail in the comments of Hugh Gower attached as Exhibit B, adoption of the draft rule would result in inconsistencies with the basic principles of utility cost accounting embedded in the Uniform System of Accounts

("USOA") that FPL is required to follow pursuant to applicable law, including this Commission's regulation establishing and requiring compliance with the USOA. See, e.g., Code of Federal Regulations, Title 18, Subchapter C, Part 101, et seq, which focuses on the costs of performing activities. Specifically, General Instruction 9 of the Code of Federal Regulations, Title 18, Subchapter C, Part 101, [incorporated by reference in Rule 25-6.014, Florida Administrative Code], provides as follows:

[t]he charges to electric plant, operating expense and other accounts for services and expenses of employees engaged in activities chargeable to varFPL accounts, such as construction, maintenance, and operations, shall be based upon the actual time engaged in the respective classes of work, or in case that method is impracticable, upon the basis of a study of the time actually engaged during a representative period.

See id. (emphasis added). As discussed above, FPL is able to capture the actual time engaged in the respective classes of work. The storm restoration activities captured and recorded on the books are consistent with the rule. Also, the description of Account No. 228.1, Accumulated Provision for Property Insurance, as set forth in the USOA, contemplates an insurance-type environment where periodic provision is made to cover future losses associated with specific risks. The costs associated with the identified risks are charged to this account. The USOA makes no mention of an incremental approach or any other comparable adjustment to actual costs incurred. Instead, it focuses on tracking the event giving rise to the loss and relating that event to the risks for which the account was created (here the schedule of risks covered by Account No. 228.1).

Further, use of the actual restoration cost approach avoids the necessity of making estimates for year-end budget variances that are inconsistent with the stringent financial reporting requirements imposed on public companies by the Sarbanes-Oxley Act of 2002. FPL is a public company and must publicly report its financial information on a quarterly

basis. To apply the version of the incremental cost approach espoused in the draft Rule to interim financial statements, FPL would have to estimate the amount of year-end variances and deduct that amount from the amounts determined using the actual restoration cost method. Such variances can occur for many reasons and be of great magnitude, having nothing to do with storm costs. There is simply no basis for making such an estimate until the actual variance is known, and requiring FPL to do so would be arbitrary and capricious. See Section 120.52(8) (a rule is an “invalid exercise of delegated legislative authority if it is “arbitrary and capricious [meaning] not supported by logic or the necessary facts [or] adopted without thought or reason or is irrational”). At the same time, making no adjustment shrouds FPL’s financial statements with uncertainties that can create disadvantages for FPL as it competes for capital.

3. The costs to regulated entities of the draft Rule could be reduced by the adoption of less costly alternatives that accomplish the statutory objectives.

If proposed, the draft Rule would be susceptible to challenge as an “invalid exercise of delegated legislative authority” on several grounds, one of which is that the draft Rule “imposes regulatory costs on the regulated person ... which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.” See Section 120.52(8), Florida Statutes (2006). The actual restoration cost approach fosters the safe and rapid restoration of service in support of statutory objectives, results in single recovery of FPL’s costs of providing service and imposes substantially lower regulatory costs.

The draft Rule would impose significant incremental costs on FPL that FPL would be denied the opportunity to recover. These costs would include:

- Costs associated with backfill and catch-up work, as described above;

- Costs associated with uncollectible accounts receivable write-offs;
- Costs associated with vacation buy back;
- Costs associated with implementation of the “incremental approach” including modifying its systems and procedures to capture and track the required items to calculate this approach.

These costs could be avoided altogether and provide FPL recovery of its actual costs incurred in accordance with ratemaking and statutory objectives.

D. Many of the specific disallowances in the draft Rule make for poor public policy.

A number of items the draft Rule would prohibit from being charged to the Reserve pose problems from a public policy, as well as a ratemaking, perspective. New proposed Section (1)(e) provides as follows:

(e) All costs charged to Account 228.199 are subject to review for prudence and reasonableness by the Commission. Under the ICCA methodology for determining the allowable costs to be charged, however, the following costs are expressly prohibited from being charged to Account No. 228.199:

1. Base rate recoverable regular payroll and regular payroll-related costs for utility managerial and non-managerial personnel;
2. Bonuses or any other special compensation for utility personnel not eligible for overtime pay;
3. Base rate recoverable depreciation expenses and insurance costs for utility-owned or utility-leased vehicles and aircraft;
4. Utility employee assistance costs;
5. Utility employee training costs;
6. Utility advertising, media relations or public relations costs;
7. Utility call center and customer service costs;

8. Utility lost revenues from services not provided;
9. Costs of back-fill work or catch-up work for activities not directly related to storm damage restoration activities; and
10. Replenishment of the utility's materials and supplies inventories.

For the reasons discussed below, and as reflected on FPL's proposed alternative to Staff's draft Rule attached as Exhibit A, FPL suggests that draft Section (1)(e) be revised as follows (see italics and strikethrough):

(e) All costs charged to Account 228.199 are subject to review for prudence and reasonableness by the Commission. Under the ~~ICCA Actual Restoration Cost~~ methodology for determining the allowable storm-related costs to be charged, *only costs directly related to storm restoration may be charged to Account No. 228.1. Such costs include, but are not limited to, costs associated with the following activities and items:*

1. *Storm preparation activities associated with an imminent threat of storm impact (i.e., within 72 hours of expected impact);*
2. *Storm damage assessments;*
3. *Repair of facilities to their pre-storm condition;*
4. *Staging and mobilization of restoration crews and support personnel;*
5. *Meals and lodging for restoration crews and support personnel;*
6. *Incremental costs associated with customer service and operation of trouble call phone centers;*
7. *Employee assistance costs that are incurred to enable employees to participate in storm restoration efforts;*
8. *Regular, overtime and temporary relieving pay for employees engaged in storm restoration efforts, including lump sum overtime pay for exempt employees working extraordinary hours in the storm restoration effort who are not eligible for overtime;*

9. Actual costs incurred for FPL-owned or leased fleet vehicles, helicopters and aircraft that are utilized in storm restoration efforts;

10. Materials and supplies used in storm restoration efforts including any costs associated with returning to the vendor materials and supplies that are ordered but not used;

11. Costs associated with contractors and outside services that are directly related to storm restoration;

12. Safety and storm-related public service advertising and media costs.

(f) ~~however,~~ The following storm-related costs are expressly prohibited from being charged to Account No. 228.199:

~~1. Base rate recoverable regular payroll and regular payroll-related costs for utility managerial and non-managerial personnel;~~

1. Bonuses or any other special compensation for utility personnel not eligible for overtime pay, *not including lump sum overtime pay for exempt employees working extraordinary hours in the storm restoration effort who are not eligible for overtime;*

~~3. Base rate recoverable depreciation expenses and insurance costs for utility owned or utility leased vehicles and aircraft;~~

2. Utility employee assistance costs *to the extent such costs are not incurred to enable the employees to participate in storm restoration efforts;*

3. Utility employee training costs *incurred prior to the imminent threat of a storm;*

4. ~~Image-enhancing~~ Utility advertising, media relations or public relations costs;

5. Utility call center and customer service costs *that would normally have been incurred;*

6. Utility lost revenues from services ~~not provided~~ *electric sales not achieved due to storms;*

7. Costs of back-fill work or catch-up work for activities not directly related to storm damage restoration activities; and

8. Replenishment of the utility's materials and supplies inventories.

Specific Comments on Section (1)(e):

1. Payroll should be allowed if it is directly related to storm.

All employee payroll that is directly related to storm restoration is charged to the Reserve. While there may be some level of regular payroll comprehended in base rates, there is no payroll comprehended for extraordinary expenses incurred due to storm. For example, employee payroll expenses associated with backfill and catch-up expense due to employees doubling up on work while the storm restoration effort is underway or incurring overtime working on projects deferred or delayed due to storm is not charged to the Reserve. As addressed above, any incremental expenses due to catch up and backfill work incurred as a direct result of storms is neither charged to the Reserve nor susceptible to recovery through base rates because of the highly volatile and extraordinary nature of such costs. If an incremental approach is followed, in order to ensure the Company is neutral with respect to engaging its employees in the restoration effort, these actual incremental costs due to storms that are not charged to the Reserve should function as an offset to any adjustment to exclusion of so-called "base rate recoverable" regular payroll. Of course, the same result is reached by following an actual restoration cost approach, without the expensive and time-consuming need to track backfill, catch-up and other incremental expenses not charged to the Reserve.

By denying surcharge recovery of "base rate recoverable payroll," the draft Rule has the unintended consequence of providing incentives to use potentially more expensive contractors instead of employees in storm restoration efforts. While the use of

experienced contractors and foreign crews are necessary to restore service to customers following significant outages, the use of Company crews and personnel are equally important. First, Company crews and personnel are geographically positioned to respond immediately to storm damage, many times actually riding out the storms in company facilities. Therefore, using employees serves the objective of rapid restoration. Also, in order for the restoration to operate successfully, the crews must receive support in the form of logistics, staging, damage assessment and meals and lodging. FPL employees are the best source of support personnel as they are trained at company expense and able to perform a variety of tasks in support of the restoration objective. FPL employees are experienced in implementing FPL's storm restoration plans and are uniquely attuned to the urgency of the overall Company response. The Company should not be penalized for engaging its own workforce in the restoration effort through an across-the-board denial of actual costs incurred.

Further, to the extent the draft Rule is intended to disallow payroll costs that would normally (absent storm) have been charged to cost recovery clauses, the Rule would misstate the actual costs of storm restoration. These amounts were never in base rates and should be charged to the Reserve if associated with storm restoration work. FPL has agreed to capitalize payroll that should be charged to capital.

2. Lump sum exempt overtime should be allowed for employees working extraordinary hours in the storm restoration effort.

Many employees who are not eligible for overtime perform critical roles in the restoration effort (staging site managers, command center representatives, logistics representatives, etc.) that require extraordinary hours. Frequently, these employees work 16-plus hour days for weeks on end without a day off.

FPL paid a very small group of exempt employees performing critical storm restoration jobs an overtime lump sum payment in December 2005, which was charged to the Reserve. The employees receiving this lump sum payment did not receive any overtime on an hourly basis during storm restoration. These employees' earnings were compared with the earnings of those in like roles and employees working in the bargaining unit. The lump sum overtime payment was to establish pay parity among the employees that received no hourly overtime compensation and those that did not receive hourly overtime at different rates for performing the same work. This expense is not and would not be covered in base rates due to the unusual and nonrecurring nature of the payments, but is a prudent cost of providing service.

To establish parity among employees who are not eligible for overtime and to encourage the work of exempt employees who are critical to the restoration effort, FPL should be permitted to charge to the Reserve lump sum overtime payments paid to exempt employees working extraordinary hours in storm restoration.

3. Actual costs incurred for FPL-owned or leased fleet vehicles, helicopters and aircraft that are utilized in storm restoration efforts should be recoverable.

Actual costs incurred for operating and maintaining vehicles, helicopters and aircraft while they are being used in storm restoration work should be recovered through the Reserve. Note that vehicle costs are a component of capital construction costs. As such, they are a part of the costs FPL has agreed would be capitalized. The Actual Restoration Cost Approach with an adjustment to remove capital records the costs associated with any transportation equipment used in construction to rate base and not the Reserve.

4. Employee assistance costs should be allowed to the extent they are incurred to enable employees to participate in storm restoration efforts.

The draft Rule entirely prohibits employee assistance costs from being charged to the Reserve. Employee assistance costs include costs associated with putting blue tarps on the damaged roofs of employees' homes and providing ice and water to employees. This broad disallowance is misguided. To the extent employee assistance costs are incurred to enable employees to participate in storm restoration efforts sooner, they should be allowed.

As with other expense items for which FPL would be denied recovery under the draft Rule, there is no provision for incremental employee assistance due to storms in base rates. This is not the type of expense susceptible to base rate recovery because of the extraordinary and highly variable nature of such costs. Therefore, if FPL is denied an opportunity to charge such costs to the Reserve, it will have the effect of denying these costs for recovery period. As a matter of public policy, this result should be avoided.

Once a storm strikes, almost all of the utility's workforce is engaged in and fully committed to storm restoration. Employees, who may have experienced damage to their own homes, are required to report to work immediately once the storm passes, and some even ride out the storm at FPL power plants and facilities. They can report to work immediately because assistance is provided, including roof tarps, ice, water and other similar essential items. If this assistance is not provided, many employees will need to address these issues themselves, which could impact their ability to report to work as quickly as they otherwise would, potentially slowing the storm restoration effort in contravention of the objective of safe and rapid restoration. Also, if employees are not

able to report to work, it could result in the need for additional contractors thus increasing restoration costs.

5. Utility employee training costs incurred in on-the-job training should be allowed.

The Company has no issues with the proposal to disallow “utility employee training costs” as long as the disallowance is not extended to safety or related training at the job sites in the face of an imminent storm threat (within 72 hours), such as training contractors on restoration and safety issues when arriving at staging sites and providing information to call center representatives to better serve our customers during the storm restoration process. These are extraordinary and highly variable costs not susceptible to base rate recovery. FPL performs training exercises throughout the year in preparation for storm season, but the expenses associated with annual training are charged to base rates and not the Reserve.

6. Safety and storm-related public service advertising and media costs should be encouraged, not discouraged.

As a matter of public policy, FPL should be permitted to charge safety and storm-related public service advertising and media costs to the Reserve. This includes information about downed power lines and about the status of restoration to affected areas. A disallowance for these types of costs as it relates to storm restoration efforts is not in the best interests of customers. These costs are incurred not in an image-building exercise, but rather to provide needed information to customers, help protect their health and safety and help customers to understand and manage expectations related to storm restoration.

As FPL has gained a deeper understanding of customer information needs before, during and after a hurricane, it has understood that customers in an emergency have a critical need for frequent and detailed information. To that end, FPL has stepped up its media outreach/public relations and advertising efforts in order to provide information about: 1) storm safety and 2) restoration status updates. Should the incremental costs of these activities not be recoverable, FPL would feel pressured to scale back its outreach activity. This could have the impact of FPL not being able to respond as quickly or as thoroughly to the 24/7 information needs and requests received during storm restoration.

The experience of both State emergency officials as well as our own experience strongly indicates that a majority of the public residing in coastal areas need more, not less information regarding hurricane preparedness. Similar to conservation measures in which government mandates utilities to meet environmental standards and allows for recovery through clauses, hurricane safety messages are a benefit to the general welfare of the public in times of natural disasters and should continue to be considered by government as part of the integrated hurricane emergency response of a utility. It is the State's responsibility to encourage and safeguard the public welfare, particularly during an imminent threat of natural disaster. To exclude hurricane safety messages and storm educational advisories as a prudent cost is to lessen the level of information needed by the public and counter to government's role of safeguarding the general public welfare during a natural disaster. In a natural disaster, government should be taxed to utilize all means at its disposal to provide information to the public and the information provided by utilities is an extension of government's role in safeguarding the public.

Excluding hurricane messages from storm recovery would force a critical public safety component to compete for dollars with a utility's annual general marketing fund. This is a curious result because storm-related advertising and outreach costs incurred before, during and after a storm affects FPL's service territory are highly volatile and extraordinary unplanned expenditures that are incremental to FPL's normal budget. Indeed, if FPL included storm-related advertising and outreach expenses in a rate case filing, the PSC would not include it in a test year because whether and how much storm-related advertising would be needed in any given year is completely unknown and highly variable. Therefore, incremental advertising expenditures represent yet another example of a cost of providing service that would be excluded from recovery anywhere (in base rates or via the Reserve) under Staff's proposal, regardless of the reasonableness and prudence of the costs incurred.

7. Incremental call center and customer service expenses should be allowed.

Incremental trouble call center and customer service expenses should be allowed in recognition of their importance to the storm restoration effort and the fact that there are large incremental costs imposed on these organizations due to the volume of trouble calls and customer service needs in the face of a hurricane or tropical storm. These expenses are not susceptible to recovery through base rates because such expenses are highly variable and extraordinary. It would be unreasonable to staff the center to be able to handle the extraordinary call volume experienced during storm restoration on a year-round basis.

As a matter of public policy, there should be no disincentive to staffing the service center around the clock. This incremental effort should be encouraged so that customers are well informed about the status of restoration.

8. Consideration of so-called "Lost revenues" and backfill and catch-up work is unnecessary if an actual restoration cost approach is followed.

As addressed above, eliminating consideration of amounts not recovered through base rates under the draft Rule results in a one-sided disallowance of "base operation and maintenance cost" without recognition of any effect the same event has on the other side (revenues). This creates a perverse imbalance. Ignoring amounts not recovered through base rates and not providing for recovery of incremental actual costs due to storms violates basic ratemaking principles. The incremental approach itself is predicated on the assumption that budgeted costs are recovered through base rates, but costs cannot be disallowed on that premise to the extent budgeted revenues are not realized. This approach totally ignores the fact that field personnel have measurable work that is backlogged while storm restoration is underway and still must be completed. It also ignores the fact that capital projects must still be worked so the costs have not been avoided, just deferred. Overtime and contractor expenses associated with these efforts are true costs to FPL that cannot be ignored under principles of ratemaking.

Under the methodology that FPL is proposing, the actual restoration cost approach with an adjustment to remove capital costs, consideration of so-called "lost revenues" is unnecessary. Also, under the actual restoration cost approach, costs associated with backfill and catch-up work and other incremental costs are absorbed by FPL, so an adjustment to offset these incremental costs is unnecessary.

9. The utility should be able to recover incremental costs associated with returning materials and supplies not used in the storm restoration effort to vendors

FPL does not oppose the provision that replenishment of the Company's materials and supplies inventories should not be charged to the Reserve provided it does not extend to denying the Company recovery of incremental expenses associated with returning materials and supplies that are ordered to be used in the restoration effort, but are ultimately not needed. Such expenses charged by vendors when FPL returns these unused materials and supplies are directly related to storm and are not recovered through base rates.

E. The draft Rule could discourage mutual aid.

The proposed requirement to credit mutual aid receipts to the storm reserve ignores the fact that personnel sent by FPL (under the mutual aid agreement) are primarily bargaining unit employees (field personnel) and their work still has to be completed either by contractors or on overtime (backfill and catch-up). Also, the proposed requirement fails to recognize that some of the reimbursement relates to out-of-pocket and other incremental costs. These costs are not billable to the utility FPL is providing assistance to under the agreement. These utilities in turn provide aid to FPL when disasters such as hurricanes affect FPL's service territory. Forcing FPL to absorb these additional costs with no offset (i.e. the reimbursement from the utility being assisted), unfairly penalizes FPL and provides a significant disincentive for FPL to participate in the mutual assistance program; a program that has meant tremendous benefits for FPL's customers over the years.

FPL notes that there is no "profit" to be made from providing mutual aid. Under the mutual aid agreement, (Section 17.1) "[m]embers understand and agree that the

provision of emergency mutual assistance is a not-for-profit endeavor” and the requesting company “will reimburse all costs and expenses incurred by the Responding Company in the provision of the emergency assistance for the entire emergency assistance period.” Therefore, the idea that there is a windfall to the utility from providing mutual aid is unfounded.

Part II.

FPL should be permitted to replenish the Reserve through a surcharge, special assessment, or securitization.

New subsection 1(h) of the draft Rule provides that a utility may request recovery of a deficit in its Reserve through a surcharge. It goes on to say that “[t]he amount requested for recovery through the surcharge shall not exceed the amount of the debit balance” in the Reserve. This language should not be included in the Rule as it would be inconsistent with Commission precedent and Section 366.8260, Florida Statutes (the securitization statute) in that replenishment or funding of the Reserve may occur by imposing a Commission-approved surcharge or special assessment for that purpose, or through the issuance of storm-recovery bonds and imposition of a charge to repay the bonds. Utilities should be permitted to fund or replenish the Reserve through a surcharge or other mechanism approved by the Commission in order to mitigate incremental rate shock to customers when deficits in the Reserve occur.

Part III.

There is no need to establish a separate subaccount for storm.

The Staff's draft Rule provides that a new subaccount, Account No. 228.199, should be created for storm. FPL disagrees. A separate subaccount for storm should not be created because there is no provision to fund the Reserve for other hazards covered by the Rule. To establish a separate subaccount for storm-related damage would render the Rule internally inconsistent because the Company's schedule of risks covered by Account No. 228.1 includes other hazards besides storms and there is not separate funding for uninsured losses or insurance deductibles associated with these other hazards. The creation of a subaccount for storm would require that FPL somehow split any future accruals between the component for storm and the component for other risks, such as retrospective nuclear assessments. Such a distinction is unnecessary and unwarranted.⁴

Subsection (1) of the Rule, related to Account No. 228.1, Accumulated Provision for Property Insurance, provides in part as follows:

- (a) This account may be established to provide for losses through accident, fire, flood, storms, nuclear accidents and similar type hazards to the utility's own property or property leased from others, which is not covered by insurance. This account would also include provision for the deductible amounts contained in property loss insurance policies held by the utility as well as retrospective premium assessments stemming from nuclear accidents under various insurance programs covering nuclear generating plants. A schedule of risks covered shall be maintained, giving a description of the property involved, the character of risks covered and the accrual rates used.

⁴ However, to the extent the Commission merely intends to require utilities only to segregate the storm costs charged to the Reserve from other costs that may be charged to the Reserve, this can be done without the use of a separate subaccount.

Despite the fact that Account No. 228.1 is available to cover uninsured losses from hazards other than storms, there is a much lower probability of losses from such other hazards. Therefore, the Reserve level has been based primarily on the risk of uninsured losses to transmission and distribution ("T&D") assets. The Commission reasonably has not required that probabilistic studies, such as the ones filed relative to storm losses, be filed to determine the appropriate provision level to cover losses and deductibles associated with other less likely hazards covered by Account No. 228.1.⁵ Rather, accruals to the Reserve have covered all potential hazards.

To require a separate subaccount for storm would yield the impractical result of the Commission having to determine the appropriate provision level for Account No. 228.1, which under the draft Rule would be available for all hazards besides storm. In addition, the Company would somehow have to split any accruals to Account No. 228.1 between the various hazards covered. This would gain the Commission nothing and would render the rule internally inconsistent. FPL recommends that new subsection (1)(c) not be added.

⁵ For example, the Commission has said:

III. APPROPRIATE USES OF THE STORM DAMAGE RESERVE

FPL's study did not include any analysis of the appropriate reserve balance necessary to cover the possibility of retrospective assessments associated with FPL's insurance of its nuclear facilities. The best information available suggests that the probability of such an assessment is low. This Commission has ongoing regulatory authority to review and determine the prudence of charges to this reserve and fund. It is not disputed that this reserve and fund is available to cover uninsured losses to FPL's transmission and distribution system, as well as insurance deductibles.

See Order No. PSC-98-0953-FOF-EI, Docket No. 971237-EI, p. 6 (issued July 14, 1998).

Conclusion

The draft revisions to the Rule would mark a fundamental departure from Commission precedent that has served the Company and customers well. It would violate fundamental principles of ratemaking authorizing utilities to recover all reasonable and prudent costs incurred in providing service to customers. Instead, for the reasons addressed above, an actual restoration cost approach (with an adjustment for capital expenditures) should be followed. If the Commission feels revisions to the Rule are needed, then adopting a rule in substantially the form proposed by FPL (Exhibit A) would allow single recovery of the cost of restoring service to customers following storms and continue to encourage the utilization of all available Company personnel in the effort to safely and rapidly restore service to customers following storms. Ultimately, customers realize the benefits that come from ensuring the utility is provided the opportunity to recover all reasonable and necessary storm costs and ensuring that the utility has the financial wherewithal to take whatever actions are required to ensure a reliable energy supply.

"EXHIBIT A"

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS:

25-6.0143 Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4.

(1) Account No. 228.1 Accumulated Provision for Property Insurance.

(a) No change.

(b) Except as provided in subsection (1)(ef), Charges to this account shall be made for all occurrences in accordance with the schedule of risks to be covered which are not covered by insurance. Recoveries or reimbursements for losses charged to this account shall be credited to the account.

(c) ~~A separate subaccount, Account No. 228.199, Accumulated Provision for Storm Damage, shall be established for that portion of Account No. 228.1 which is designated to cover storm-related damages to the utility's own property or property leased from others that is not covered by insurance.~~

(d) In determining the storm-related costs to be charged to Account No. 228.199, the utility shall use -an Incremental Cost and Capitalization Approach methodology (ICCA). Under the ICCA methodology, the costs charged to Account No. 228.199- an Actual Restoration Cost (ARC) approach with an adjustment for capital expenditures. Under the ARC approach, only costs directly related to storm restoration may be charged to Account No. 228.1. shall exclude those costs that normally would be charged to non-cost recovery clause operating expenses in the absence of a storm. In addition, capital expenditures for the removal, retirement and replacement of facilities damaged due to a storm facilities charged to Account 228.199 shall exclude the normal cost for the removal, retirement and replacement of those facilities in the absence of a storm. The utility shall notify the Director of the Commission's Division of Economic

Regulation in writing and provide a schedule of the amounts charged to Account No. 228.199 for each incident exceeding \$10 million.

(e) All costs charged to Account 228.199 are subject to review for prudence and reasonableness by the Commission. Under the ICCA ARC methodology for determining the allowable storm-related costs to be charged, only costs directly related to storm restoration may be charged to Account No. 228.1. Such costs include, but are not limited to, costs associated with the following activities and items:

1. Storm preparation activities associated with an imminent threat of storm impact (i.e., within 72 hours of expected impact);
2. Storm damage assessments;
3. Repair of facilities to their pre-storm condition;
4. Staging and mobilization of restoration crews and support personnel;
5. Meals and lodging for restoration crews and support personnel;
6. Incremental costs associated with customer service and operation of trouble call phone centers;
7. Employee assistance costs that are incurred to enable employee(s) to participate in storm restoration efforts;
8. Regular, overtime and temporary relieving pay for employees engaged in storm restoration efforts, including lump sum overtime pay for exempt employees working extraordinary hours in the storm restoration effort who not eligible for overtime;
9. Actual costs incurred for FPL-owned or leased fleet vehicles, helicopters and aircraft that are utilized in storm restoration efforts;

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10. Materials and supplies used in storm restoration efforts including any costs associated with returning to the vendor materials and supplies that are ordered but not used;

11. Costs associated with contractors and outside services that are directly related to storm restoration; and

12. Safety and storm-related public service advertising and media costs.

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(f) The following storm-related costs are expressly prohibited from being charged to Account No. 228.199:

~~1. Base rate recoverable regular payroll and regular payroll related costs for utility managerial and non-managerial personnel;~~

~~2-1. Bonuses or any other special compensation for utility personnel not eligible for overtime pay, not including lump sum exempt overtime pay addressed in subsection (e);~~

~~3. Base rate recoverable depreciation expenses and insurance costs for utility owned or utility leased vehicles and aircraft;~~

42. Utility employee assistance costs to the extent such costs are not incurred to enable the employee(s) to participate in storm restoration efforts;

53. Utility employee training costs incurred prior to the imminent threat of a storm;

64. Image-enhancing Utility advertising, media relations or public relations costs;

75. Utility call center and customer service costs that would normally have been incurred;

86. Utility lost revenues from services not provided electric sales not achieved due to

storms;

97. Costs of back-fill work or catch-up work for activities not directly related to storm damage restoration activities; and

108. Replenishment of the utility's materials and supplies inventories.

(fg) A utility may, at its own option, charge storm-related costs as operating expenses rather than charging them to Account No. 228.199. The utility shall notify the Director of the Commission's Division of Economic Regulation in writing and provide a schedule of the amounts charged to operating expenses for each incident exceeding \$5 million.

(gh) If the charges to Account No. 228.199 exceed the account balance, the excess shall be carried as a debit balance in Account No. 228.199 and no request for a deferral of the excess or for the establishment of a regulatory asset is necessary.

(hi) A utility may petition the Commission for the recovery of a debit balance in Account No. 228.199 through a surcharge.- The amount requested for recovery through the surcharge shall not exceed the amount of the debit balance in Account No. 228.199..A utility may request authority to replenish or fund Account No. 228.1 through a surcharge, the issuance of storm-recovery bonds, special assessment, accrual, or other means as approved by the Commission.

(i) If a utility receives reimbursement from another utility for expenses incurred in providing storm damage restoration assistance to another utility, the utility shall credit Account No. 228.199 for the costs that normally would be charged to operating expenses in the absence of providing storm damage restoration assistance.

(j) A utility shall not establish a new annual accrual amount or a new target accumulated balance amount for Account No. 228.199 without prior Commission approval.

(kk) Each utility shall file a Storm Damage Self-Insurance Reserve Study (Study) with the Division of the Commission Clerk and Administrative Services by January 15, 2011, and at least once every 5 years thereafter from the submission date of the previously filed study unless otherwise required by the Commission. A Study shall be filed whenever the utility is seeking a change to either the target accumulated balance or the annual accrual amount for Account No. 228.199. At a minimum, the Study shall include data for determining a target balance for, and the annual accrual amount to, Account No. 228.199.

(ll) Each utility shall file a report with the Director of the Commission's Division of Economic Regulation providing information concerning its efforts to obtain commercial insurance for its transmission and distribution facilities and any other programs or proposals that were considered. The report shall also include a summary of the amounts recorded in Account 228.199. The report shall be filed annually by February 15 of each year for information pertaining to the previous calendar year.

(2) - (4)(a) No change.

(b) If a utility elects to use any of the above listed accumulated provision accounts, each and every loss or cost which is covered by the account shall be charged to that account and shall not be charged directly to expenses except as provided for in subsection (1)(ef). Charges shall be made to accumulated provision accounts regardless of the balance in those accounts.

(c) No change.

Specific Authority 366.05(1) FS. Law Implemented 350.115, 366.04(2)(a), 366.05(1) FS.

History-New 3-17-88.

AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

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“Exhibit B”

FPSC DRAFT RULE: RECOVERY OF COSTS ASSOCIATED WITH STORM DAMAGE

COMMENTS OF HUGH GOWER

Introduction

The following comments reflect the results of my review and evaluation made at the request of Florida Power & Light Company (“FPL”) of the Florida Public Service Commission’s Staff 2006 draft rule the (“Rule”) relative to the recovery of costs associated with storm damage repairs and service restoration and to offer observations on:

1. Its soundness as an accounting method and consistency with the Uniform System of Accounts (USOA) and accepted utility accounting practices;
2. Its propriety as a regulatory cost recovery mechanism, and
3. Its fairness to utility customers and utility investors

Information on my professional qualifications and experience with utility accounting and ratemaking is attached.

My comments, observations and conclusions follow.

Summary of Comments

I find that the “Rule”, in attempting to specify an approach by which to measure and prevent windfalls or double recovery of costs by utilities which have experienced storm events, proposes methods fraught with a number of measurement problems. The “incremental cost” method called for in the “Rule” represents a departure from the cost

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assignment methods suggested in the USOA and which is the predominant regulatory method. The data needed to implement the “Rule’s” guidelines are not susceptible of objective accounting measurement and ignores factual information about whether there is actually evidence of a double recovery or windfall. The “Rule” simply assumes this is the case. The “Rule” is not balanced, but rather tilts the scales against utilities because of its intrinsic but unstated assumption. Adoption of the “Rule” could be a disincentive to rapid service restoration following a storm. It is a regulatory policy not in the best interests of either customers or utilities, and it should not be adopted.

While the combined effect of rapidly rising fuel costs and the onset of numerous major storms has created significant upward pressure on billings to customers, I hope that the FPSC will, as it has in the past, act in a reasonable and balanced way with regard to the “Rule” and not approve it as presently drafted.

“Rule” Proposal

The “Rule” proposes to limit charges to the Accumulated Provision For Storm Damage, Account No. 228.199 (“the reserve”) to “incremental costs”. Under the “Rule” this would be accomplished by prohibiting costs which would otherwise be charged to operating expenses in the absence of a storm from being charged to the reserve. In this connection, specific prohibitions are proposed for certain “base rate recoverable” costs as well as other categories, and for lost revenues.

The proposal appears to be based on the unstated assumption that, ipso facto, a windfall or double recovery will occur when a utility utilizes its internal resources (manpower and other) in storm damage repair and service restoration efforts. Not only does the “Rule”

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tilt the scales against utilities by this presumption, but also the methods by which it proposes to identify the amount of presumed double recovery raises a number of measurement problems. These and other matters are discussed below.

Regulatory Principles and Facts

Certain regulatory principles and facts were the basis for evaluating the “Rule”. These include:

1. The cost of storm damage repair and service restoration is a necessary and legitimate cost of providing customer service.
2. The greatest portion of the storm damage repair and service restoration costs experienced in 2004 and 2005 were not recovered previously from customers.
3. Recovery of storm damage costs (in excess of amounts accrued for or included in base rates) should be based upon the prudently incurred costs. Recovery should:
 - a. Be allowed over a reasonable time period.
 - b. Include all costs not otherwise compensated for.
 - c. Not result in a windfall or double recovery for utilities nor be confiscatory.
 - d. Be based upon objective accounting measurement practices.
4. Whenever possible, the recovery mechanism chosen should meet all of the following criteria:
 - a. Recover all prudently incurred costs not otherwise compensated for.
 - b. Result in the lowest long-run cost for customers.
 - c. Should avoid disincentives to good service, operating efficiency or sound financial and accounting management.

“Exhibit B”

Storm Repair Costs: A Necessary Cost of Service

As has been previously acknowledged by the FPSC, the prudently incurred costs of storm damage repair and service restoration are a proper cost of providing electric service to customers. Accordingly, utilities should have an opportunity to recover such costs.

Storm Damage Costs Previously Recovered

In years prior to Hurricane Andrew in 1992, FPL obtained third party property insurance coverage on storm exposures and the related premiums were included in cost of service in rate case filings. Subsequent to Hurricane Andrew, such insurance became generally unavailable. In addition, accruals for “self insurance” of storm damage repair and service restoration costs were, upon approval of the Commission, made in certain years to create a reserve to which costs might be charged if and when incurred. For the years 2004 and 2005 when a series of seven major hurricanes affected its service territory, FPL was accruing \$20.3 million annually as authorized by the FPSC. The costs of storm damage repair and service restoration for the 2004 storm season totally depleted the reserve balance and created a deficit in the reserve. The costs for 2005 storms added to the recovery deficit. Thus, the greatest portion of storm damage repair and service restoration costs for 2004 and 2005 have not been included in charges to customers.

“Exhibit B”

What Storm Damage Costs Should Be Recovered?

Utilities should be allowed to recover all and only prudently incurred costs to make repairs and restore service for storm events.

The amount which should be recovered is the amount in excess of any amounts previously recovered or included in customer charges. Fairness and equity dictates that this should include all storm repair costs not otherwise compensated for, and should not result in a windfall or double recovery for the utility, nor should the amount exclude prudently incurred storm restoration costs.

Storm damage repair and service restoration cost amounts should be susceptible of objective accounting measurement and verification by appropriate parties.

Objective Measurement

The “Rule” proposes to require use of an “incremental” cost basis to identify costs recoverable by means of charges to the storm damage reserve (Account No. 228.199) or special billings to customers. The “Rule” lacks specific guidance on the measurement of incremental costs, but does contain specific prohibitions of including “base rate recoverable” and certain other costs. As contrasted to the fully distributed cost methods implicit in the USOA and predominant regulatory practices, “incremental costs” are subject to a variety of interpretations and can be calculated in more ways than one. Whatever the FPSC intends to be employed as a costing method should be carefully articulated in its rule.

“Exhibit B”

Cost Accounting Methods

Businesses which undertake multiple activities or provide multiple products or services must employ some cost accounting method in order to assign costs and expenses to those activities, products or services for a variety of purposes. Incremental costs generally mean those costs incurred to perform some incremental activity or produce additional products or services. Fully distributed costs generally means that all actual costs for a period are assigned to the activities performed or products or services produced during the period. Whether costs are assigned on a fully distributed or incremental basis depends on the uses for which cost information is needed.

Incremental cost accounting is apt to be employed by enterprises involved in providing products or services competitively. Fully distributed cost accounting is more often employed by businesses whose expenses are largely common to its activities or products and services.

Utilities are one of the latter type businesses and, in practice, generally employ fully distributed cost methods consistent with the USOA accounting instructions as well as predominant regulatory practices. FPL employs the fully distributed method to assign costs to operations, construction and to its non regulated affiliates. If the FPSC believes that an incremental cost approach is preferable, as the “Rule” suggests, it should direct that that method be used for all cost assignments. While that would likely lower long run revenue requirements it would substantially increase FPL’s operating expenses, perhaps triggering the need for higher current rates. This is not likely a result that any of the parties at interest would find desirable at this time.

“Exhibit B”

Requiring the use of the “incremental” cost method for storm events as defined in Staff’s Draft Rule would result in a recovery amount less than the actual storm damage repair and service restoration costs prudently incurred by utilities.

In Docket No. 041291-EI Staff proposed adjustments to the amount of repair and restoration costs for 2004 based largely on the difference between actual non-storm related costs and original departmental budgets. If similar adjustments are proposed by Staff in Docket No. 060038-EI relative to the 2005 service restoration and repair costs, it is possible that this is the calculation of “incremental” intended by the “Rule”. If this proves to be the case, the “Rule’s” proposed “incremental cost” would never accurately capture the true actual costs of storm damage repairs and service restoration when utilities employ internal resources in that effort.

The “Rule” creates further significant problems with measurement which are discussed below.

Relating Current Costs To Rates Set In Prior Years

The “Rule”, if adopted, is intended for use in future years which are affected by storm events. In its effort to prevent a double recovery of costs by utilities, it proposes to exclude from charges to the reserve the “base rate recoverable” cost of resources utilized in the damage repair and service restoration effort. The question which needs to be considered is: Can the amount of costs “recovered through base rates” in future years be determined when base rates were set in years prior to the storm event?

“Exhibit B”

Rates represent prices found by regulators to be fair and reasonable on the basis of evidence presented in a rate case. Normally, rates – the actual prices – are set by relating the total cost of service and the sales volumes found allowable for the test period and which are expected to be representative of operating conditions when the new rates will be applied. In addition, a number of other factors are usually considered in devising the actual tariff prices. These include the number of customers, value, customer usage characteristics, conservation, consistency with prior charges, ease of administration and customer understanding. Consequently, actual tariff rates are rarely equal to the exact amount of cost of service approved in a rate filing for each class of customer or each volume category within classes.

It would be unreasonable to expect that the relationship between the key variables used in the calculation of rates, such as number of customers, weather, demand and sales volumes, as well as operations expense and capital investment levels would remain the same in future years as they were during the test period. These variables change for any number of valid reasons. Prices set on any basis cannot provide a lasting link to or preserve the relative values between the key variables which were the basis for their calculation.

The longer it has been since the test period used for rate setting, the more improbable the determination with any degree of reliability the amount of any particular current cost of service element (such as depreciation, operations expense or income taxes) such rates recover. As such, “rates” are “just and reasonable” prices, no more and no less, until the regulatory authority having jurisdiction finds otherwise. The notion that there is any

“Exhibit B”

“attachment” created by the rates customers pay for service to any particular element of cost of service has been rejected many years ago.

A conclusion that an amount charged to an operating expense account or included in an operating budget for periods several years subsequent to an actual test period represent a like amount recovered from customers in base rates set earlier is an assumption which would be true only to the extent that actual revenues cover such costs. Unfortunately, the “Rule” focuses only on what costs might have been included in base rates whenever they were set and ignores revenues. The “Rule” fails to consider actual revenues for the periods affected by storms and instead assumes there has been a double recovery.

Subjectivity and Inconsistency

In addition, the “Rule’s” proposal to identify “incremental costs” based on differences between budget and actual cost comparisons introduces a significant degree of subjectivity into the cost assignment process and represents a departure from the reasonable and fair cost accounting directives contained in the USOA. Essentially, the USOA directs accounting for the actual costs of all activities undertaken in the provision of utility service, construction or other activities. For example, see Accounting Instructions 9, “distribution of pay and expenses of employees” and Electric Plant Instructions 3, “components of construction cost”.

Fairness suggests that the same cost assignment principles embodied in the USOA be applied to costing all activities, including storm damage repair and service restoration costs. Consistent with this notion, FPL assigns its costs to operations, construction and to

“Exhibit B”

its non-regulated affiliates on a basis consistent with the USOA instructions. If it were to use “incremental costs” - - as the “Rule” suggests for storm repair - - the charges to construction and non-regulated affiliates would be substantially less and costs recorded to operating expenses by FPL correspondingly higher. While this might produce lower long run revenue requirements, the cost in terms of current increases in revenue requirements is probably not something any party of interest would find presently desirable.

Aside from inconsistency with other cost assignments which are an intrinsic part of utilities’ routine accounting practices and procedures, the “Rule’s” methodology would understate the actual cost of storm damage repair and service restoration. The actual cost of such efforts is important information for management, regulators and other interested parties. Provided with the actual cost of damage repair and service restoration, all parties can then make more informed decisions as to recovery or other issues.

Objective Measurement

FPL has established rigorous accounting procedures subject to adequate internal accounting controls by which to identify the actual storm damage and service restoration costs. By contrast, the “Rule’s” proposed identification of incremental costs by means of comparing actual and budgeted amounts and, thereby, attempting to identify costs “included” in or “recoverable” by base rates raises substantial measurement issues.

First, differences between actual and budgeted amounts occur in each year for reasons unrelated to storm events. Such differences can arise for a number of reasons. For

“Exhibit B”

example, changes in operating methods, completion of specific programs, initiation of new programs, new and improved systems and procedures, etc., can all affect the comparison of actual and budgeted amounts. In addition, identification of the amount included in and recoverable through base rates should focus on operations and maintenance expenses which are an element of cost of service. Budgets deal with a business unit's deployment of its total resources including those assignable to construction or other activities not included in the development of cost of service for base rates. Isolation of the amount of a variance between actual and budgeted costs attributable to a storm event is not a mechanical exercise. It requires considerable and informed analysis. The methods suggested by the “Rule” for this attempt are subjective and judgmental. Such difficulties are not eliminated by making the multiple assumptions on which the rule appears to be based.

Second, it's likely that no adequately controlled standardized accounting procedures and practices to identify budget vs. actual variances due to storms currently exist, and it's questionable whether sufficiently well controlled procedures can be developed. The nature of such a determination is too judgmental and subjective to be susceptible to a mechanical determination and would probably require ad hoc calculations in each instance.

Third, comparison of actual and budgeted expenses for only one period (be it a month, a quarter or a year) would not account for the cost of normal operating activities which, due to service restoration efforts, were postponed but must be performed in a later period.

“Exhibit B”

Finally, the “Rule’s” suggestion that it’s necessary to identify the amount of storm damage and service restoration costs “recoverable through base rates” and eliminate these from charges to the storm damage reserve would appear to be based upon unstated assumptions or conclusions that recovery of actual costs would result in a double collection or windfall gain to the utility. No matter what amounts are included in base rates (assuming for purposes of discussion this could be ascertained) and the storm damage and service restoration recovery factor, no windfall can result unless revenues exceed both operating expenses (including, if appropriate, a portion of the storm costs).

Risk Sharing

Certain FPSC orders have found that storm damage repair and service restoration costs are necessary and legitimate costs of providing service and are eligible for recovery by utilities. In some orders the FPSC has also stated that it is not its intention to fully indemnify utilities from the financial effect of storm events. This raises the question of to what extent, if any, such risks should be divided between customers and utilities.

Returns authorized by regulators usually do include some allowance for risk. The risks for which compensation is included in returns allowed would include general business risks such as normal weather variations. Returns allowed clearly do not cover the risk of catastrophic losses from major storm events.

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Storm event risks which the FPSC has historically assigned to utilities include revenue losses from service outages. In some instances, utilities have been assigned the cost of storm damage repair and service restoration when such costs did not materially adversely affect earnings. In addition, in cases where the storm reserve is depleted, in the absence of a storm recovery surcharge approved by the FPSC, utilities have capital invested in the restoration costs and bear the carrying cost.

It would not be in the best interest of customers or utilities for utilities to have to bear the costs of catastrophic storm losses because of the higher capital costs required to compensate for such risks.

Proper Recovery Mechanism

Storm damage repair and service restoration costs are necessary to the provision of electric service and the actual amount should be recoverable by either charges to the storm damage reserve and/or surcharges to customers. Use of actual costs consistent with USOA instructions is the best way to identify such storm related costs. When, as in the case currently in Florida, no amounts remain available in storm damage reserves to absorb storm damage and service restoration costs, a special recovery through a surcharge billing factor appears appropriate.

The accounting directions chosen as a result of the “Rule” are important to the interests of both customers and utilities. If utilities are directed to absorb and expense amounts

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listed in the “Rule” as excluded from recovery as storm damage repair costs, catastrophic storm damage such as experienced in 2004 and 2005 could result in significant reductions in utilities earnings. Aside from the important issue of confiscation, other adverse results due to investors’ perception of increased risk could occur.

On the other hand, if utilities are not required to absorb and expense such costs, capitalization of such actual storm damage repair and service restoration costs proscribed by the “Rule” implies higher rates for customers over long periods of time due to increased capital costs and income taxes over time.

As utilities should be entitled to the opportunity for the recovery of prudent costs of storm damage repair and service restoration in excess of amounts previously reserved for, consideration of customers’ interests suggest a moderately short recovery period coupled with financing methods with lower costs than utilities’ weighted average capital costs in order to keep the long run costs as low as possible. Several such arrangements have been previously and/or are currently proposed.

Incentive Issues

It should go without saying that revenue losses, the need to finance service restoration costs and customer dissatisfaction, among others, are strong incentives to utilities to restore service as rapidly as possible following a storm.

Some have suggested that there is a natural incentive for utilities to shift (increase) costs charged to the storm reserve in order to increase profits by double collecting actual costs.

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Assuming for sake of discussion that this were true, how would it be detected? Very simply, a utility's financial reports would reflect higher earnings rather than lower earnings during periods affected by storms (even though utilities absorb the lost revenues resulting from service outages storms cause). An analysis of operating income seems preferable to making the assumption that double recovery would have occurred as the “Rule” appears to do.

Other factors also mitigate against any bias toward shifting costs to storm damage and service restoration. Most importantly, there is considerable rate pressure due to rising fuel costs and multiple storms. There has been adverse publicity and considerable negative public reaction to higher costs in addition to multiple service outages. In addition, utilities accounting is governed by the USOA and costs assigned to storm restoration are subject to audit by the FPSC as well as the FERC.

Finally, the “Rule” as it appears to be intended, may be a disincentive to rapid restoration of service since it would disallow recovery of the cost of considerable internal resources which have historically been applied to the service restoration effort. This disincentive could offset the natural incentives to rapid service restoration due to lost revenues and having to finance the restoration costs until a recovery factor is approved by the Commission. This would not be good regulatory policy.

Conclusions and Recommendations

1. The “Rule” appears to be based on an assumption of over recovery which may or may not be factual. Such a conclusion should be reached on facts in evidence on a case

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by case basis rather than being embedded into a rule which applies to all utilities in all cases.

2. The “Rule” (as it has been applied in practice) attempts to measure over recovery by methods which are of questionable validity, convoluted and disconnected from facts.
3. “The Rule” would impose a burden to create accounting methods, procedures and systems which are unnecessary and will increase utilities’ costs while producing little, if any, benefit.
4. The “Rule” could introduce disincentives to the most expeditious and efficient means of service restoration.

I believe the FPSC could achieve the laudable objective of preventing double recovery of service restoration costs without resorting to questionable accounting and ratemaking methods. The elements of this approach would:

1. Rely on established accounting methods, procedures and systems to capture the actual costs of storm damage repair and service restoration in accordance with the instructions embedded in the USOA.
2. Determine from information and reports already in existence if there is probable cause to believe there has been a windfall or double recovery of operating expenses and/or storm damage repair and service restoration costs.
3. If there is probable cause to believe there has been a windfall or double recovery of costs, undertake sufficient, competent analysis to determine the reason.
4. If such analyses show that a windfall or double recovery is the result of charges to customers or operating revenues exceeding actual expenses and storm damage and

“Exhibit B”

service restoration costs, reduce the allowed charges to the reserve or surcharges to customers by an appropriate amount.

TOM LEE
President



Harold McLean
Public Counsel

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ALLEN BENSE
Speaker



Charles J. Beck
Deputy Public Counsel

February 28, 2006

Mr. John Slemkewicz
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Proposed Rule 25-6.0143

Dear Mr. Slemkewicz:

I am writing to express our strong support for the overall direction set forth by staff in proposed Rule 25-6.0143. In particular, we agree with the incremental cost approach taken by the proposed rule. Electric utilities should only recover the incremental cost resulting from storm damage and should not be allowed to use storms as a reason to recover costs which are already reflected in base rates. In addition, we agree with the provisions of the rule which prohibit the recovery of "lost revenues," which are really not costs at all. To allow utilities to recover "lost revenues" would in effect allow the companies to charge customers for electricity which was never consumed.

The attachment to this letter sets forth some issues we would like to explore with staff and other interested persons at the hearing on March 10, 2006. Several of us from the Office of Public Counsel will be attending the hearing, and we look forward to discussing these matters with you at that time.

Sincerely,

Charles J. Beck
Deputy Public Counsel

CJB:bsr

Attachment

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ECONOMIC REGULATION

Attachment

OPC Suggested Revisions to Proposed Rule

1. Amend subsection (1)(b) to state: Except as provided in subsections (1)(e) and (1)(f).
2. In subsections (1)(d),(f),and (l), change report filing location from Director of the Division of Economic Regulation to the Division of the Commission Clerk and Administrative Services.
3. Make the following changes to subsection (1)(e):
 1. Base rate recoverable payroll, salaries and payroll related costs for managerial and non-managerial personnel, including overtime, taxes and other benefits normally included in the annual budget;
 3. Base rate recoverable depreciation, fuel, maintenance, insurance and other normal operating costs for utility-owned or utility-leased vehicles and aircraft;
 11. Bad debt expense or uncollectible accounts receivable expense;
(New)
 12. Normal budgeted tree trimming expense already included in base rates.
(New)
4. Revise subsection (1)(f) as follows:

(1)(f) Storm-related costs for each incident which do not exceed the threshold of 0.02% of a utility's year-end balance of plant in service on a system basis for the year prior to the incident shall be charged as operating expenses and not to Account No. 228.199. A utility may, at its own option, charge amounts in excess of this threshold to operating expenses rather than charging them to Account No. 228.199. The utility shall notify the Division of the Commission Clerk and Administrative Services in writing and provide a schedule of the amounts charged to operating expenses above the threshold.
5. For subsection (1)(i), OPC believes that the accounting treatment for both expenses incurred and revenues received for providing storm damage restoration assistance to another utility should be addressed in the rule. We also believe that these costs should be treated as above the line amounts.

6. Subsection (1)(j) suggested wording is as follows: (j) A utility shall not establish a new or change an existing annual accrual amount or a ~~new~~ target accumulated balance amount for Account No. 228.199 without prior Commission approval.

7. Subsection (1)(l) should delineate the type of information to be included in the annual report on storm damage to the Commission.

8. Add provision stating that nothing in this rule prohibits the Commission from using an earnings test or measure on a case by case basis requiring utilities to expense all or a portion of storm costs which would otherwise be charged to account 228.199.

February 28, 2006

John Slemkewicz
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Comments of Progress Energy Florida regarding Potential Revisions to Rule 25-6.0143, Florida Administrative Code, Use of Accumulated Provision Accounts

Dear Mr. Slemkewicz:

The staff of the Florida Public Service Commission (Staff) has proposed revisions to Rule 25-6.0143, Florida Administrative Code, related to accumulated provision accounts 228.1, 228.2, and 228.4. In response to Staff's request for comments on the proposed revisions, Progress Energy Florida (PEF) submits the following comments.

PEF would first emphasize that cost recovery for property losses based on the "incremental method" versus the "actual replacement cost method" is not a new issue. This very issue has been discussed and debated by the Commission quite extensively in prior proceedings. The current rules related to property loss damage were implemented to replicate replacement cost insurance and the current method of accounting supports the achievement of that objective. The Commission has concluded in prior proceedings that the actual restoration cost approach is consistent with the manner in which replacement cost insurance works (FP&L Order No. PSC-95-0264-FOF-EI, p.4.). The actual replacement cost methodology was most recently tested in PEF's 2004 storm cost proceedings, and PEF contends that, although the decisions rendered in that proceeding deviated slightly from a "pure" actual replacement cost methodology, the outcome of that proceeding continues to support that the actual replacement cost methodology represents a fair and equitable basis for cost recovery. The "incremental method" as proposed by staff, however, represents a vast departure from the "actual replacement cost method" that is currently employed.

The actual replacement cost method, as implemented by the current rules, has served the utilities, the customers, and the Commission well. The current rules are straightforward and effective because they provide for charging property losses that are not covered by insurance to account 228.1. This methodology properly accumulates all costs related to property loss events and more closely mirrors third party insurance. On the other hand, accounting for storm costs on an incremental basis is inconsistent with the principles of cost accounting. Therefore, PEF suggests that a more appropriate starting point is a refinement or clarification of the current rules rather than a complete change in methodology.

In contrast to the straightforward actual replacement cost method, the incremental approach proposed by Staff is laden with complex issues. The difficulty with the incremental approach lies in determining what the basis is against which these costs will be measured to determine the amount that is incremental. Comparison to budgeted expenses is not straightforward because there can be a number of factors that cause variances to budgeted expenses. Additionally, the incremental approach is costly, time-consuming, and relies on subjective assessments of budget variances and could hinder the restoration process. Furthermore, numerous adjustments and estimates have to be made to determine incremental costs.

If the Commission nonetheless chooses to adopt the incremental approach despite all the issues and problems discussed above, then it is imperative that all incremental costs are included, such as backfill work, catch-up work, increases in uncollectible accounts, and work that has shifted from capital projects to storm recovery efforts, just to name a few. The amended rule as it is currently proposed violates the fundamental principles of ratemaking because it ignores the unrecovered base rate expenses that result from the impact of a storm. The proposed rule also specifically excludes certain items for which incremental costs are incurred for the benefit of the customer such as call center activity, advertising and media communications, and employee assistance costs. All of these costs, however, are incremental, extraordinary in nature, and not contemplated in base rates. Such incremental costs are incurred to facilitate a safer, faster and more reliable restoration of service to customers, and they should not arbitrarily be excluded from an incremental cost approach.

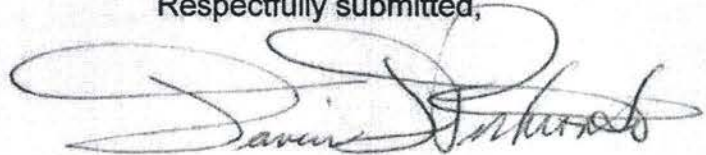
PEF also takes issue with the Staff's proposal that revenues received from mutual assistance activities should be credited to the reserve. This proposal ignores the fact that PEF employees, who are diverted from their "normal" responsibilities, have to return to those demands after they complete their service for other utilities. The base rates collected from PEF customers are used to pay for "normal" work that is performed both before and after mutual assistance work, and PEF's customers do not pay for mutual assistance assignments. Rather, the revenues collected from other utilities offset the costs of providing mutual assistance.

Finally, PEF notes that the provisions of Section 8(j), regarding recovery of a debit balance in Account 228.1, appear to be internally inconsistent. Specifically, the rule contemplates a target reserve level but only provides for recovery of the debit balance in the reserve. In order to be consistent, PEF suggests that any rule implementing an incremental approach provide for recovery up to the balance in the reserve prior to the casualty loss or storm event.

In summary, the issues outlined herein are not new ones. These issues have been addressed extensively in prior proceedings that have led to the rules as they exist today. Although we have seen increases in storm and casualty loss activity in the past couple of years, the fundamentals of accounting for those events and the issues related to "actual replacement cost" versus the "incremental" method of accounting for those costs have not changed. Assurance of proper accounting for and recovery of these costs is vital to the financial stability and strength of the utilities, and ultimately, it is the customer who benefits from a financially sound utility that can provide safe and reliable service. With these facts in mind, PEF proposes the refinements and clarifications of the existing rule that is currently in place as outlined on the attached "redline" version of the current rule (Attachment A). PEF respectfully suggests that implementation of these proposed changes to this rule would best meet the needs of customers, the Commission, and the utilities in a time-tested and effective manner.

PEF appreciates the opportunity to provide these comments and looks forward to working with the Commission and Staff at the March 10, 2006 workshop on these issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Javier Portuondo", with a large, stylized flourish above the name.

Javier Portuondo

25-6.0143 Use of Accumulated Provision Accounts 228.1, 228.2, and 228.4

(1) Account No. 228.1 Accumulated Provision for Property Insurance.

(a) This account may be established to provide for losses through accident, fire, flood, storms, nuclear accidents and similar type hazards to the utility's own property or property leased from others, which is not covered by insurance. This account would also include provisions for the deductible amounts contained in property loss insurance policies held by the utility as well as retrospective premium assessments stemming from nuclear accidents under various insurance programs covering nuclear generating plants. A schedule of risks covered shall be maintained, giving a description of the property involved, the character of risks covered and the accrual rates used.

(b) Charges to this account shall be made for all occurrences in accordance with the schedule of risks to be covered which are not covered by insurance. Recoveries or reimbursements for losses charged to this account shall be credited to the account.

(c) Actual repair activities and those activities directly associated with storm damage and restoration activities shall be charged to the reserve. Actual Restoration costs include, but are not limited to:

(1) Labor costs – including overtime or premium pay for employees dedicated to repair activities such as line crews, storeroom, engineering, and transportation personnel, payroll loading for associated taxes, administrative costs, and employee benefits;

(2) Materials and supplies – all materials and supplies (M&S) used for the temporary or permanent repair or replacement of facilities, including a standard loading factor to cover the administration of M&S inventories, the cost of preparing, operating, and staffing temporary staging facilities for materials and supplies distribution, the above-normal cost of M&S

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Inserted: normal cost of M&S purchased to replenish inventory levels back to pre-storm conditions and any costs incurred in the return of materials to vendors which were not consumed and not need in inventory

PROPOSED RULE DEVELOPMENT – DIRECT (PEF VERSION)

PAGE 2

purchased to replenish inventory levels back to pre-storm conditions and any costs incurred in the return of materials to vendors which were not consumed and not need in inventory ;

(3) Outside Services – including reimbursement costs to other utilities and payment to subcontractors dedicated to restoration activities;

(4) Transportation costs – including operating costs, fuel expense, and repair and maintenance of Company fleet and/or rented vehicles;

(5) Damage assessment costs – including surveys, helicopter line patrols, and operation of assessment and control facilities;

(6) Costs associated with the rental and/or operation and maintenance of any equipment used in direct support of restoration activities such as communication equipment, office equipment, computer equipment, etc.;

(7) Costs associated with injuries and damages to personnel and/or their property as a direct result of restoration activities;

(8) Costs of temporary housing for restoration crews and support personnel and their related subsistence costs;

(9) Storm preparation costs – including information and orientation costs, for Company employees and non-company personnel;

(10) Fuel and related costs for back-up generators;

(11) Costs of customer service personnel, phone center personnel, and other division personnel dedicated to customer service needs and locating and prioritizing areas of damage;

(12) Special storm-related advertising and storm-related media costs associated with customer information, public education and/or safety;

Deleted: and training

(13) Special storm-related employee assistance – including cost of cash advances, housing and or subsistence for employees and families to expedite their return to work;

(14) Identifiable bad debt write-offs due to storm damage; and

(15) any other appropriate cost directly related to storm damage and restoration activities.

(2) Account No. 228.2 Accumulated Provision for Injuries and Damages.

(a) This account may be established to meet the probable liability, not covered by insurance, for deaths or injuries to employees or others and for damages to property neither owned nor held under lease by the utility. When liability for any injury or damage is admitted or settled by the utility either voluntarily or because of the decision of a Court or other lawful authority, such as a workman's compensation board, the admitted liability or the amount of the settlement shall be charged to this account.

(b) Charges to this account shall be made for all losses covered. Detailed supporting records of charges made to this account shall be maintained in such a way that the year the event occurred which gave rise to the loss can be associated with the settlement. Recoveries or reimbursements for losses charged to the account shall be credited to the account.

(3) Account No. 228.4 Accumulated Miscellaneous Operating Provisions.

(a) This account may be established for operating provisions which are not covered elsewhere. This account shall be maintained in such a manner as to show the amount of each separate provision established by the utility and the nature and amounts of the debits and credits thereto. Each separate provision shall be identified as to purpose and the specific events to be charged to the account to ensure that all such events and only those events are charged to the provision accounts.

(b) Charges to this account shall be made for all costs or losses covered. Recoveries or

reimbursements for amounts charged to this account shall be credited hereto.

(4)(a) The provision level and annual accrual rate for each account listed in subsections (1) through (3) shall be evaluated at the time of a rate proceeding and adjusted as necessary.

However, a utility may petition the Commission for a change in the provision level and accrual outside a rate proceeding.

(b) If a utility elects to use any of the above listed accumulated provision accounts, each and every loss or cost which is covered by the account shall be charged to that account and shall not be charged directly to expenses. Charges shall be made to accumulated provision accounts regardless of the balance in those accounts.

(c) No utility shall fund any account listed in subsections (1) through (3) unless the Commission approves such funding. Existing funded provisions which have not been approved by the Commission shall be credited by the amount of the funded balance with a corresponding debit to the appropriate current asset account, resulting in an unfunded provision.

Specific Authority 366.05(1) FS. Law Implemented 350.115, 366.04(2)(a) FS. History-New 3-17-88.

AUSLEY & McMULLEN

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February 28, 2006

HAND DELIVERED



Ms. Blanca Bayo, Director
Division of Commission Clerk
& Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Rule Title: Use of Accumulated Provision Accounts 228.1, 228.2 and 228.4
(Undocketed) (Proposed Rule Development for Rule 25-6.0143)

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen (15) copies of Tampa Electric Company's comments for consideration in connection with the proposed rule development referenced above.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

James D. Beasley

JDB/pp
Enclosure

cc: John Slemkewicz (w/enc.)
Marlene Stern (w/enc.) ✓

**NOTICE OF PROPOSED RULE DEVELOPMENT
FLORIDA PUBLIC SERVICE COMMISSION**

Tampa Electric Comments

Tampa Electric appreciates the opportunity to comment on the proposed rule development for Rule 25-6.0143, Accumulated Provision Accounts 228.1, 228.2, and 228.4. Although there are certain elements of the Florida Public Service Commission ("Commission") Staff's draft proposed rule language that concerns Tampa Electric, it seems appropriate, given the events of the last couple of years with regard to hurricanes, that new rule language be crafted that addresses the important issue of accounting for accruals for unrecovered losses as a result of storm damage and other events, as well as related matters. However, it should be noted that the impetus behind this proposed rulemaking change appears to be the recent cost recovery dockets regarding recovery of hurricane costs not covered by insurance. The establishment of accounting guidance for recording costs should not be used to presume appropriate ratemaking treatment regarding cost recovery of such costs. It appears that many of the changes are being proposed because of cost recovery issues raised over the past year or so. Accordingly, many of Tampa Electric's comments go to the issue of cost recovery. However, these two issues are very separate and should not be confused.

While there are certain specific language changes that Tampa Electric would propose to be made to the proposed rule, an overarching issue involves the codification of the incremental cost methodology as the way costs are to be charged to the account, rather than the actual recovery cost approach. The actual recovery cost approach was mandated by the Commission to be used by Tampa Electric in Order No. PSC-95-0255-FOF-EI issued February 23, 1995 in Docket No. 930987-EI. In Tampa Electric's stipulation and settlement order related to the

effects of Hurricanes Charley, Frances and Jeanne (Order No. PSC-05-0675-PAA-EI issued June 20, 2005 in Docket No. 050225-EI) a modification to that approach was agreed to by the parties and approved by the Commission, however no permanent change was made to the actual recovery cost approach originally mandated by the Commission in the prior order. Tampa Electric is aware that the Commission, in its orders in the Florida Power and Light (FPL) and Progress Energy Florida (PEF) hurricane cost surcharge request dockets (Order No. PSC-05-0937-FOF-EI in Docket No. 041291-EI for FPL and Order No. PSC-05-0748-FOF-EI in Docket No. 041272-EI for PEF) elected to apply an incremental cost methodology. However, in both orders the Commission chose to implement the incremental methodology based on the facts and circumstances in those cases. The Commission has thus utilized both approaches at different times in different orders to the same companies. Adopting one methodology for accounting purposes would seem to be trying to tie the hands of future Commissions in making a choice of the appropriate methodology to use in future cost recovery proceedings.

In any case, whatever methodology is ultimately adopted by the Commission, for accounting or other purposes, the philosophical basis of that methodology should be carried out in its entirety to assure appropriate cost recovery. Selecting one method, and then arbitrarily deciding to exempt recognition for particular cost items that reflect that methodology's philosophical basis, would be unfair and not reflect the cost recovery principles of regulation in general and this Commission in particular.

There are some particular elements of the proposed rule that Tampa Electric would like to identify for inquiry at this time in the process, although additional items and issues may arise later:

- ▶ Section (1)(c) which would establish a new, specified subaccount, for storm-related damage accounting may be too specific. A better approach might be to require the utility to maintain accounting records in the parent account in sufficient detail to report storm costs by individual storm, and let the utility develop the appropriate accounting mechanism to do that.

- ▶ Section (1)(d) addresses the entire incremental cost issue as discussed above. If the incremental cost approach is to be applied, all incremental costs above base rate recovery must be made eligible for recovery. So called “double dipping” should not be allowed to occur, however the first dip must be included in base rates before something is excluded to avoid a double dip. All incremental base rate expenses should be recorded and eligible for recovery. It should be noted that this problem is avoided altogether using the actual cost recovery method. In any case, the rule should be focused on accounting for these costs so that there is sufficient information available to support future cost recovery. One additional comment for this section would be to consider changing the \$10 million threshold for notification to a percentage of rate base or percentage of storm reserve cap to better match reporting with the size of utility. Another comment would be to consider adding language that “reasonable estimates” are acceptable as many costs are not known for months. For example, Tampa Electric learned during the 2004 hurricane season that

mutual assistance utilities that assist during hurricanes do not bill for their services until many months after the storm restoration has been completed.

- ▶ Section (1)(e) expressly prohibits certain costs from being charged to the account. Tampa Electric has many questions about these exclusions and the basis for them. For example, some employee assistance costs may be necessary to enable employees to return to work for storm restoration duty. Certain advertising and media costs should be considered recoverable as well; for example, communicating essential safety information to customers or requesting customers call the company if they are still out of power and other such messages associated with returning them to service are directly related to storm restoration and should be recoverable. It is unclear why all call center and customer service costs, including overtime, are excluded. There are other substantial issues regarding these exclusions which should be explored before summarily being excluded from recovery.

- ▶ Tampa Electric believes a better way to address the issue raised by Section (1)(f) would be to give the utility discretion to increase or decrease the annual accrual, not the amount charged to the reserve. In addition, the \$5 million threshold for notification could be treated as a percentage rather than a fixed value, similar to the suggestion in Section (1)(d).

- ▶ Tampa Electric agrees with Section (1)(g) as being administratively efficient, however Section (1)(h) appears to unreasonably restrict Commission action (limiting a utility

surcharge request to the debit balance in the account). It is also not clear whether this prohibition would be inclusive of securitization. On any case, the rule should make clear that the credit balance of the account can be replenished through a surcharge, special assessment or securitization.

- ▶ Section (1)(i) is not clear, and Tampa Electric is concerned that something like this could be a disincentive for utilities to aid each other during storm recovery. Utilities incur backfill work when they send crews to assist storm damaged utilities and these revenues serve, in part, to counterbalance those costs. Mutual assistance activities are not profit ventures for utilities but instead are cost reimbursement for actual work performed. These activities are essential for timely restoration and have greatly benefited Florida.

- ▶ Sections (1)(j), (k) and (l) seem generally reasonable and appropriate at this point, pending the company gaining further information on the requirements.

The comments provided above are not necessarily the final positions of Tampa Electric on this proposed rule language, nor are they comprehensive of positions Tampa Electric may take as this rulemaking proceeds. Tampa Electric looks forward to participating in the workshop and in having further discussions with Commission Staff and other interested parties as this rulemaking moves forward.